

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: *CZ2002/000-582.10.01 to 10.06*
Title: *2002 Phare National Programme for the Czech Republic, Part II*
Duration: *Until 31/10/2004*

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **6,3** MEUR 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 *31/10/2004* 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 disbursement of THE EC GRANT is *31/10/2005*. All disbursements must be completed by the deadline for

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.

disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the disbursement period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry of the disbursement period of the EC GRANT. All the funds, which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

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

for the COMMUNITY:

*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

Done at Prague
Date

for THE RECIPIENT
Zdeněk Hrubý
National Aid Co-ordinator
Deputy Minister
Ministry of Finance

for THE COMMUNITY
Ramiro Cibrián
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 PROVISIONS

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 2002 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, which are:

- stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union;
- the conditions for its integration through the adjustment of its administrative structures, so the European Community legislation transposed into legislation is implemented effectively through appropriate administrative and judicial structures.

Objective 10 Preparation for the Structural Funds and the Cohesion Fund

CZ2002/000-582.10.01 Sector Operational Programme HRD and ESF Structures – Building Implementation Capacity: This twinning and technical assistance project addresses an AP priority and aims to ensure full compliance with the relevant Structural Funds Regulations by all bodies to be involved in the implementation of the European Social Fund, which includes in particular the management at both central and regional level of the Sector Operational Programme for Human Resources Development that is to be implemented under the Community Support Framework after accession of the Czech Republic to the European Union. The project should result in the designated Managing Authority and all relevant intermediate bodies being able to perform the duties described in Council Regulation 1260/99, and 438/01 and 448/01 in particular. These duties include all activities described under Council Regulation 1260/99 Article 34.1 (a) to (h) inclusive. Particular attention should be paid to compliance with the Partnership principle. The project should be based on the outputs of assistance programmed under existing Phare projects, and CZ9807.01, CZ9902.02, CZ9915.01 and 03 and CZ0010.01 in particular. The project is conditional on respect by the Czech authorities of their commitments made within the framework of negotiations on Chapter 21.

CZ2002/000-582.10.02 Sector Operational Programme Industry – Building Implementation Capacity: This twinning and technical assistance project addresses an AP priority and aims to ensure full compliance with the relevant Structural Funds Regulations by all bodies to be involved in the management at both central and regional level of the Sector Operational Programme for Industry/Competitiveness that is to be implemented under the Community Support Framework after accession of the Czech Republic to the European Union. The project should result in the designated Managing Authority and all relevant intermediate bodies being able to perform the duties described in Council Regulation 1260/99, and 438/01 and 448/01 in particular. These duties include all activities described under Council Regulation 1260/99 Article 34.1 (a) to (h) inclusive. Particular attention should be paid to compliance with the Partnership principle. The project should be based on the outputs of assistance programmed under existing Phare projects, and CZ9807.01 and CZ0010.01 in particular. The project is conditional on respect by the Czech authorities of their commitments made within the framework of negotiations on Chapter 21.

CZ2002/000-582.10.03 Joint Regional Operational Programme and Community Support Framework – Building Implementation Capacity: This twinning and technical assistance project addresses an AP priority and aims to ensure full compliance with the relevant Structural Funds Regulations by all bodies to be involved in the management at both central and regional level of the Joint Regional Operational Programme and the Community Support Framework that is to be implemented after accession of the Czech Republic to the European Union. As concerns the Joint Regional Operational Programme, the project should result in the designated Managing Authority and all relevant intermediate bodies being able to perform the duties described in Council Regulation 1260/99, and 438/01 and 448/01 in particular. These duties include all activities described under Council Regulation 1260/99 Article 34.1 (a) to (h) inclusive. As concerns the Community Support Framework, the project should ensure effective inter-ministerial coordination through developing, in partnership with the relevant Managing and Paying Authorities, the permanent channels for co-ordination, which should serve to reinforce the management of the future Community Support Framework. The project should ensure that co-ordination channels are tested through existing and future Phare programmes, and should pay particular attention to information flows and dissemination methods, pro-active promotion and guidance to achieve best-practice, and to testing methods for broadening long-term application of the partnership principle. For both parts of this project, particular attention should be paid to compliance with the Partnership principle. The project should be based on the outputs of assistance programmed under existing Phare projects, and CZ9807.01 and CZ0010.01 in particular, and on respect by the Czech authorities of their commitments made within the framework of negotiations on Chapter 21.

