

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 Agreement between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE:

Programme number: 2004/16815.01

Title: **Programme for Community support in the field of Nuclear Safety for Bulgaria**

Duration: **Until 30/11/2006**

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€6.27 Million** hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30/11/2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT, which have not been contracted by this date shall be cancelled. The deadline for execution of contracts of THE EC GRANT is **30/11/2007**. 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 Demetre Kourkoulas
Delegation of the European Commission
9 Moscovvska Str.
1000 Sofia
Bulgaria*

for THE RECIPIENT:

*Mr Milen Velchev
Minister of Finance (National Aid Co-ordinator)
Ministry of Finance
102, Rakovski St.
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 *01/02/2005*

Done at *Sofia*
Date *17.12.2004*

for THE RECIPIENT
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.....
MILEN VELCHEV
MINISTER OF FINANCE
Encl.

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

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FRAMEWORK AGREEMENT

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

of the one part, and

The Republic of Bulgaria, hereinafter referred to as "THE RECIPIENT",

of the other part,

and together jointly referred to as "THE CONTRACTING PARTIES"

Whereas the Bulgarian Government is eligible to be a recipient under the Community's aid programme PHARE as provided for in the European Community Council Regulations no.3906/89 of December 18, 1989 and 2698/90 of September 17, 1990.

Whereas it is fitting that the technical, legal and administrative framework within which MEASURES financed in 1990 under the Community's aid programme shall be executed, should be laid down.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

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

The Bulgarian Government takes all necessary steps in order to ensure the proper execution of all measures.

ARTICLE 2

Each MEASURE which is financed within the framework of this Agreement shall be implemented in accordance with the General Conditions set out in Annex A hereto, which shall be deemed to be incorporated in each financing memorandum.

The financing memorandum may vary or supplement the General Conditions as may be necessary for the implementation of the MEASURE in question.



ARTICLE 3

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

ARTICLE 4

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

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

ARTICLE 5

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

ARTICLE 6 - NUMBER OF COPIES

This Agreement is drawn up in the English and Bulgarian languages in two original copies. In case of divergencies between the two language versions, the English text prevails.

ARTICLE 7 - VALIDITY

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

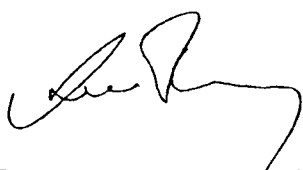
On termination of this Agreement any MEASURE still in the course of execution shall be carried out to its completion in accordance with the terms of the financing memorandum relating thereto, and of the General Conditions set out herein.

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ARTICLE 8

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

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



FOR
THE REPUBLIC OF BULGARIA

At. PAPARIZOV



FOR
THE COMMISSION OF
THE EUROPEAN COMMUNITIES

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ANNEX A
GENERAL CONDITIONS RELATING TO FINANCING MEMORANDA

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

TITLE I - FINANCING OF PROJECTS

ARTICLE 1 - COMMITMENT OF THE COMMUNITY

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

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

ARTICLE 2 - AVAILABILITY OF THE EEC GRANT

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

ARTICLE 3 - DISBURSEMENT

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

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

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

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

As regards MEASURES executed on the basis of prepared estimates, a first payment instalment which, save where the financing memorandum otherwise provides, shall not exceed 20% of the amount of the estimate approved by THE COMMISSION, may be made in favour of THE

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RECIPIENT in order to facilitate the launching of THE MEASURE. Other payment instalments shall be made available, at the request of THE RECIPIENT, subject to the same conditions set out in the paragraph 2 above.

TITLE II - PROCUREMENT

ARTICLE 4 - GENERAL

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

ARTICLE 5 - CONDITIONS OF PARTICIPATION

1. Save under the conditions of art.6 THE COMMISSION and THE RECIPIENT take the MEASURES necessary to ensure equality of conditions for participation in such contracts, in particular by publication, in due time of invitations to tender. Such publication is to be made for the Community at least in the Official Journal of the European Communities and for the beneficiary states in the appropriate official journal.
2. General conditions of contracts shall be drawn up in conformity with the models in international use, such as the general regulations and conditions for supply contracts financed from PHARE funds.

ARTICLE 6 - DEROGATION FROM STANDARD PROCEDURES

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

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

Such derogation shall be laid down in the financing memorandum.

