

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: *CZ2003/005-601.08.02 to 08.09*
Title: *2003 Phare National Programme for the Czech Republic – Part II*
Duration: *Until 30/11/2005*

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€56.680 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
Chargé d'Affaires, Commission Delegation

Encl.

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

ANNEX C – SPECIAL PROVISION

1. OBJECTIVES AND DESCRIPTION

In view of the provisions of Article 4 of the Accession Partnership Regulation (EC 622/98), overall agreement on the Phare 2003 programme will depend on the Government's commitment, as described in the individual project fiches. The overall objectives of the programme are to help the Czech Republic fulfil the Copenhagen and Madrid criteria for membership, in particular those related to Structural Funds implementation.

Objective 8 Economic and Social Cohesion

OP Human Resources Development

The OP Human Resources Development (HRD) was drafted under the auspices of the Ministry for Labour and Social Affairs. In accordance with the partnership principle, the drafting process also involved extensive consultations with relevant stakeholders, including regional representatives, labour offices, professional associations, trade unions and relevant Governmental agencies. The OP includes a total of 4 Priorities (excluding technical assistance) - Active Labour Market Policy, Social integration and equal opportunities, Development of life-long learning, and Adaptability and entrepreneurship - and 12 Measures. Of these 12 Measures and on the basis of the criteria referred to under 2. Summary (last para), a total of 6 Measures were long-listed as most suitable for Phare support. These were Measure 1.1 Strengthening of active employment policy, Measure 2.1 Integration of population groups in danger of social exclusion, Measure 3.1 Improvement of education in school facilities, Measure 3.3 Support to state structures and systems for school education, Measure 3.4 Development of further education, and Measure 4.1 Increasing adaptability of employers and employees. A further selection took place on the basis on 5 key criteria to identify those Measures the Phare ESC pre-financing of which was likely to have the most value. These 5 criteria were Urgency/added value of Phare pre-financing, Implementation capacity in place, Capacity building impact of the measures proposed, State of preparation/maturity of the measure proposed, and Relevant experience acquired to date by the institutions proposed for implementation, with each criterion rated from 1 (lowest) to 5 (highest). The future OP Monitoring Committee meeting on 30 January and further meetings at the Ministries for Labour and Education rated Measure 1.1 Strengthening of active employment policy, Measure 2.1 Integration of population groups in danger of social exclusion, and Measure 3.4 Development of further education with total average scores of 3.8, 3.4 and 3.4 respectively. As a result, Measures 1.1, 2.1 and 3.4 are proposed to be financed under this Financing Proposal.

CZ2003/005-601.08.02 Operational Programme HRD – Measure 1.1 Strengthening of active employment policy: This grant scheme project aims to support the development of employment, education and HRD policy aimed at boosting the employability of specific groups in society, and to develop effective implementation mechanisms for HRD support programmes to be co-financed with the help of EU Structural Funds after accession. The scheme will be operational in all NUTS II regions in the Czech Republic eligible for Objective 1 and should result in an increased capacity of the Implementing Agency and Managing Authority (and future Intermediate Bodies) to design and manage Structural Fund-type grant schemes. It should also ensure fully functioning employment services able to take on the obligations resulting from the European Employment Strategy, and in the development of new types of employment services providing for a variety of comprehensive support activities. Such services should be aimed at, on the one hand, increasing the employability of groups particularly exposed to the risk of redundancy and, on the other, at reducing the chance of redundancy for those currently employed and threatened from unemployment. The

scheme should provide grant support (€50,000/€100,000 Phare contribution) for projects to be developed by public entities that comply with specific selection criteria to be included in the relevant Operational Guidelines. The allocation and grant contract sizes proposed for this project reflect the proposed allocation for the measure under the relevant SOP, the availability of co-financing and the need to ensure that each target region acquires meaningful grant scheme management experience.