CZ2002/000-582.10.04 Start up compliance and system audits of SF/CF implementation structures: This technical assistance project addresses an AP priority and aims to provide a comprehensive gap assessment in the form of independent systems audit. All Managing Authorities, the Paying Authority and the relevant intermediary bodies shall be subject of the audit. The project should result in an independent confirmation of the implementing arrangements for the use of the Structural Funds and the Cohesion Fund, and the duties described in Council Regulation 1260/99, and 438/01, 448/01, 1159/00 and 1685/01 in particular. The project should ensure that the Paying Authority is able to perform all its duties as required by the relevant acquis. The project is directly linked to the results of CZ02.10.01 to 03 projects. The project should be based on the outputs of assistance programmed under existing relevant Phare projects CZ9903.01.01 and CZ0109.01. The project is conditional on respect by the Czech authorities of their commitments made within the framework of negotiations on Chapter 21.

CZ2002/000-582.10.05 Strengthening Public Sector Business-related Real Estate Management: This technical assistance project addresses an AP priority and aims to strengthen the capacity of the relevant Czech public authorities to manage business-related real estate so as to allow for effective, efficient and economical use of public real estate and other property in the Czech Republic. The project should result in the relevant authorities at both central and regional levels to be skilled and trained in all aspects of public business-related real estate and property management and development, the setting up of a comprehensive public real estate and property development support programme, and the introduction of relevant top-quality degree courses at a selected number of universities.

CZ2002/000-582.10.06 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 to specific, urgent and unforeseen needs identified in the course of the accession negotiation process, in line with the Accession Partnership. The project should target specific areas in relation to the challenges of EU integration, and the negotiation chapters relevant to the preparation for structural and regional policies. The project should deliver advice from officials from Member States

through medium or short assignments, or from technical assistance provided by commercially contracted experts.

Additional work should be done by the Czech Government, outside the immediate framework of the current Phare programme and the activities described under Objective 10. 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 provisional closure of chapter 21 in April 2002, including those related to other relevant chapters, and an increase in qualified staff levels in the relevant implementing bodies: Progress includes 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.

2. BUDGET

No.	OBJECTIVE/Project	IB	INV	Total Phare
CZ2002/000-582.10	PREPARATION FOR THE STRUCTURAL FUNDS AND THE COHESION FUND	6.30	-	6.30
CZ2002/000-582.10.01	SOP HRD and ESF Structures – Building Implementation Capacity			
CZ2002/000-582.10.02	SOP Industry – Building Implementation Capacity			
CZ2002/000-582.10.03	JROP & CSF – Building Implementation Capacity			
CZ2002/000-582.10.04	Start up compliance and system audits of SF/CF implementation structures			
CZ2002/000-582.10.05	Strengthening Public Sector Business-related Real Estate Management			
CZ2002/000-582.10.06	Institution Building Envelope			
TOTAL		6.30	-	6.30

3. IMPLEMENTATION ARRANGEMENTS

a.) Financial and Project Management by the Candidate Country

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures².

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementation 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 *DIS Manual* and other instructions of the Commission, and that all contracts are being prepared in accordance with the *Practical Guide for PHARE, ISPA and SAPARD*.³

The NAC and the NAO shall be jointly responsible for co-ordination between PHARE (including PHARE CBC), ISPA and SAPARD.

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

b.) Project size

All pure investment projects will be greater than 2 M€.

c.) Contracting and disbursement deadline

All contracts must be concluded by 31 October 2004. All disbursements must be made by 31 October 2005.

The final deadline for signature of contracts and twinning covenants is 31 October 2004. However, in order to ensure that projects are implemented as quickly as possible, all tender dossiers (or, where applicable, grant schemes, requests for services or contract dossiers) must be submitted to the Commission within 6 months of signature of the FM, except project CZ 02.10.01 SOP HRD and ESF Structures – Building Implementation Capacity, where the deadline is maximum 12 months after signature of the Financing Memorandum for the reasons of sequencing, and project CZ 02.10.06 Institution Building Envelope, since it is designed to respond to needs identified throughout the programmes life. Technical specifications will be reviewed by independent experts within the framework of twinning, where possible and appropriate. 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 reallocation. Such cancelled funds shall be allocated to another project of project no later than 12 months after the signature of the Financing Memorandum. The first consolidated draft of twinning covenants must be submitted to the EC Delegation within 3 months of the Delegation's notification to the Member States of their selection as twinning partner. Failure to meet this deadline can result in a decision by the Commission to re-circulate the relevant project fiche. If funds are reallocated to a new project or activity, the tender dossier (or other

² taking into consideration the rules set down in the annex of Council Regulation 1266/1999

³ The Practical Guide has replaced section F ("Procurement") of the DIS Manual

documents as applicable) must be submitted to the Commission within 3 months of the re-allocation decision or by 31 May 2004, whichever is the earlier.