ARTICLE 7 - AWARD OF WORKS AND SUPPLIES CONTRACTS

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

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

ARTICLE 8 - TECHNICAL COOPERATION CONTRACTS

1. Technical Cooperation contracts, which may take the form of studies, supervision of works or technical assistance contracts, shall be concluded after direct negotiation with the consultant or when technical, economic or financial reasons so justify, following invitation to tender.
2. Contracts shall be drawn up, negotiated and concluded either by THE RECIPIENT or by THE COMMISSION when the financing memorandum so provides.

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3. Where contracts are to be drawn up, negotiated and concluded by THE RECIPIENT, THE COMMISSION shall put forward a short list of one or more candidates on the basis of criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the project in question.
4. When there is to be a direct negotiation procedure and THE COMMISSION has proposed several candidates, THE RECIPIENT may freely choose the candidate with which it intends to conclude the contract from among those put forward.
5. When there is recourse to a tendering procedure, the contract shall be awarded to the candidate which has submitted the offer which is acknowledged by THE RECIPIENT and THE COMMISSION to be economically the most advantageous.



TITLE III - GRANT OF FACILITIES

ARTICLE 9 - GENERAL PRIVILEGES

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

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

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

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

ARTICLE 11 - IMPORT AND RE-EXPORT OF EQUIPMENT

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

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

ARTICLE 12 - IMPORTS AND EXCHANGE CONTROL

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

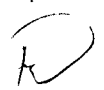
THE RECIPIENT shall grant the permits necessary to repatriate funds received in respect of THE MEASURE, in accordance with the foreign exchange control regulations in force in the state of THE RECIPIENT.

ARTICLE 13 - TAXATION AND CUSTOMS

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

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

- THE RECIPIENT shall ensure that the imports concerned will be released from the point of entry for delivery to the contractor as required by the provisions of the contract and for immediate use as required



for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above-mentioned duties, taxes or charges.

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

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

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

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

TITLE IV - EXECUTION OF CONTRACTS

ARTICLE 14 - ORIGIN OF SUPPLIES

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

ARTICLE 15 - PAYMENT PROCEDURES

1. For contracts financed out of the EEC Grant, tenders shall be drawn up and payments made, either in European Currency Units (ECU), or in accordance with the foreign exchange laws and regulations of the RECIPIENT in the currency of THE RECIPIENT, or in the currency of the state where the tenderer has his registered place of business, or in the currency of the state where the supplies were produced.

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

3. THE RECIPIENT and THE COMMISSION shall take all measures necessary to ensure execution of payments within the shortest possible time.

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TITLE V - COLLABORATION BETWEEN THE COMMISSION AND THE RECIPIENT

ARTICLE 16 - INSPECTION AND AUDIT

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

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

2. THE RECIPIENT shall :

(a) maintain records and accounts adequate to identify the works, supplies or services financed under the financing memorandum in accordance with sound accounting procedures;

(b) ensure that the aforementioned agents or representatives of THE COMMISSION have the right to inspect all relevant documentation and accounts pertaining to items financed under the financing memorandum, and assist the Court of Auditors of the European Communities to carry out audits relating to the utilization of the EEC Grant.

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

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

ARTICLE 17 - FOLLOW-UP OF MEASURES

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

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

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

TITLE VI - GENERAL AND FINAL PROVISIONS

ARTICLE 18 - CONSULTATION - DISPUTES

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

2. Where there is a failure to carry out an obligation set out in the financing memorandum and these General Conditions, which has not been the subject of remedial measures taken in due time, THE COMMISSION may suspend the financing of the MEASURE, after consultation with THE RECIPIENT

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3. THE RECIPIENT may renounce in whole or in part the execution of THE MEASURE. The Contracting Parties shall set out the details of the said renunciation in an exchange of letters.

ARTICLE 19 - NOTICE - ADDRESSES

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

The addresses are set out in the financing memorandum.

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ARBITRATION

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

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

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

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

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

Should any arbitrator in accordance with this provision resign, die or become unable to act, another arbitrator shall be appointed in the same manner as the arbitrator whose place he takes; such successor shall have all the powers and duties of the original arbitrator.

1. OBJECTIVES AND DESCRIPTION

1.1. Objectives

The overall objective of this programme is to contribute to improving nuclear safety in the beneficiary candidate countries.

The specific objectives of this programme are to

- enhance the factors affecting regulatory effectiveness as spelled out, for instance, in the conclusions of the CONCERT Group¹;
- improve radioactive waste management;
- heighten off-site emergency preparedness.

