

FINANCING MEMORANDUM¹

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

on the one part, and

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

on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

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

Programme number: **BG 2004/016-782**

Title: **2004 Cross-Border Co-operation Programme between Bulgaria and Greece**

Duration: **Until 30 November 2006**

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **20 M€** hereinafter referred to as "**THE EC GRANT**".

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

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30 November 2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT, which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is **30 November 2007**, with exception of the project BG 2004/016-782.01.01 where the deadline for execution of contracts is **30 November 2009**. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the contract execution period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

Correspondence relating to the execution of THE MEASURE, stating THE MEASURE'S number and title, shall be addressed to the following:

for the COMMUNITY:

Delegation of the European Commission

9 Moskovska Str
PO Box 668
BG-1000 Sofia
Bulgaria

Tel: (+359 2) 933 5252
Fax: (+359 2) 933 5233

for THE RECIPIENT:

Mr Milen Veltchev
Minister of Finance
102 Rakovski St
BG-1040 Sofia
Bulgaria

ARTICLE 5 - NUMBER OF ORIGINALS

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

ARTICLE 6 - ENTRY INTO FORCE

This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT.

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

Done at
Date

Done at
Date

for THE RECIPIENT

for THE COMMUNITY

Encl.

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

ANNEX C TO THE FINANCING MEMORANDUM

SPECIAL PROVISIONS

1. OBJECTIVES, DESCRIPTION AND CONDITIONALITY

1.1 The wider objectives of the programme are:

- To promote good neighbourliness and stability between the CEEC countries and the Member States by funding projects which will yield tangible benefits to the regions and communities on both sides of the border;
- To promote co-operation with the CEEC regions bordering the European Union, helping these regions to overcome the specific development problems which may arise, *inter alia*, from their position within the national economies, in the interest of the local communities and in a manner compatible with the environment protection;
- To develop the economy of the border regions by enhancing the trade and the economic co-operation with special environmental consideration.

1.2 The specific objectives and results are reflected in the following priority areas:

- To continue to facilitate the movement of goods and people by rehabilitation of the access roads and infrastructure to the border crossings;
- To address local environmental problems that affect both sides of the border, such as, but not limited to, management of liquid waste disposal, and the integrated water management of the shared river basins (Mesta/ Nestos) that will improve the quality of life and the safety of the local population and protect the natural environment.
- To facilitate the cross-border co-operation of regional actors and agencies in the areas of civil society, culture, education, business, especially tourism, and environment through the continuation of a Small Project Fund.
- To provide technical assistance through Project Preparation Facility projects.

1.3 Programme Description

The programme has been designed following bilateral contacts between Bulgaria and Greece, several consultations with EC Delegation in Bulgaria, and DG Enlargement recommendations reflecting the Commission Regulations No 2760/ 98 (as amended by Regulation No. 1596/2002), concerning the implementation of CBC programmes in the framework of the Phare programmes. The proposed projects selected for support in the Phare CBC Bulgaria-Greece 2004 Programme were discussed and agreed during several meetings.

1.3.1. Transport Infrastructure Projects:

Starting from 1994, thanks to the establishment of the Cross-Border programme between Greece and Bulgaria, substantial funds were made available to improve and strengthen the co-operation of the two border regions. In order to have a longer term strategic approach, reduce the isolation and encourage investments and cross-border trade, the governments of Bulgaria and Greece signed on 22 December 1995 a bilateral agreement, by which they agree to open three new border crossing links: Kurdjali – Komotini, Gotse Deltsev - Drama, and Rudozem – Xanthi. This bilateral agreement has since been the basis for the previous development of the Bulgaria-Greece border region. Consequently, each country has undertaken to carry out the necessary feasibility and technical studies in order to ensure appropriate road links to the proposed crossing points.