CZ2003/005-601.08.03 Operational Programme HRD – Measure 2.1 Integration of population groups in danger of social exclusion: This grant scheme project aims to support the development of pro-active measures against social exclusion and discrimination, and to ensure the reintegration in the labour market of handicapped, homeless, single parents, minorities, early school leavers and other vulnerable groups to be specified in the relevant Operational Guidelines. The scheme should also address training and advisory services to staff in organisations providing social services and in other entities dealing with various forms of social integration. The scheme will be operational in all NUTS II regions in the Czech Republic eligible for Objective 1 and should result in an increased capacity of the Implementing Agency and Managing Authority to design and manage Structural Fund-type grant schemes, strengthened social services providers able to take on the obligations from the European Strategy on Social Inclusion, and in the development of special counselling and guidance programmes for target groups. The scheme should provide grant support (€15,000/€100,000 Phare contribution) for projects to be developed by public entities that comply with specific selection criteria to be included in the relevant Operational Guidelines. The allocation and grant contract sizes proposed for this project reflect the proposed allocation for the measure under the relevant OP, the availability of co-financing and the need to ensure that each target region acquires meaningful grant scheme management experience.

CZ2003/005-601.08.04 Operational Programme HRD – Measure 3.4 Development of further education: This technical assistance and supplies project aims to establish a system and the relevant infrastructure to allow for continued vocational training in two pilot regions so as to increase employability of the local workforce. The project should serve as a comprehensive model to be applied in other regions nation-wide, with Continued Vocational Training (CVT) centres becoming final beneficiaries under the European Social Fund upon accession. By the end of the project, two CVT centres should be fully operational in two pilot regions, with all relevant technical infrastructure set up and relevant staff trained. All relevant tools, mechanisms, procedures and CVT methodology should be tested and ready for application in other regions, and a selected number of trainers should be qualified to staff the two centres concerned and to disseminate the relevant methodology successfully throughout the country. The project is conditional on Czech co-financing of the supplies part.

OP Industry and Enterprise

The OP for Industry and Enterprise was drafted by a Programming Committee of the Ministry for Industry and Trade, including social and economic partners. In accordance with the partnership principle, the drafting process also involved extensive consultations with relevant stakeholders, including regional representatives, economic chambers, professional associations, NGOs, trade unions and relevant Governmental agencies. The OP includes a total of 3 Priorities (excluding technical assistance) - Development of entrepreneurship and competitiveness of the productive sector, Restructuring of the production base, and Increase of energy efficiency - and 8 Measures. Of these 8 Measures and on the basis of the criteria referred to under 2. Summary (last para), a total of 4 Measures were long-listed as most suitable for Phare support. These were Measure 1.1 SME Development, Measure 1.2 Innovation, Measure 2.1 Restructuring of areas with a high concentration of industrial activities, and Measure 2.2 Restructuring of companies, industrial fields. A further selection took place on the basis on the 5 key criteria referred to under OP HRD above to identify those Measures the Phare ESC pre-financing of which was likely to have the most value. The OP Monitoring Committee meeting on 18 February 2003 rated Measure 1.1 SME Development

highest, with a total average score of 3.67, followed by Measure 1.2 Innovation with a total average score of 2.86. As a result, Measure 1.1 is included in this Financing Proposal, confirming the original OP SWOT analysis.

CZ2003/005-601.08.05 Operational Programme Industry and Enterprise – Measure 1.1 SME Development: This grant scheme and technical assistance project aims to support the technical development, innovation and quality management in productive sector SMEs, and to develop effective implementation mechanisms for SME support programmes to be co-financed with the help of EU Structural Funds after accession. The scheme will be operational in all NUTS II regions in the Czech Republic eligible for Objective 1 and should result in an increased capacity of the Implementing Agency and Managing Authority to design and manage Structural Fund-type grant schemes, increased competitiveness of SMEs, an increased number of productive sector SMEs applying new technologies and/or knowledge-based production, and better quality production standards and business practices achieved and applied by SMEs. The scheme should provide public grant support for investment in innovative and/or new technologies by SMEs (EU definition applies) located in the Czech Republic that comply with specific selection criteria to be included in the relevant Operational Guidelines. The size of the public grant, composed of Phare and national financing, will be between €70,000 and €300,000, with a minimum Phare co-financing per project of €50,000. The allocation and grant contract sizes proposed for this project reflect the proposed allocation for the measure under the relevant OP, the availability of co-financing and the need to ensure that each target region acquires meaningful grant scheme management experience. By means of a separate service contract, which should cover a range of ‘soft’ measures aimed to improve quality management and the development of sustainable and competitive business plans, the project should also ensure the creation of a Czech Benchmarking Index and the development of adequate capacity at the relevant MIT agency to apply this Index. The measure will be implemented in accordance with the applicable state aid provisions.