Details of the specific objectives and description of the projects are to be found in the project fiches prepared for each project.

Indicators of achievement

Overall indicators of achievement have, in the past, not been established for projects in the field of nuclear safety.

There are no Community common technical standards covering safety in the operation of nuclear installation, regulatory practices or radioactive waste management. Consequently, in their absence, the secondary step of deriving benchmarks from such standards is not possible. However, with regard to regulatory practices, although there is a high degree of convergence on the substance of requirements, there are a number of different regulatory approaches according to practices in Member States determined by their specific legal and technical traditions. Nuclear Safety Authorities from candidate country adapt to their local requirements best practice transferred from EU member state regulators.

1.2. Description of Projects

The revised Phare Guidelines acknowledge that pre-accession financial assistance in the field of nuclear safety demands a specific approach. The projects have been chosen for being sufficiently mature and able to contribute to a sustainable improvement to the level of nuclear safety within their specific objectives. Most projects pertain to the field of institution building, supporting either the nuclear safety authority or public bodies entrusted with specific duties regarding radioactive waste management or similar tasks.

This programme allocates financial assistance to the following projects:

Projects:

¹ Conclusions of the 17th CONCERT Group meeting, June 29-30 2000. These factors are:

- "To be effective, a regulatory body must have a well-defined task, well-defined work and assessment processes, be independent from the energy producers, political power and pressure groups, be transparent and open, and have the adequate means, in terms of budget and competent and well motivated staff to perform its task.
- An effective regulatory body is one that ensures an acceptable level of safety, acts to prevent degradation of safety, promotes safety improvements, is timely and cost effective, ensures the confidence of operators, general public and government, and strives continuously for improved performance.
- A regulatory system is effective when the utilities consistently do all that they should to maintain or improve safety. Nevertheless, the performance of the plant operators depends also on other factors, and it is difficult to use it to assess the effectiveness of the regulatory body.
- International co-operation and international peer reviews play an important role in the development and maintenance of an effective regulatory body."

Bulgaria 016-815.01

016-815.01.01 Severe Accident Management Guidelines (SAMG). Review and assessment in compliance with international requirements

The actual set of SAMGs for Kozloduy NPP units 3-4 and 5-6 are being developed with the help of Phare project BG 01.10.01 "Phenomena investigation and development of Severe Accident Management Guideline" which should be completed within the next few months.

The aim of this proposal is to assist the Bulgarian Nuclear Regulatory Agency (NRA) in the process of the review of SAMGs for Kozloduy NPP units 3-4 and 5-6. The project will provide EU regulatory and technical expertise to improve NRA capabilities in the area of SAMG through training and other activities, including the preparation of a procedure for review and assessment of SAMG by the regulatory authority.

These are the main activities of the project:

- Review and assessment of the SAMG, including: (1) the development of the corresponding methodology; (2) actual review of SAMG for units 3-4 and 5-6 of Kozloduy NPP; and (3) review and assessment of the methodology used (applicability of computer codes used, adequacy of modelling assumptions and uncertainties analyses considered).
- Transfer of knowledge and capabilities in the area of review of SAMGs to NRA, including: (1) on-the-job training of staff from NRA and Technical Support Organisations (TSO) in the review of SAMGs; and (2) analyses of the review process, covering the effectiveness of the review methodology and validation and approval of the regulatory procedure for the review and assessment procedure based on results of the previous activity.

The beneficiary organisation of the project is NRA.

016-815.01.02 Safety Analysis Report of Kozloduy NPP Units 5 and 6. Review and assessment in compliance with international requirements

The aim of this proposal is to assist the Bulgarian Nuclear Regulatory Agency and its TSOs in the review of the safety analysis reports (SARs) for Kozloduy NPP units 5 and 6. The project will provide EU regulatory and technical expertise to improve the NRA capabilities in the review process of these SARs in order to ensure their quality and their fulfilment with the international requirements in format, structure, contents and quality of calculation results.

These are the main activities of the project:

- Review and assessment of the SARs of Kozloduy NPPs units 5 and 6, including: (1) the assessment of the completeness of the information provided; (2) the assessment of the adequacy of the modelling assumptions and the adequacy of computer codes used; (3) the review and assessment of the methodology applied to: design bases accidents; beyond-design basis accidents; etc.; (4) the assessment of selected and sensitive assumptions and analyses, which require engineering judgment; and (5) the review and approval of the demonstration by the SAR of the safety of the units in view of the recent implementation of the modernization programme.
- Training and validation of the methodology for review and assessment of SARs, including: (1) on-the-job training of NRA and TSOs staff in review of SARs; and (2) validation and assessment of the methodology through its application to specific safety cases concerning the SAR

The beneficiary organisation of the project is NRA.