During the previous years, Phare CBC programmes and INTERREG programmes have contributed to the implementation of this bilateral agreement, by financing the construction of the first border crossing road (Gotse Deltsev – Drama):

- Under CBC BG/GR 1998 , € 9 million for the Bulgarian access road to Ilinden (on the border between Gotse Deltsev and Drama);
- Under CBC BG/GR 1998 , €3 million for the new Bulgarian check point at Ilinden ;
- Under CBC BG/GR 1998 , €11.82 million for Rehabilitation of E85 road ;
- Under CBC BG/GR 1998 , €23.20 million for Rehabilitation of E79 road;
- Under INTERREG II , Greek access road to Ilinden;
- Under CBC BG/GR 2000 , €17 million for the construction of the 17.67 Km access road (Podkova-Makaza) to the new border- crossing between Greece and Bulgaria (Makaza - Nimfea);
- Under CBC BG/GR 2000 , €3 million for the construction of a Cut & Cover tunnel at Gotse Deltsev – Drama border crossing;
- Under CBC BG/GR 2001 , €7 million for the new Bulgarian check point at Makaza;
- Under CBC BG/GR 2002: Rehabilitation and Partial Reconstruction of Road II-19 “Razlog – Bansko – Gotse Delchev – Sadovo, €9.3 million;
- Under CBC BG/GR 2002: Construction of Second tube of the Tunnel at km 327 on road E-79 (Dupnitsa By-Pass), €3.8 million.

The following project is a logical step forward to the achievement of the programme objectives.

2004/016-782-01.01: Construction of Road II-80/E-85/ from Novo Selo to “Maritsa” Motorway, km 0+000 to km 3+490
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Only two operational border crossing points between Bulgaria and Greece exist at Kulata and Novo Selo, the access to which was upgraded by the rehabilitation works to the existing E79 and E85 roads under the Phare funded Southern Border Regions Road Project. In addition a new Border Crossing Check Point and new access road at Ilinden are constructed. This is also mirrored by similar new construction on the Greek side.

The proposed project consists of new construction of an II class road, which will pass 3-4 km Northwest near by Svilengrad. The anticipated new road is a natural continuation of the newly constructed four-lane carriageway from Cross Border Check Point “Svilengrad” to Novo Selo and shall be 6.866 km shorter than the current connection.

It begins from km 0+000 on road I-8, in the northwest end of the Svilengrad' s quarter Novo Selo, to km 3+490 with a total length of 3.49 km.

At present this connection passes through the urban area of Svilengrad, passes near by the city hospital and reaches the intersection in the village of Novo Selo. The heavy traffic causes significant ecological noise pollution.

The road will be continued in the direction of the Port of Burgas at a later stage, creating a direct transport connection with the Greek Port of Alexandropolis. Its implementation will considerably decrease the transport distance therewith significantly increasing the economical effectiveness of the route.

1.3.2. Economic Development and Employment:

2004/016-782-01.02: People to people

The economic life and development of the Bulgarian – Greek trans-border region presents many differences in the quality of life, as witnessed at all levels of the economic life of the region. Considerable conflicts are present in the Bulgarian side primarily due to the acute socio-economic upheavals of the recent years, thus not allowing the local economy to mature and create those structures which are already operational on the Greek side.

The economy of the Bulgarian region eligible under the Programme turns out 11.4% of the total GNP of the country. In the structure of the Gross Added Value the tertiary sector features the highest share (43.1%), followed by the primary sector (35.7%) and the secondary sector ranks at the last place (21.2%). All in all, the level of economic development, measured in terms of the indicator GDP/capita, is below the national average. In 1999 its value was BGN 2071, that is 75% of the national average and 29 % of the EU (25) average.

The region is characterized by sharp contrasts in its economic development, ranging from agriculture and mono-structural industry to modern, services-oriented economy. Blagoevgrad and Haskovo stand out as the two extreme poles of development of the Bulgarian border region. The individual districts and municipalities manifest different capacity and rates of adapting to change. The differences in the development of the private sector reflect the impact of the crisis that transition to market-oriented economy has forced on local economies, the unequal opportunities for development in the private sector, and the limited initiatives taken by local businesses as well as the limited number of foreign investment projects in the region.

The scheme intends to provide an **indirect support to SMEs** through improved business services, consultancy and information on the possibilities and potential opportunities for creating partnerships in the BG-GR border area. A **direct support** will address regional non-profit actors in overcoming the gap in research and development activities, in creating favourable conditions and institutional framework to support economic actors to develop cross-border relations. The aim is to encourage inter-company co-operation in the cross-border region, in order to enhance their competitiveness and productivity. Development of common projects will contribute to the creation of the joint economic space and will lead to synergies. By co-operating, companies get a chance to pool their competitive advantages and to overcome the competitive weaknesses of individual enterprises. The grant scheme will stimulate the development and exploitation of mutual complementarity and a better

access to markets for co-operating companies. The regional impact of the project will be measured not only by the success of individual enterprises, but also by the increase of the growth potentials of service and manufacturing clusters, as well as by the increase of the number of employed in the border region.