Joint Regional Operational Programme

The Joint Regional Operational Programme was drafted under the auspices of the Ministry for Regional Development. In accordance with the partnership principle, the drafting process also involved extensive consultations with relevant stakeholders, in particular the regional representatives. The JROP includes a total of 6 Priorities (excluding technical assistance) - Development of local entrepreneurial activities, Regional development of transport and communication technology, Local development of human resources, Improving the environment in municipalities and regions, Revival of rural areas, and Development of tourism in municipalities - and 14 Measures. Of these 14 Measures and on the basis of the criteria referred to under 2. Summary (last para), a total of 6 Measures were long-listed. These were Measure 1.2 Preparation of areas and property for business, Measure 2.1 Development of regional transport infrastructure, Measure 3.1 Infrastructure for development of human resources in regions, Measure 5.1 Regeneration and development of rural municipalities, Measure 5.2 Development of small enterprises and crafts in rural areas, and Measure 6.2 Development of tourism in municipalities. A further selection took place on the basis on the 5 key criteria referred to under OP HRD above to identify those Measures the Phare ESC pre-financing of which was likely to have the most value. The NUTS II regions rated Measures 2.1, 5.1 and 6.2 highest with respective total scores of 114.8, 120 and 102.8. However, since under the Structural Funds it would be financed under the EAGGF rather than the ERDF and to avoid possible overlap with Sapard (EC Regulation 1266/99), Measure 5.1 was deemed not to be suitable for financing under Phare ESC. As a result, Measures 2.1 and 6.2 are included for financing under this Financing Proposal.

CZ2003/005-601.08.06 Joint Regional Operational Programme – Measure 2.1 Development of regional transport infrastructure: This grant scheme project aims to support the improvement of business-related infrastructure at regional level, and to develop

effective implementation mechanisms for similar measures to be co-financed within the framework of the JROP with the help of EU Structural Funds after accession. Specifically, the scheme should co-finance the construction and/or repair of regional and local access roads to business facilities, and the installation of the relevant technical utilities infrastructure, thereby attracting industrial activity, diversifying the regional economy and stimulating employment. The scheme should provide grant support (€100,000/€300,000 Phare contribution) for business-related infrastructure investment projects that would need to comply with specific selection criteria to be included in the relevant Operational Guidelines, and be submitted by regional or local public entities. Each grant application must comprise a feasibility study confirmed as strategically appropriate and realistic by the MIT/Czech Invest. Only those projects that comply with EU norms and standards and are financially sustainable will be eligible.

CZ2003/005-601.08.07 Joint Regional Operational Programme - Measure 6.2 Development of tourism in municipalities: This grant scheme project aims to support the improvement of tourism-related infrastructure in the regions concerned, and to develop effective implementation mechanisms for similar measures to be co-financed within the framework of the JROP with the help of EU Structural Funds after accession. Specifically, the project should co-finance the construction and/or repair of regional and local access roads and paths to tourist facilities and cultural heritage, and related infrastructure allowing for improved access to tourist sites and facilities, boosting the share of tourism in the regional economy, thereby ensuring its diversification and stimulating employment. The scheme should provide grant support (€50,000/€300,000 Phare contribution) for tourist-related infrastructure investment projects that would need to comply with specific selection criteria to be included in the relevant Operational Guidelines, and be submitted by regional or local public entities. The allocations and grant contract sizes proposed for both schemes reflect the proposed allocations for the respective measures under the JROP, the availability of co-financing and the need to ensure that each target region acquires meaningful grant scheme management experience.

INTERREG

CZ2003/005-601.08.08 INTERREG IIIB CADSES and INTERREG IIIC: This grant scheme project aims to ensure participation of Czech partners in INTERREG IIIB CADSES and INTERREG IIIC and thus to contribute to the development of both relevant administrative and adequate project preparation capacity. Specifically, the project will support actions as described in the Programme Complement of INTERREG IIIB CADSES and of INTERREG IIIC. Eligibility will be restricted to those projects that are to form the Czech part of joint trans-national and interregional projects already approved for funding by the relevant Steering Committees since the first call for proposals of both programmes. Grants will therefore be awarded to those projects following the INTERREG selection process (call for proposal and selection of projects by the relevant Steering Committees). In any case the ex-post verification by the Commission following section 6.8 PRAG applies to the projects for which procurement by the grant beneficiary is foreseen. Tenders have to follow PRAG rules, but can take place using the language of the beneficiary country. The maximum Phare contribution per grant will not exceed a total of €300,000 and 75 % of the total eligible project costs, and must be incurred after the signature of the Phare grant contract with the grant beneficiary. Additional details will be specified in the relevant Operational Guidelines.