016-815.01.03 Assistance to the Bulgarian Nuclear Regulatory Agency in capacity building in the areas of regulatory guides, assessment capabilities, staff training and quality management

The aim of this proposal is to assist the Bulgarian Nuclear Regulatory Agency in enhancing its regulatory and technical competences dealing with regulatory requirements, assessment capabilities and practices and training and quality management systems in respect to the enforcement of the Bulgarian New Act on the Safe Use of Nuclear Energy. The project will provide EU regulatory and technical expertise in the above mentioned areas.

The Act on Safe Use of Nuclear Energy in force since July 2002 covers the state regulation of the safe use of nuclear energy and ionising radiation and the safety of radioactive waste management and the safety of spent fuel management. Bulgaria is finalising the corresponding secondary legislation, but to complete the process, the regulatory framework will require the development and adoption by NRA of a number of Regulatory Guides that will give advice to the Licensees/Applicants on the ways to meet legislative requirements.

NRA has embarked on a process of recruiting new staff. Although new employees have sufficient technical knowledge, they need training in the nuclear regulatory field. There is a need to improve NRA's training and re-training system by establishment of well-structured and properly maintained training programmes.

An important part of the overall operation of the organisation is the clear and precise definition of the processes and documentation of practices, including the self-assessment and monitoring of company performance. Some assistance to NRA in the design of its Quality Management System has been provided through Phare Project BG 01.10.02 ("Enhancement of safety assessment capabilities available to BNRA"), but this assistance should be completed by the implementation of this new Phare project.

These are the main activities of the project:

- Development and adoption by BNRA of a number of Regulatory Safety Guides;
- Establishment within BNRA of the necessary capabilities for performing review and assessment of licensees' safety documentation;
- Drawing up of an appropriate regulatory training programme
- Development at NRA of a modern well-documented quality management system;
- Providing EU experience and knowledge on the organisational arrangements for self-assessment, audits, indicators;

The beneficiary organisation of this project is NRA

016-815.01.04 Improvement of the Off-site Emergency Preparedness (OSEP) in Central and Eastern Europe: Installation of the RODOS System in Bulgaria

The RODOS system, comprising hardware, specific software, communications links and software, as well as specialised training of future operators, is to be delivered and installed within this project. At the end of the project RODOS shall be in the pre-operational state, which means that the Bulgarian Nuclear Regulatory Agency (NRA) will subsequently develop their competences to use RODOS on a daily basis, including localisation of RODOS output. This phase should develop confidence in RODOS results among the various other actors in the national Bulgarian network that ensures off-site emergency preparedness. The NRA, will ensure sustainable further development of the system, including staff participation in external RODOS seminars and training exercises. NRA staff will also be trained to meet all requirements of the system operation and maintenance.

The beneficiary organisation of the project is NRA.

016-815.01.05 Development of conceptual design of the national disposal facility for low- and intermediate-level short-lived radioactive waste

According to the Bulgarian national strategy on radioactive waste management, a disposal facility for low- and intermediate-level short-lived radioactive waste should be operational by 2010. This facility will mainly accommodate radioactive waste packages arising from the Kozloduy NPP operation and decommissioning. At present four sites are being evaluated, all are situated near Kozloduy. In 2005, a decision should be taken concerning site selection. This project fits in the sequence of activities that will lead to operation of the disposal facility. It comprises three main tasks:

- Definition of waste acceptance criteria for disposal of radioactive waste to be used in further technical design activities.
- Drawing-up of a conceptual design of the repository.
- Contribution to the preparation of technical specifications of the repository for the subsequent tender documentation.

The beneficiary of the project is the newly established state-owned company on radioactive waste management

016-815.01.06 Civil construction works for establishment of radioactive waste processing plant and storage facility for Novi Han repository

Institutional radioactive waste is currently managed by the Institute for Nuclear Research and Nuclear Energy (INRNE) which operates a long-term/storage facility at Novi Han. In 2004 the responsibility of the management of institutional radioactive waste will be handed over to the newly established state-owned company on radioactive waste management.