1.3.3. Environment projects

2004/016-782-01.03 Promotion of nature protection actions and sustainable development across the border (*Grant scheme*)

The project purpose is to develop a new approach for the effective management of a joint CBC eco-network. It will cover all categories of Protected Areas (including proposals for designation of new protected areas), with a view of their preparations for a future NATURA 2000 membership, as defined by the harmonised Protected Areas Law (1998) and Biological Diversity Law (2002), buffer zones and adjacent territories.

A significant challenge for the management of joint rich biodiversity areas in the border region is the reconciling of stakeholder interests and management goals into a coherent, comprehensive management plan, integrating nature conservation objectives with sustainable local socio-economic development, social affordability, and tangible benefits for the local people. Bulgaria is currently building up the experience for such integrated management, for the benefit of both the people and the nature.

The present project will implement some pilot innovative administrative and management schemes for selected rich biodiversity areas within the CBC BG-GR region; it will develop and test economic and financial mechanisms for the self-sustaining, as well as participatory planning and implementation structures. It will also support the development of integrated Management Plans for sustainable local development.

Bulgarian beneficiaries of the grant scheme will implement operations in close cooperation with the Greek partners, who have already established Natura 2000 sites and developed information systems. It is expected, that Bulgaria will benefit from the transfer of know-how. of the Greek partners. Greeks authorities have established several protected areas located on the border area. The co-operation between stakeholders at regional and local level will be reinforced with implementation of joint actions

This Grant Scheme is elaborated with the representatives from the regions on the basis of the national and regional strategies and survey of the potential project ideas as also the analysis of the Greek INTERREG III A projects (lessons learned for best practices transfer). This is a guarantee for successful implementation of the proposed scheme.

2004/016-782-01.04 *Integrated use of the thermo mineral waters accumulated in the “Erma reka-Ilidza” geothermal system*

The project aims at ensuring integrated use of the underground thermo-mineral waters “Erma reka - Elidze” by the Bulgarian and Greek side by assessment of the effects of utilization of the two geothermal sources in Greece and Bulgaria, including monitoring of the effect of utilization of the thermo-mineral waters in Bulgaria on the springs’ regime of the natural discharge of the aquifer in the valley of river Ilidza in Greece and development of a joint strategy.

2004/016-782-01.05: Integrated Water Management of the Mesta/ Nestos River Basin (Phase II)

The Mesta / Nestos River – named Mesta in Bulgaria and Nestos in Greece - flows from its origin in the mountains in the Southwest of the country through the Anatoliki Makedonia region in the North-eastern part of Greece and into the Aegean Sea. The River Basin contains substantial water resources of strategic importance for the economic development of the region and the border regions. In addition, the River Basin comprises a range of ecologically valuable, but also vulnerable ecosystems in national parks, habitat areas, wetlands and tributaries.

1.3.4. Highlighting and Promotion of cultural and tourist resources

2004/016-782.01.06: Promotion of the cultural, tourist and human resources in the cross-border region (*Grant scheme*)

The current project aims to achieve several goals through integrated approaches – to directly aid the preservation of cultural heritage and tourism in the target districts, to stimulate the cohesion with the neighbouring areas in Greece by joint actions and import of good practices and expertise, to raise the employment rate by creation of temporary and permanent employment opportunities and to stimulate the economical development in the field of tourism and other activities, related to cultural heritage

1.3.5. Technical assistance

2004/016-782-01.07 *Project Preparation Facility and Technical Assistance for the CBC Bulgaria-Greece*

The projects aims are: strengthening the capacity to prepare adequate programmes and projects in the context of Phare Cross Border Cooperation Programme between Bulgaria and Greece, with a view of financial support under future Phare CBC programmes and/or international financing institutions (IFI) as well as to support the relevant authorities to prepare a pipeline of mature projects in all JPD axes and measures that will be proposed for the 2005 and 2006 Phare CBC programmes.

