

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 *Czech Republic*, 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 of 6th August 1997 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: *CZ2003/005-077.01 to 077.03*
Title: *2003 Cross Border Co-operation Programme between the Czech Republic and Poland*
Duration: *Until 30/11/2005*

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€ 5 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 **30/11/2005** subject to the provisions of his 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 **30/11/2006**. All payments must be made by the deadline for execution of contracts. 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 contract execution of the EC GRANT. All the funds, which have not been disbursed shall be returned to the Commission.

¹ The Financing Memorandum structure is as follows : 1. the coverpages with the references to the country concerned, amount and authority to sign, 2. Annex A of the Framework Agreement; 3. Annex B of the Framework Agreement; Annex C –Special Conditions (the text of the adopted financing proposal starting from **Description and Objectives** onwards; and Annex D 'Visibility/Publicity.

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:

*European Commission Delegation in the Czech Republic
Pod Hradbami 17
160 00 Praha 6
Czech Republic*

for THE RECIPIENT:

*Ministry of Finance of the Czech Republic
National Aid Co-ordinator
Letenska 15
118 10 Praha 1
Czech Republic*

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 Prague
Date

for THE RECIPIENT
Zdeněk Hrubý
National Aid Co-ordinator

Done at Prague
Date

for THE COMMUNITY
Ralf Dreyer
Head of the Commission Delegation

Encl.

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

ANNEX C – SPECIAL PROVISION

1. PROGRAMME OBJECTIVES AND DESCRIPTION

1.1 Programme Objectives

1.1.1 General Objectives

The general objective of the Phare cross border co-operation programme is to promote co-operation of border regions in Central and East European Countries with adjacent regions in a neighbouring country. The programme seeks to help these regions overcome specific development problems resulting, inter alia, from their relative isolation in the framework of national economics, in the interest of the local population and in a manner compatible with the protection of the environment. It also supports the establishment and development of co-operative networks on either side of the border and the creation of linkages between these networks and wider Community networks.

1.1.2 Specific Objectives

More specifically, the objectives of the 2003 Czech-Polish Phare CBC Programme are:

- to support the Czech Republic's and Polish Republic's transformation process and to facilitate the process of European integration;
- to support the further development of the economic potential of border regions by strengthening existing structures, increasing the competitiveness of enterprises, and reviving the overall economy on both sides of the border;
- to overcome problems burdening the border areas, by improving the infrastructure on both sides of the border;
- to reduce the peripheral character of these areas, thereby improving the quality of life and creating a co-operative network on both sides of the border.

1.2 Programme Description

In accordance with the Joint Programming Document, projects addressing the following priorities have been selected:

- transport infrastructure
- environment: provision of efficient sewage systems
- economic development
- socio-economic development (people-to-people and institution building)

The 2003 programme includes allocations for improvement of roads, construction of waste water treatment plant, sewage system, and a Joint Small Projects Fund. All projects to be supported under this programme will be co-financed from Czech and Polish sources, primarily from resources of the communities in the Czech-Polish border region and of the respective Czech and Polish governments. The Joint Co-operation Committee agreed on the programme composition at its meeting in Wroclaw in February 2003. The criteria for project selection include the cross border impact of projects, co-financing, and project impact on the environment.

Detailed descriptions of the projects are attached in fiche format in annex to this document.

1.2.1 CZ2003/005-077.01 Improvement of roads in the border region of the Usti nad Orlici district

The aim of the project is to improve access to the border crossing at Dolni Lipka – Boboszew as well as to the new border crossing at Orlicke Zahori – Mostowice. The project should result in the improvement of the following roads, with a total length of some 30 km:

- road II/311 between Mladkov and Cihak
- road II/312 between Mladkov, Lichkov and Dolni Lipka
- road III/3112 between Ceske Petrovice and Klasterec nad Ohri
- road III/31222 and III/31223 between Dolni Lipka, Horni Lipka and Horni Morava

Works should be focused on the reinforcement and widening of the existing roads, reconstruction and repair of bridges and culvert, and include the installation of new road signs.