In order to comply with Bulgarian safety requirements and EU best practices in the field of storage/disposal of radioactive waste, the Novi Han repository must be modernised. An action plan was established which notably foresees the construction of a waste processing plant and a storage facility for various types of waste and in particular high-activity sealed radioactive sources. The preparation of the technical specifications for the facility is part of the scope of the Phare project 632.01.01 "Supply of equipment for characterisation of institutional radioactive waste and development of technical design for waste processing and storage facility" that was programmed in 2002.

The main objective of this project is to proceed with the construction of two buildings at Novi Han that will constitute the facility. The project has two main components: works and service (supervision of the construction works). Only basic equipment should be provided through this project. Delivery and installation of special equipment should be performed within a separate project.

The beneficiary organisation of the project is the newly established state-owned company on radioactive waste management

Romania 016-815.02

016-815.02.01 Assistance to Romanian Nuclear Regulatory Authority by the supply of specific mechanical analysis computer codes

This proposal builds upon results of the Phare project RO 01.10.02 (2002) which strengthens the effectiveness of the Romanian Nuclear Regulatory Authority (CNCAN) in developing its internal capabilities to perform and to assess the overpressure protection analysis for the Special Safety Systems and Reactor Primary Circuit, and stress analyses issued by the utility. CNCAN staff has been trained to use certain computer codes (in particular ADLPIPE and ANSYS/Mechanical and ANSYS/Structural) in the context of this running project. This present new project foresees CNCAN gaining access to two types of mechanical computer codes, similar with to those mentioned above. The named codes are currently used by the Romanian utility in support of submissions to the regulatory authority. The development plan of CNCAN foresees setting up within the duration of this

new project an in-house TSO capability that in terms of personnel and other commitments will ensure sustainability of the results of this project.

The beneficiary organisation of the project is CNCAN.

016-815.02.02 Technical assistance for the Romanian Nuclear Regulatory Authority to deal with important aspects of future commissioning activities

The aim of this proposal is to assist the Romanian Nuclear Safety Authority (CNCAN) in dealing with future commissioning activities, as part of the licensing process. The project will provide EU regulatory and technical assistance to strengthen CNCAN's capabilities in reviewing and assess all the commissioning stages of Cernavoda NPP Unit 2, scheduled for end of 2006. This assistance will be also very valuable for enhancing in general the licensing capabilities of CNCAN.

The CNCAN has embarked on a process of recruiting new personnel to be able to properly manage all the nuclear safety activities under its responsibility. This project will contribute, through formal and on-the-job training, to strengthening the competences of CNCAN's new staff in the nuclear regulatory field.

These are the main activities of the project:

- Specific training course based on the EU experience in the field and know-how transfer for supporting the CNCAN staff to perform the regulatory activities related to commissioning activities. Specific training courses in the area of quality assurance management systems during commissioning and NPP operation, as well as in the area of regulatory activities related to the assessment of supporting documents for operation licence and other activities.
- EU support for the preparation of requirements covering all commissioning phases (structure and responsibilities of the organisation, content of the commissioning programme, acceptance criteria, regulatory approval, etc.), and requirements of documentation to be submitted for justification from safety point of view.

The beneficiary organisation of the project is CNCAN.

016-815.02.03 Technical assistance to the Romanian Nuclear Regulatory Authority to improve the management of high-activity sealed radioactive sources (SRS), including spent sealed radioactive sources (SSRS), and orphan sources²

As part of the EU accession process, Romanian regulations in the field of management of high-activity sealed radioactive sources must comply with the new acquis as defined in the Council Directive 2003/122/EURATOM that was issued on 22 December 2003 on "the control of high-activity sealed radioactive sources and orphan sources". This requires a number of new regulations to be laid down by the Romanian regulatory body (CNCAN) and thereby an enhanced degree of expertise of CNCAN staff in this particular area. This project primarily aims at providing CNCAN technical assistance for improving regulations on the safety of long-term storage/disposal of high activity and long-lived sealed sources, and retrieving orphan sources. It will also consist in the organisation of training activities in a number of specific domains, e.g.

- Control and security of long-term storage/disposal of high-activity sealed sources
- Safe retrieval of orphan sources
- Funding mechanism for retrieving and managing orphan sources
- Decommissioning of facilities where orphan sources might be found
- Identification of the equipment for intervention and retrieval of orphan sources

² An orphan source is a source that poses sufficient radiological hazard to warrant regulatory control, but which is not under regulatory control because it has never been so, or because it has been abandoned, lost, misplaced, stolen or otherwise transferred without proper authorisation

The beneficiary organisation of the project is CNCAN.