The Project Preparation Facility (PPF) will support the preparation of projects within the future multi-annual Phare CBC programmes and as a consequence it will promote the key objectives of the Greek INTERREG III Programme and Bulgarian Phare CBC Programme. Special attention will be given to the preparation of joint CBC PHARE / INTERREG III projects and to projects with a strong cross-border co-operation character which will be planned in close co-operation with the regional and local authorities in the border areas.

1.4 Overall programme conditionalities

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Co-ordinator will satisfy the Commission that it is taking adequate steps to staff and resource adequately the National Fund, the Implementing Agency and project management units involved in implementing this programme.

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Co-ordinator will confirm the availability of the national co-financing indicated in each project fiche, and the modalities for combining Phare and national co-financing when projects are contracted.

All projects involving the supply of equipment and works require national co-financing as shown in the relevant project fiche. If the total cost of such equipment or works turns out to be less than the amount envisaged in the fiche, the amount of Phare support will be reduced to maintain unchanged the relative proportions of Phare support and national co-financing shown in the fiche. If the total cost turns out to be greater than the amount envisaged in the fiche, the extra support required will be provided by additional national co-financing.

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

All investment projects which, according to the rules stipulated in Directive 85/337/CEE, as amended by Directive 97/11, require an Environmental Impact Assessment should be the subject of such an assessment. If the directive has not yet been fully transposed, the procedure should be similar to that established by the above-mentioned Directive.

All investment projects 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.

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

2. BUDGET

2.1 Financial Table

2004 Phare Cross Border Programme Bulgaria-Greece (in €million)

Objective	Phare Funding			IFI	TOTAL
	Institution Building (IB)	Investment (INV)	TOTAL Phare (IB and INV)		
Cross Border Infrastructure					
Construction of Road II-80/E-85/ from Novo Selo to “Maritsa” Motorway, km 0+000 to km 3+490		8.4	8.4	0	8.4
Economic Development and Employment					
People to people	1.1		1.1	0	1.1
Quality of life/Culture					
Promotion of nature protection actions and sustainable development across the border	1.4	2.05	3.45	0	3.45
Integrated use of the thermo mineral waters accumulated in the “Erma reka-Ilidza” geothermal system	0.6	0.15	0.75	0	0.75
Integrated Water Management of the Mesta/ Nestos River Basin (Phase II)	0.95	0.35	1.3	0	1.3
Promotion of the cultural, tourist and human resources in the cross-border region (<i>Grant scheme</i>)	0.5	4.0	4.5	0	4.5
Technical Assistance					
Project Preparation Facility and Technical Assistance for the CBC Bulgaria-Greece	0.5		0.5	0	0.5
TOTAL	5.05	14.95	20	0	20

(The distribution of figures between the budgets line is indicative within the limits of Art 5 MoU NF)

2.2 Principle of Co-Financing

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

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

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

3. IMPLEMENTING AGENCIES

Implementing Agencies responsible for the CBC programmes will be the Phare CBC Implementing Agency of the Ministry of Regional Development and Public Works.

4. IMPLEMENTATION ARRANGEMENTS

4.1 Method of Implementation

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation².

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 1266/1999³, 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 Rules⁴, as well as the Commission Decision SEC (2003) 387/2⁵.

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

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

⁴ Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1

⁵ 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

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 website⁶ at the date of the initiation of the procurement or grant award procedure.

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

4.3 Procurement Principles for Grant Schemes

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

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

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

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules in use for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency’s capacity to operationally and financially manage the schemes in a sound and efficient manner⁷, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

⁶ current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

⁷ see section 11 and Annex 4 of the 2004 Phare Programming Guide

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

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

4.4 Implementation Principles for Twinning Projects

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

The eligible costs may include costs incurred by the selected Partner State during the preparation of the Twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

4.5 Principles for the CBC Small Projects Fund

The CBC Small Projects Fund will finance projects with a Phare contribution below € 50,000 (Phare contribution). It will not include physical investments other than small infrastructure not generating substantial net revenue.