1.2.2 CZ2003/005-077.02 Construction of a waste-water treatment plant and sewage system at Mosty u Jablunkova

The aim of the project is to reduce pollution in the Osetnice, Lomna and the Olse rivers, and to protect the ground water in Jablunkov. This project is one of the actions envisaged in the joint Czech-Polish Clean-up Programme for the Olse river with the objective to increase the water quality, repair of banks and elimination of old environmental burdens on both sides of the border. The project should result in the construction of a mechanical and biological waste-water treatment plant with a capacity of 2.100 equivalent units, and a sewage system at Mosty u Jablunkova with a length of 8.4 km and with about 550 access lines. Project implementation should include all construction-related works, such as the resurfacing of roads and pavements, excavation work, and the construction of a pump station.

1.2.3 PL2003/005-078.01 Construction of a slow traffic lane for the national road No 8 section Lewin Klodzki-Duszniki Zdroj

This project aims to improve the transport infrastructure capacity along the route Warsaw-Wroclaw-Klodzko-Brno and of the border crossing at Kudowa Slone. The national road No 8 is the second most trafficked road section of the Polish-Czech border region. The project should result in the modernisation of the national road No 8 by construction of a slow traffic lane, reconstruction of road-exits to Karlow, Zielieniec and to Lewin Klodzki, reinforcement of the existing road structure, and improvement of the road drainage system.

1.2.4 PL2003/005-078.02 Bio-diversity protection and development of the Zloty Potok river valley

The aim of the project is to improve the water quality of the Zloty Potok river and the ecosystem of the Gory Opawskie landscape park, which covers an area of 4.903 ha. The project should result in the adjustment of the existing sewage system at Prudnik with a total length of around 2 km, and the construction of a new sewage system at Laka Prudnicka and at Moszczanka with a total length of around 20 km. Project implementation should include construction-related works, such as rebuilding of access roads and the adjustment of existing and construction of new pump stations.

1.2.5 CZ2003/005-077.03 & PL2003/005-078.03 Joint Small Projects Fund (JSPF)

The projects under the JSPF should support local and regional development across the border through small-scale activities as per Article 5.1 a) to n) of Commission Regulation 2760/98 of 18 December 1998, amended by Commission Regulation 1596/2002 of 6 September 2002. Special attention should be given to measures with a strong cross-border co-operation character which are planned in close co-operation between the regional and local authorities

in the border areas and which include the establishment or development of shared management structures intended to widen and deepen cross-border co-operation between public and para-public agencies as well as non-profit organisations. Only non-profit making entities are eligible.

Priority will be given to projects that are planned, selected and realised jointly by Czech and Polish partners and supported from both JSPFs on the Czech and Polish side. The maximum grant per project (Phare contribution) is € 50.000, and the minimum grant is € 1.000. The beneficiary's co-financing contribution to the project is minimum 10% and maximum 25% of the total eligible project costs. The JSPF will not include physical investment other than small infrastructure not generating substantial net revenue. Up to 7% of the Phare contribution may be used for expenditure relating to the preparation, selection, appraisal, external audit and monitoring of the assistance.

Implementation of the JSPF is conditional on prior verification and approval of the scheme by the Delegation. For the Polish part, the tendering and contracting of the works will be carried out by the recipient in accordance with the national Procurement Law of Poland.