016-815.02.04 Design and safety assessment of Cernavoda surface low-and intermediate short-lived radioactive waste repository in Romania

The National Nuclear Plan approved by the Romanian government in 2002 stipulates that a near-surface disposal facility for short-lived radioactive waste generated during operation of the Cernavoda NPP should become operational by 2010. In all probability the Saligny site that is located near the Cernavoda NPP should be selected for hosting the repository (30,000 m³ capacity). In this context, the newly created Romanian Radioactive Waste Management Agency (ANDRAD) that will operate the facility is in charge of drawing up the technical design of the repository as well as assessing its safety.

Actually, both activities (technical design and safety assessment) have already been subject to a number of investigations over long periods, some of them with the support of the IAEA and the USA. The main objectives of this project are to finalise the disposal concept, to prepare technical specifications for the subsequent tendering activities, to perform a preliminary safety assessment (PSAR) and to provide regulatory authorities with all necessary information that would then enable ANDRAD to start the construction of the repository.

The beneficiary organisation of the project is ANDRAD.

1.3. Assumptions and risks

The programme assumes that the beneficiary countries will maintain their efforts to ensure a high level of nuclear safety and to implement the recommendations of the June 2001 Council Report on Nuclear Safety in the Context of Enlargement. The Peer Review Status Report, established by the Council's Atomic Questions Group and its ad-hoc formation Working Party on Nuclear Safety on 5 June 2002, found that candidate countries are clearly committed to fulfil the recommendations set out in the Council Report, both for nuclear power plants and other types of installations. The status report also noted that all candidate countries had accepted the recommendations. In the case of Bulgaria a further peer review report on nuclear safety was produced by the Council in March 2004 on the basis of the Council Peer review mission to Bulgaria in November 2003. This programme assumes that the beneficiary countries will continue to pay sufficient attention and devote appropriate effort to the timely implementing the supported projects.

Whilst there are no identifiable risks inherent in the tasks to be fulfilled under the various projects, an overall risk to the programme is that continued nuclear safety assistance involves the danger to create dependency on the side of the beneficiary. Special regard has to be directed towards the way in which the beneficiary organisations will sustain the results of the projects. In the cases of regulatory assistance, emphasis needs to be laid on the value of transferring know-how to the recipient and avoiding the replacement of functions in the sphere of responsibility of the beneficiary organisation through activities of the contractor.

1.4. Conditionalities

The effective launching of some of the projects listed above is subject to particular conditions that are described, in more detail, in the respective project fiches. In particular, the proper implementation of the project 016-815.01.06 (Bulgaria) requires timely implementation of Phare project 632.01.01/2002. In general the construction of new facilities requires the preparation, beforehand, of the corresponding preliminary safety analysis reports and environmental impact assessments.

2. BUDGET (€)

2.1 Budget table

<i>Country</i>	<i>Implem. Agency</i>	<i>Code</i>	<i>Intit. Building</i>	<i>Invest.</i>	<i>Co-Financing</i>	<i>Total Budget</i>	<i>Total Phare Budget</i>
Bulgaria	CFCU	016-815.01	4,300,000	1,970,000	820,000	7,090,000	6,270,000
Project 1		016-815.01.01	800,000			800,000	800,000
Project 2		016-815.01.02	1,300,000			1,300,000	1,300,000
Project 3		016-815.01.03	1,050,000			1,050,000	1,050,000
Project 4		016-815.01.04		450,000	150,000	600,000	450,000
Project 5		016-815.01.05	1,000,000			1,000,000	1,000,000
Project 6		016-815.01.06	150,000	1,520,000	670,000	2,340,000	1,670,000
Romania	CFCU	016-815.02	1,865,000	94,000	131,400	2,090,400	1,959,000
Project 1		016-815.02.01	15,000	94,000	31,400	140,400	109,000
Project 2		016-815.02.02	500,000			500,000	500,000
Project 3		016-815.02.03	350,000			350,000	350,000
Project 4		016-815.02.04	1,000,000		100,000	1,100,000	1,000,000
TOTAL			6,165,000	2,064,000	951,400	9,180,400	8,229,000

2.2. Principle of Co-Financing

In accordance with the Phare Guidelines of 1999 and Revised Guidelines of 2002, 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 eligible³ public expenditure.

