

## **FINANCING MEMORANDUM**

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

on the one part, and

The Government of **Poland**, hereinafter referred to as "**THE RECIPIENT**"

on the other part,

HAVE AGREED AS FOLLOWS:

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

### **ARTICLE 1 - NATURE AND SUBJECT**

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

<u>Programme number</u>	<b>PL0013</b>
<u>Programme title:</u>	<b>Supplementary Investment Facility for Poland in 2000</b>
<u>Duration:</u>	<b>Until 30.11.2002</b>

### **ARTICLE 2 - COMMITMENT OF THE COMMUNITY**

The financial contribution of THE COMMUNITY is fixed at a maximum of 40,7 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 **30.11.2002** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled. The deadline for disbursement of THE EC GRANT is **30.11.2003**. All disbursements must be completed by the deadline for 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:**

Delegation of the European Commission in Poland  
Al. Ujazdowskie 14  
PL-00478 Warsaw  
Poland  
Fax: (+48-22) 625 04 30

**for THE RECIPIENT:**

**Ministry of Internal Affairs and Administration**  
ul.Stefana Batorego 5  
PL-02-591  
Warsaw  
Fax: (+48-22) 694.71954

ARTICLE 5 - NUMBER OF ORIGINALS

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

ARTICLE 6 - ENTRY INTO FORCE

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

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

Done at .....  
Date: .....

Done at .....  
Date: .....

for THE RECIPIENT  
Pawel Samecki

for THE COMMUNITY  
Bruno Dethomas

Annex A & B of the Framework Agreement  
Annex C Special conditions  
Annex D Visibility/Publicity

## **ANNEX C – Special Conditions**

### **1. OBJECTIVES AND DESCRIPTION**

#### **1.1. Objectives**

The overall objective of this Financing Proposal is to improve the environment for business in target regions and strengthen the future external frontier of the Union.

The specific objective of this Financing Proposal is to ensure that the projects listed below are completed within the disbursement period and that the improved infrastructure is operational.

#### **1.2. Eligible Projects**

The list of projects to be co-financed is given in annex. Exceptionally projects may be revised or replaced with the agreement of the Commission. This list covers nine of the candidate countries of Eastern and Central Europe.

In total about half the funds are allocated to strengthening the future external frontier of the Union and half to improving business-related infrastructure. The latter category of business-related infrastructure is also split in two parts with about half being allocated to transport and environment projects (that are not eligible for Ispa) and the remaining half for the development of industrial zones, business incubators and similar activities.

#### **1.3. Principles for investment support**

Individual projects must respect the principles laid down for investment support in the Phare guidelines. This will be ensured as follows:

**Catalytic** – all projects to be supported from the supplementary investment facility relate to actions for which the public sector is responsible and which are already prepared but cannot be implemented because of lack of public funds. The use of Phare funds allows them to be brought forward and implemented earlier than would otherwise be the case.

**Co-financing** – there will be a minimum of 25% co-financing from national public funds for all projects.

**Co-ordination and additionality** – the Commission will transmit the list of projects to be approved to the European Investment Bank and the International Financial Institutions for information.

**Project readiness and size** – projects have been subject to a feasibility study. In most cases they will be ready for tendering by the end of 2000 in order to comply with the requirement in the guidelines that contracting should take place as far as possible in the six months after the signature of the Financing Memorandum. Projects respect the minimum size requirement (Phare contribution of at least €2 mio).

**Sustainability** – is a key aspect of feasibility studies for all projects. Only those projects that will comply with EU norms and standards after accession and will be financially sustainable will be accepted.

## 2. BUDGET

Country	Implementing Agency	Code	Allocation €
Bulgaria	CFCU	BG.0012	9,400,000
Czech	Centre for Regional Development	CZ.0016	8,100,000
Estonia	CFCU	ES.0011	2,500,000
Hungary	Ministry of Agriculture and Rural Development	HU.0014	5,000,000
Latvia	CFCU	LE.0003	1,750,000
Lithuania	CFCU	LI.0013	4,300,000
Poland	Ministry of Internal Affairs	PL.0013	40,700,000
Slovakia	CFCU	SR.0016	4,000,000
Slovenia	CFCU	SL.0007	2,600,000
<b>TOTAL</b>			<b>78,350,000</b>

## 3. IMPLEMENTATION ARRANGEMENTS

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

### 3.1. Implementation

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures. The National Aid Coordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes.

The National Fund (NF) in the relevant Ministry (as indicated in the table below) headed by the National Authorising Officer (NAO), will supervise the financial management of the Programme, and will be responsible for reporting to the European Commission. Appropriate financial control will be carried out by the competent National Control Authority with respect to the implementation of the programme.

The National Fund (NF) in each of the countries respectively is as follows:

1. Bulgaria - Ministry of Finance
2. Czech Republic – Ministry of Finance
3. Estonia – Ministry of Finance
4. Hungary - State Treasury
5. Latvia – Ministry of Finance
6. Lithuania - Ministry of Finance
7. Poland - Ministry of Finance
8. Slovakia – Ministry of Finance
9. Slovenia – Ministry of Finance

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and the relevant countries. Funds will be transferred following requests from the NAO. 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 Agency. 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 Implementing Agency and the manner in which the payment function will be carried out.

Four Replenishments will be made of **up to** 20% of the funds to be managed locally or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 10% of the budget has been disbursed by the Implementing Agency. The second replenishment may be requested when 30% of the total budget in force has been disbursed. The trigger point for the third replenishment is 50%, and for the final fourth instalment when 70% is disbursed. Save for express prior authorisation from the Commission HQ, no replenishment request may be made if the aggregate of the funds deposited in the NF and the Implementing Agency exceeds 10% of the total budget in force of the commitment. Exceptionally the NAO may request an advance payment of more than 20% in accordance with the procedures laid down in the aforesaid Memorandum of Understanding.

The National Fund will transfer funds to the nominated Implementing in each country in accordance with Financing Agreements (FAs) signed between the NF and the IA where applicable. Each individual FA will be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the Implementing Agency there will be no transfer of funds from the NF to the Implementing Agency. The Implementing Agency must be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all the operations carried out by the relevant Implementing Agency.

A separate bank account, denominated in € will be opened and managed by the NF in a separate accounting system in the Central Bank. In principle, all bank accounts 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. The same procedures will apply to any funds transferred to the Implementing Agency.

The NAO and the PAOs will ensure that tendering and contracting comply with the procedures set out in the DIS Manual.

All contracts must be concluded by 30.11.2002. All disbursements must be made by 30.11.2003.

Any funds not used by the expiry date of the programme will be recovered by the Commission.

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 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.

#### **4. MONITORING AND ASSESSMENT**

A Joint Monitoring Committee (JMC) will be established. It will include 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 FM and the AP. The JMC may recommend a change of priorities and/or the reallocation of Phare funds. The JMC is assisted by Monitoring Sub-Committees (MSC) that include the NAC, the PAO of the Implementing Agency 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.

#### **5. AUDIT AND EVALUATION**

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.

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

#### **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 at Annex Visibility/Publicity.

#### **7. SPECIAL CONDITIONS**

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