For the CBC Small Project Fund, up to 7 % of the Phare contribution may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

5. MANAGEMENT OF ASSISTANCE

5.1 Project Management

5.1.1. Responsibilities

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

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

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

5.1.2. Project Size

All projects will be greater than € 2 million, except those for

- People to people actions (2004/016-782.01.02)
- Integrated use of the thermo mineral waters accumulated in the “Erma Reka-Ilidza” geothermal system (2004/016-782-01.04)
- Integrated Water Management of the Mesta/ Nestos River Basin (Phase II) (2004/016-782-01.05)
- Project Preparation Facility and Technical Assistance for the CBC Bulgaria-Greece (2004/016-782-01.07)

where the Bulgarian Ministry concerned cannot utilise as much as € 2 million

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

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

In the cases of the following more complex project, however, execution of contracts must end by November 30, 2009:

2004/016-782-01.01: Construction of Road II-80/E-85/ from Novo Selo to “Maritsa” Motorway, km 0+000 to km 3+490

The justification for this relates to the need to take into account the duration of works (impossibility to work in winter during several months) and the Defect Liability Period of one year after the completion of works.

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

5.1.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁸ 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 documented⁹.

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

⁹ in Annex EIA to the corresponding investment project fiche.

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 documented¹⁰.

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

5.2 Financial Management

5.2.1. Principles and Responsibilities

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

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

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

Payments will be made following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the National Fund in the Central Bank or in a Government guaranteed bank account. 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 payment¹¹ of up to 20% of the funds to be managed locally¹², will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agency (IA Phare CBC) i.e. the Ministry of Regional Development and Public Works. 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, and the manner in which the payment function between them will be carried out.

Two further payments¹³ of up to 30% of the funds to be managed locally¹⁴ will be made. The second payment will be triggered when 5 % of the total budget in force¹⁵

¹⁰ In Annex Nature Conservation to the corresponding investment project fiche

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

¹² excluding the amount foreseen for Community Programmes

¹³ representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁴ excluding the amount for Community Programmes

has been disbursed by the IA. The third payment may be requested when 35% of the total budget in force¹⁶ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force¹⁷ 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, IA 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 the IA, in accordance with Financing Agreements signed between the NF and the IA. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency 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. The IA must 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 IA.

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

Not relevant

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

Not relevant

5.2.6. Payments in Case of Contractual Retention Clauses

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

¹⁵ excluding the amount for Community Programmes

¹⁶ excluding the amount for Community Programmes

¹⁷ excluding the amount for Community Programmes

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

5.2.7. Closure of Expenditure and Clearance of Accounts

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

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

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

The results of the Commission's checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing. If no agreement is reached within one month of receipt of the NF's written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.

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

6. MONITORING AND EVALUATION

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

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), which will include the NAC, the PAO of each Implementing Agency and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled

by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring that these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

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

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

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

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96¹⁸.

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 Auditors¹⁹, the accounts and operations of the National Fund and, where applicable, the relevant Implementing Agency 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

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

¹⁹ as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

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 438/2001²⁰.

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

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

7.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption²¹ 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 1681/94²².

In particular, all suspected or actual cases of fraud²³ and irregularity²⁴ as well as all measures related thereto taken by the national authority must be reported to the

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

²¹ 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.

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

²³ 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.

²⁴ 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,

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 irregularity²⁵ or fraud²⁶ discovered at any time during the implementation of the programme or as the result of an audit will lead to the recovery of funds by the Commission.

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

- (a) the Beneficiary Country has not complied with the obligations to prevent, detect, and correct irregularities or
- (b) the implementation of a project appears not to justify either part or the whole of the assistance allocated or
- (c) there are serious failings in the management or control systems which could lead to irregularities,

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

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

- (a) reduce or cancel any payment for the programme in question, or
- (b) make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

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

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

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.)

²⁵ see definition above

²⁶ see definition above

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

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

8. VISIBILITY AND PUBLICITY

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

9. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Government of the Republic of Bulgaria, the Commission may review the programme with a view, at the Commission's discretion, to cancelling all or part of it and/or to reallocate unused funds for other purposes consistent with the objectives of the Phare programme. Each construction project will include adequate independent supervision of projects. Works will be tendered to pre-qualified contractors with relevant financial capacity, and technical and FIDIC experience.

ANNEX ON VISIBILITY AND PUBLICITY

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.