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

Provisions on joint or parallel co-financing are contained in the budgetary paragraphs of the individual project fiches. The level of co-financing per project is indicated in the proposal under Section 5 "Budget".

3. IMPLEMENTATION AGENCIES

The Central Financing and Contracting Agencies (CFCUs) within the Ministry of Finance will be the implementation agencies responsible for tendering, contracting and financial reporting.

³ Taxes are not an element eligible for co-financing

4. IMPLEMENTATION ARRANGEMENTS

4.1. Method of implementation

This Financing Proposal is for a horizontal programme. The projects will be implemented through the Phare national programme structures. This Financing Proposal will be split on a country-by-country basis leading to two separate Financing Memoranda, as set out in the table above.

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation⁴. The Beneficiary Country will ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times. The Commission reserves the right to take the necessary measures, including suspension of funds, if it considers that these conditions are not met.

Prior to the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999⁵, project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

4.2. Procurement

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Title 5 of its Implementing Rules⁶, as well as the Commission Decision SEC (2003) 387/2⁷.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the "Practical Guide to contract procedures financed from the general EC budget in the context of external actions" as published on the EuropeAid website⁸ at the date of the initiation of the procurement or grant award procedure.

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

5. MANAGEMENT OF ASSISTANCE

5.1. Project Management

5.1.1. Responsibilities

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

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

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

⁴ Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

⁵ Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

⁶ Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1

⁷ Commission Decision SEC (2003) 387/2 on the general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of co-operation with third countries, adopted on March 25, 2003

⁸ Current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

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

Although in general the size of projects financed under Phare are above 2 million €, given the particular nature of the support needs and implementation challenges in the nuclear safety field, projects are generally of **smaller size**.

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

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

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

(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval well ahead of the deadline for contracting and preferably by no later than 6 months after the signature of the FM. In case of non-compliance, the Beneficiary Country will inform the Joint Monitoring Committee (JMC) which may recommend reallocation of funds in accordance with Art. 5 of the Memorandum of Understanding (MoU) on the National Fund.

5.1.4. Environmental Impact Assessment and Nature Conservation

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

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

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

5.2. Financial Management

5.2.1. Principles and Responsibilities

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

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.

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

¹⁰ In Annex EIA to the corresponding investment project fiche.

¹¹ In Annex Nature Conservation to the corresponding investment project fiche

The Commission will make payments to the NF in accordance with the Memorandum of Understanding signed between the Commission and each of the countries concerned Bulgaria and Romania.

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 bank agreed in advance with the Commission. In principle, all bank accounts will be interest bearing. Interest will be reinvested in the programme.

5.2.2. Payments to the National Fund

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

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

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

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

5.2.3. Payments from the National Fund to the Implementing Agency

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

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

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

¹³ Excluding the amount foreseen for Community Programmes

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

¹⁵ Excluding the amount for Community Programmes

¹⁶ Excluding the amount for Community Programmes

¹⁷ Excluding the amount for Community Programmes

¹⁸ Excluding the amount for Community Programmes

5.2.4. Payments in Case of Contractual Retention Clauses

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

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

5.2.5. Closure of Expenditure and Clearance of Accounts

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

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

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

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

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

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

6. MONITORING AND EVALUATION

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

For the Phare programme, the JMC will be assisted by Sectorial 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 effective. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

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

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

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

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

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

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

7.2. Obligations of the Beneficiary Country

7.2.1. Audit and Financial Control

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

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

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

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

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

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

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

7.2.2. Preventive Measures

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

7.2.3. Anti-Fraud Measures and Corrective Actions

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

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

In particular, all suspected or actual cases of fraud²⁴ and irregularity²⁵ as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud or irregularity to report, the Beneficiary Country shall inform the Commission of this fact within two months following the end of each quarter.

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

7.3. Recovery of Funds in Case of Irregularity or Fraud

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

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

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

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

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

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

²⁵ Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure. The term "Community law" in this context shall be defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, the MoU on the Establishment of the National Fund etc.)

²⁶ See definition above

²⁷ See definition above



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

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

8. VISIBILITY AND PUBLICITY

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

9. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Government of concerned, the Commission may review the programme with a view, at the Commission's discretion, to cancelling all or part of it and/or to reallocate unused funds for other purposes consistent with the objectives of the Phare programme.



ANNEX D

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.

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