2. Budget

The total financial contribution under the Phare CBC 2003 Programme Czech Republic – Poland in support of the projects described in section 4 above amounts to € 10 million, as follows:

	Priorities	INV	IB	Total Phare (in M€)
CZ2003/005-077.01	Improvement of roads in the border region of the Usti nad Orlici district	2.80		2.80
CZ2003/005-077.02	Construction of a waste water treatment plant and sewage system at Mosty u Jablunkova	1.70		1.70
CZ2003/005-077.03	Joint Small Projects Fund		0.50	0.50
	Total Czech Republic	4.50	0.50	5.00
PL2003/005-078.01	Construction of a slow traffic lane for the national road No 8 section Lewin Klodzki-Duszniki Zdroj	2.30		2.30
PL2003/005-078.02	Bio-diversity protection and development of the Zloty Potok river valley	2.20		2.20
CZ2003/005-078.03	Joint Small Projects Fund		0.50	0.50
	Total Poland	4.50	0.50	5.00
	Total Phare contribution	9.00	1.00	10.00

(The figures in the budget table are indicative only)

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 eligible² 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.

² Taxes are not an element eligible for co-financing

3. Implementation Arrangements

a.) Financial and Project Management by the Candidate Country

The programme will be managed in accordance with the Phare Extended Decentralised Implementation System (EDIS) procedures as set down in the EDIS Accreditation Decision and the Agreement on the Implementation of EDIS (EDIS Implementation Agreement; EIA) concluded between the Czech Republic and the Commission, and between Poland and the Commission³. Prior to the conclusion of said Agreement, implementation will exceptionally follow Phare Decentralised Implementation System (DIS) procedures⁴. Extended Decentralisation will, however, apply from the date of accession at the latest.

The National Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the EDIS Implementation Agreement and/or the DIS Manual as well as the other instructions of the Commission, and that all contracts required to implement the Financing Memorandum are awarded using the procedures and standard documents defined and most recently published by the European Commission for the implementation of External Actions.

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

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

b.) Project size

All projects except the Czech waste-water treatment plant project (CZ2003/005-077.02) and the Joint Small Projects Fund (CZ2003/005-077.03 & PL2003/005-078.03) are higher than € 2 million.

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

All contracts must be concluded by 30 November 2005. Execution of all contracts must end by 30 November 2006. Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted.

³ in accordance with the rules set down in the Council Regulation 1605/2002 (Financial Regulation), in particular Art. 164, Commission Regulation 2342/2002 (Implementing Rules of the Financial Regulation) and the annex of Council Regulation 1266/1999

⁴ in accordance with the rules set down in Council Regulation 1605/2002 (Financial Regulation), the Commission Regulation 2342/2002 (Implementing Rules of the Financial Regulation) and the annex of Council Regulation 1266/1999

In order to ensure that projects are implemented as quick as possible, all tender dossiers (or, where applicable, grant schemes, request for services or contract dossiers) for the Czech Republic must be submitted to the Commission within 4 months of signature of the Financing Memorandum. Any project or its part for which the relevant documents are not submitted within the deadline specified will be cancelled and the money made available for re-allocation. Such cancelled funds shall be allocated to another project no later than 12 months after signature of the Financing Memorandum.

d.) Clearance of Accounts Procedure and Recovery of Funds

A clearance of accounts procedure in line with Art. 53 para 5 Financial Regulation⁵ and Art. 42 of the Implementing Rules to the Financial Regulation⁶ will be put in place.

Any proven irregularity or fraud⁷ discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

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

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

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

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

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

Any funds not used by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO 2 months after all payments have been made, showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

⁵ Council Regulation 1605/2002 of 25 June 2002

⁶ Commission Regulation 2342/2002 of 23 December 2002

⁷ As defined under number 8a (Audit and Anti-fraud Measures by the Candidate Countries) of this document

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

The National Authorising Officer will ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of notification. If the NAO does not repay the amount due to the Community, the beneficiary country shall refund this amount to the Commission. Interest on account of late payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the Community Budget.

e.) Financial Flows

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

aa) Transfer of Funds to the National Fund

A first transfer of up to 20% of the funds to be managed locally, representing pre-financing⁸ will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). The provisions foreseen in articles 2 and 13 of the MoU on the NF must also be met. Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the IA/CFCU and the manner in which the payment function will be carried out.