Additional work should be done by the Czech Government, outside the immediate framework of the current Phare programme and the activities described under Objective 8. Within this context the Commission expects progress in the following key areas:

Adoption and enforcement of legislation relevant to the implementation of the Structural Funds, respect of all commitments undertaken at the completion of accession negotiations at the Council of Copenhagen in December 2002, including those related to other relevant chapters: Progress includes implementation of the Chapter 21 commitment for a comprehensive Human Resource Development Strategy (sufficient staffing and training programmes), and comprehensive implementation of the Act on Financial Control in Public Administration, including the establishment of independent internal audit units. An acquis compliant Act on Public Procurement should be adopted and implemented. Newly adopted acquis compliant legislation as concerns State Aid, Competition, EIA and Budgetary Rules should be implemented. In terms of decentralisation, a decision on the definition of responsibilities of the national, regional and local levels of Government should be taken, as well as a decision to put the financing and staffing of the decentralisation process on a stable and sustainable footing, a decision on the status of public servants working for regional and municipal assemblies and the drafting of homogeneous selection criteria for the recruitment and remuneration of regional assembly staff.

CZ2003/005-601.08.09 Institution Building Envelope: This project consists of an envelope allowing for as yet unspecified Institution Building activities to provide assistance through twinning, twinning light and other forms of technical assistance address priorities that emerge in the course of preparations for accession during the lifetime of the programme. Priorities will stem from gaps identified in the latest Accession Partnership, Regular Report, National Programme for the Adoption of the Acquis, the Action Plan, Peer Reviews, the Monitoring Report and other relevant documents. The project should deliver advice from officials from Member States through medium or short assignments, or from technical assistance provided by commercially contracted experts. The detailed programming of this support, and the preparation of the Terms of Reference relevant to each self-contained activity, will be subject to the approval by the Commission Delegation in Prague.

2. BUDGET

No.	OBJECTIVE/Project	IB	INV	Total Phare (in €M)
CZ2003/005-601.08	ECONOMIC AND SOCIAL COHESION	-	56.680	56.680
08.02	OP HRD – Measure 1.1 Strengthening of active employment policy			
08.03	OP HRD – Measure 2.1 Integration of population groups in danger of social exclusion			
08.04	OP HRD – Measure 3.4 Development of further education			
08.05	OP Industry and Enterprise – Measure 1.1 SME development			
08.06	JROP – Measure 2.1 Development of regional transport infrastructure			
08.07	JROP – Measure 6.2 Development of tourism in municipalities			
08.08	INTERREG IIB CADSES and INTERREG IIIC			
08.09	Institution Building Envelope			
TOTAL		-	56.680	56.680

(The split between IB and INV in the figures in the budget table is 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.

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 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, 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

² Taxes are not an element eligible for co-financing

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

All projects will have a minimum allocation of €2 million (Phare contribution), except the Institution Building Envelope.

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. Concerning the amount foreseen under the Institution Building Envelope, projects must be programmed and Terms of Reference agreed by the Delegation by no later than the date of accession.

In order to ensure that projects are implemented as quickly as possible, all tender dossiers (or, where applicable, grant schemes, request for services or contract dossiers) 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:

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

- (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.

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. 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

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

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 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:

No.	Sub-Programme	Implementing Agency	Ministries of Institutions with a technical role
08	ECONOMIC AND SOCIAL COHESION	Centre for Regional Development,	MRD, MoLSA, MIT

⁹ as defined in Art. 105 of the Implementing Rules

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

		National Training Fund, Czech Invest, CFCU	
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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.

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 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.

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

¹³ DIR 92/43/EEC; OJ 206/7; 22.7.1992

¹⁴ in Annex Nature Conservation to the corresponding investment project fiche

- Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in the Czech Republic 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-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.

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.

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.

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

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

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.

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.

¹⁸ OJ L 292; 15.11.1996; p. 2-5

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.