d.) Recovery of Funds

Any proven irregularity or fraud 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 just after the end of the disbursement period of the Financing Memorandum 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 December 1998⁴. 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 Czech National Bank.

aa) Transfer of Funds to the National Fund

A payment of up to 20% of the funds to be managed locally* will be transferred 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 replenishments will be made of up to 30 % of the funds to be managed locally* and the final payment of up to 20% or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 5% of the budget* has been disbursed by the IAs and the CFCU. The second replenishment may be requested when 35% of the total budget* in force has been disbursed. The final third replenishment will be paid when 70% of the total budget* in force is disbursed. Exceptionally the NAO may request an advance 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 replenishment 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.

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 extending beyond the end of the disbursement period of the programme, 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. Interests accrued on the funds

⁴ All candidate countries signed the MoU for the establishment of the National Fund in December 1998.

* excluding the amount foreseen for the Community programmes

deposited will be paid to the Commission after final payment to the contractors. 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.) Transfer of Funds to the National Fund for Participation in Community Programmes and Agencies

A single advance will be made to the National Fund to cover the full amount of the Phare part of the financial contribution for participation in Community programmes and agencies. This advance will be made following signature of the Financing Memorandum and upon request from the National Fund.

This advance is separate from the advances made for the rest of the programme. However, it should be noted that the Phare contribution for each programme will only be transferred when the Association Council Decision or Memorandum of Understanding establishing the terms and conditions for participation in that programme is in force.

If there is a delay in the entry into force of some of the Memoranda of Understanding, the payment to the National Fund may be divided into two or more tranches, so that 100% of the funds necessary for the programmes in force can be transferred immediately.

The National Fund will be responsible for transferring the funds back to the Commission, following the call for funds of the Commission's Directorate General responsible for the programmes concerned and within the deadlines requested.

dd.) Interest

In principle, all bank accounts⁵ 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 or Institutions with a technical role
CZ2002/000 -282.10	PREPARATIONS FOR THE STRUCTURAL FUNDS AND THE COHESION FUND	CFCU	MRD, MoLSA, MoIT, MoF

g.) Environmental Impact Assessment (EIA) and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁶ 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 documented⁷.

⁵ in particular, but not exclusively, accounts run by the NF, the CFCU and IAs

⁶ 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

⁷ 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-Directive⁸ must be documented⁹.

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

Twinning

The amounts earmarked for twinning projects will cover the eligible costs (as set down in the DIS instructions) for implementing the work plan agreed between the Member State and the Applicant Country. The eligible costs may include costs incurred by the selected Member State during the preparation of the twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

Grant Scheme

For grant schemes whose procedures and formats are not covered by the current DIS rules, 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.
- The ex ante approval of the Commission (Delegation in Prague) will be required for the call for proposals, application forms, evaluation criteria, the selection procedures (including the composition of the committees) and results (list of projects to be funded). The grant contracts signed by the PAO will be subject to the ex-ante control of the EC Delegation.

The implementation of the selected projects through the 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. The decentralised system established for CBC small projects is to be applied to all such contracts below 300 000 € (or any increased threshold to be fixed by EC Headquarters for small project funds under CBC programmes). Tenders and contracts above this threshold will be presented to the EC Delegation for ex ante

⁸ DIR 92/43/EEC; OJ 206/7; 22.7.1992

⁹ in **Annex Nature Conservation** to the corresponding investment project fiche

approval. The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. Project implementation and all Phare disbursements are to be done before the expiry date of the present Financing Memorandum.

4. MONITORING AND ASSESSMENT

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission. 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.

The JMC will be assisted by Monitoring Sub-Committees (MSC) which will include the NAC, the PAO of each IA (and of the CFCU where applicable) and the Commission Services. The MSC will review in detail the progress of each programme, including its components and contracts, on the basis of regular Monitoring and Assessment reports produced with the assistance of external consultant (in accordance with the provisions of the DIS Manual), and will put forward recommendations on aspects of management and design, ensuring these are effected. The MSC will report to the JMC, to which it will submit overall detailed reports on all Phare financed programmes

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 Countries

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 effective treatment of suspected cases of fraud and irregularities.

Irregularity shall mean any infringement of a provision of Community law 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.

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 1681/94¹⁰.

In particular, all suspected cases of fraud and irregularities 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 irregularities or related measures 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 measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned and on-the-spot checks.

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. 2185/96¹¹.

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 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.

¹⁰ OJ L 253; 7.10.00; p. 5-14

¹¹ 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.