Two further transfers of up to 30 % each of the funds to be managed locally will be made. The second transfer will be triggered when 5% of the budget has been disbursed by the IAs and the CFCU. The third transfer may be requested when 35% of the total budget in force has been disbursed. A fourth transfer will be made when 70% of the total budget in force is disbursed and when all expenditure has been incurred (i.e. fully contracted). No later than 2 months after all payments have been made the National Fund will submit a final declaration of expenditure, which will trigger a balancing operation of all transfers against final certified expenditure incurred, which at that point will be equal to payments made (closure of expenditure⁹).

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

bb.) Transfer of Funds to the Implementing Agencies

The National Fund will transfer funds to IAs, including the Central Financing and Contracting Unit (CFCU), in accordance with Financing Agreements (FAs) signed between the NFs and

⁸ as defined in Art. 81.1.b.i of the Financial Regulation

⁹ as defined in Art. 105 of the Implementing Rules

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

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

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

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

cc.) Interest

In principle, all bank accounts¹⁰ will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme.

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

Czech Republic: The Ministry for Regional Development in conjunction with the Centre of Regional Development will be the Implementing Agency for all programme related projects.

Poland: The Implementing Authority for the Phare Cross Border Co-operation Programme.

g.) Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive¹¹ 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 I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented¹².

¹⁰ in particular, but not exclusively, accounts run by the NF, the CFCU and IAs

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

¹² 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-Directive¹³ must be documented¹⁴.

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.

h.) Special rules for certain components for the programme

Grant Schemes

For Grant Schemes in the field of Economic and Social Cohesion (both within PHARE National Programme or PHARE CBC) 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 provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.
- 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 has also 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 of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.
- Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in the Czech Republic, and of the Commission Delegation in Poland will be required, in conformity with the provisions of chapter 6 of the Practical Guide (decentralised ex-ante control).
- The implementation of selected projects through provision of works, supplies and services, sub-contracted by the final beneficiaries of the individual grants, shall be subject to the procurement regulations in the Practical Guide.
- Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by final beneficiaries of individual grants. The detailed provisions governing the role of the Delegation in the above mentioned sub-contracting phase will be specified, as appropriate, in the exchange of letters between the Delegation and the National Authorities following the above mentioned assessment exercise.
- Grant schemes will not involve projects for which PHARE contribution is more than € 2 million and less than € 50.000. This lower limit may be waived as a result of the above-

¹³ DIR 92/43/EEC; OJ 206/7; 22.7.1992

¹⁴ in Annex Nature Conservation to the corresponding investment project fiche

mentioned assessment of the Implementing Agency's capacity of giving assurance of sound financial management. This lower limit is not applicable in the case of NGOs.

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

Small Projects Fund

The Small Projects Fund will finance projects 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, external audit and monitoring of the assistance.

4. Monitoring and Evaluation

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

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

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

5. Audit and Anti-Fraud Measures

a.) By the Candidate Countries¹⁵

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

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

¹⁵ in accordance with the rules set down in Art. 54 of the Financial Regulation

Irregularity shall mean any infringement of a provision of national or Community law¹⁶, this Financing Memorandum or ensuing contracts or 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, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

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

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94¹⁷.

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

b.) By the Commission

All Financing Memoranda as well as the resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-fraud Office) and audits by the Court of Auditors. This includes on-the-spot checks and, as long as the Extended Decentralisation System is not yet applicable to the Implementing Agencies in the Candidate Country concerned, measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned.

In order to ensure efficient protection of the financial interests of the Community, the Commission may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96¹⁸.

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

¹⁶ defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (for example the Europe Agreement, the Framework Agreement, the Memorandum of Understanding on the Establishment of the National Fund etc.).

¹⁷ OJ L 178; 12.7.94; p. 43-46

¹⁸ OJ L 292; 15.11.1996; p. 2-5

6. Visibility/Publicity

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

7. Special conditions

In the event that agreed commitments are not met for reasons which are within the control of the Government of the Czech Republic, 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 – VISIBILITY/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.