EUROPEAN COMMISSION

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TRANSITION FACILITY

PROGRAMMING AND IMPLEMENTATION GUIDE

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A. INTRODUCTION

1. Background

The European Commission proposed in its Strategy Paper[1] to create a Transition Facility for certain Institution Building actions in the new Member States over the period 2004-2006. The principle and related financial allocations were subsequently enshrined in the Act of Accession [2] under Article 34. The purpose of the Transition Facility is to continue to assist the new Member States[3] in their efforts to strengthen their administrative capacity to implement Community legislation and to foster exchange of best practice, as an extension to assistance provided until accession under Phare.

In the interest of continuity, stability and simplicity, the orientation of the Transition Facility is to continue Institution Building activities according to the same principles as practised under Phare during the pre-accession period. Therefore, the structures and methods established under Phare for programming, decision making and implementation will continue to apply for the Transition Facility, with some small adaptations where necessary. The Commission will take annual Financing Decisions, based on a programme for which the Phare Management Committee has given its opinion. Implementation of national programmes funded by the Transition Facility will build on the architecture of a Memorandum of Understanding with each beneficiary Member State, setting out responsibilities and administrative and financial rules and procedures for the implementation of the Transition Facility (cf. B2)

2. Purpose of the Transition Facility

As of 1997, the Commission made the administrative and institutional capacity of the candidate countries to implement the acquis its top priority in the context of Agenda 2000. The aim has been to devote 30% of Phare funds to Institution Building projects and a further 35% to investments in regulatory infrastructure.

The Commission developed a series of instruments to guide and focus this policy decision; the Accession Partnerships, NPAAs, Regular Reports and, most recently in 2002, the Action Plans for administrative and judicial capacity have served as a basis for the annual programming of Phare IB support. The amounts allocated to each country have gradually increased reaching a total of € 1 billion under Phare 2002.

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[1] COM (2002) 700 final, 9.10.2002
[2] EU AA 2003
[3] Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia

2003 has been the last year of programming pre-accession assistance for the 10 countries scheduled to join the EU in 2004. The implementation of Phare pre-accession assistance programmes will, however, continue until 2006 at least. Thus, 2004 will constitute the peak of resources – with 2002 and 2003 allocations to be contracted - available to the new Member States to address weaknesses in their acquis-related administrative capacity.

Indeed, an overwhelming number of issues identified over the years have been addressed and solved with the help of Phare. Nevertheless, in the process of finalising accession negotiations certain outstanding issues were identified and became the subject of firm commitments with strict time schedules for remedial action on the part of the prospective new Member States. The Commission has been monitoring compliance with the commitments and published a Comprehensive Monitoring Report in November 2003.

In areas where key acquis risks being jeopardised, such as the Internal Market, consumer safety, customs control, public safety, sound management of Community funds, to name but some, the Accession Treaty foresees the possibility of two types of safeguard clauses being invoked over a period of up to three years after the date of accession; a special internal market safeguard clause and a special justice and home affairs safeguard clause.

The purpose of the Transition Facility is to continue to provide assistance to the new Member States in areas where their administrative and institutional capacity still shows some weaknesses in comparison with present Member States in the field of acquis transposition. The Transition Facility should provide the tools to react rapidly and precisely to weaknesses identified through the monitoring exercise. Article 34 AA establishing the Transition Facility in the Accession Treaty states that

“assistance shall address the continued need for strengthening institutional capacity in certain areas through actions which cannot be financed by the Structural Funds, in particular in the following areas:

- Justice and home affairs (strengthening of the judicial system, external border controls , anti-corruption strategy, strengthening of law enforcement capacities);
- financial control;
- protection of the Communities' financial interests and the fight against fraud;
- internal market, including customs union;
- environment;
- veterinary services and administrative capacity-building relating to food safety;
- administrative and control structures for agriculture and rural development, including the Integrated Administration and Control System (IACS);
- nuclear safety (strengthening the effectiveness and competence of nuclear safety authorities and their technical support organisations as well as public radioactive waste management agencies);
- statistics;

- strengthening public administration according to needs identified in the Commission's comprehensive monitoring report which are not covered by the Structural Funds.”

The issues to be addressed by the Transition Facility have primarily been identified through the monitoring process, in particular in the Comprehensive Monitoring Report.

3. Co-ordination with other financial instruments

Careful co-ordination is required to avoid any overlap, but to promote synergy effects with other Community financial instruments. Actions funded by the Transition Facility shall not receive any support from ongoing Phare, ISPA and Sapard programmes and future Structural and Cohesion Funds or the Schengen Facility.

4. Legal base

Article 34 of the Act of Accession establishes the Transition Facility and sets out the basic orientation for its implementation. §3 refers to the procedure under the Phare Regulation for seeking Committee opinion on programmes. §4 refers to the Financial Regulation article 53 §1 (b) and leaves room for implementation according to the decentralised system of the national programmes. Multi-beneficiary programmes will be implemented centrally, by the Commission.

5. Funding

a) Distribution of annual envelopes

Article 34 AA provides for commitment allocations at 1999 prices (2004 prices in brackets) of € 200 million (€ 221 million) for 2004, € 120 million (€ 136 million) for 2005 and € 60 million (€ 69 million) for 2006. The Commission decides on individual programme allocations.

Reflecting continuity with Institution Building support funded by Phare, part of each annual envelope of the Transition Facility will be allocated to certain multi-beneficiary programmes.

The remainder of the annual envelopes will be distributed indicatively between the new Member States. All countries must maintain a critical level of public administration to satisfy acquis requirements; therefore, regardless of size and population, core Institution Building needs are similar throughout the beneficiary countries. Half will be distributed equally between the new Member States to address these core needs. The other half will be distributed proportionately as a % share of population and GDP. This methodology was applied when the Commission decided to support the Action Plans for administrative and judicial capacity with part of the 2002 Phare envelope.

The Commission shall decide final allocations at a later stage, based on actual needs identified, quality of projects submitted and absorption capacity, in accordance with the Phare Guidelines[4] and article 34 AA § 3. Table 1 provides an overview of indicative allocations.

b) Co-financing

As has been the practice under Phare-funded Institution Building projects, co-financing is considered to be provided for by the beneficiary bearing certain infrastructure and operational implementation costs, through financing the human and other resources, required for effective and efficient absorption of Transition Facility assistance. The costs detailed in the project fiches thus constitute a full grant.

Funding from the Transition Facility for projects concerning small equipment necessary for the implementation of the acquis must receive co-financing from national public funds. The Community contribution may amount to up to 75% of the total eligible[5] public expenditure.

6. Programming

The basic principles and methodology described in the Phare Guidelines[6] and Phare Programming Guide in respect of Institution Building and small-scale equipment for the implementation of the acquis shall apply to programming of the Transition Facility. The Commission will be responsible for guiding and supervising the process from needs identification (monitoring exercise) to Commission Decision.

The Transition Facility targets, in the first instance, Institution Building issues requiring remedial action and needs for equipment directly related to and essential for the implementation of the acquis, as highlighted in the monitoring exercise. Assistance is thus directed principally at the public administration of the beneficiary Member States. NGOs may benefit in so far as they have a role in implementing the acquis or in addressing issues related to the political criteria for membership.

The Transition Facility may also be used to address other Institution Building issues (e.g. left over from the Action Plans, new acquis) for which weaknesses emerge as requiring remedial action. It should be considered as an extension of the Institution Building part of the Phare programming cycle.

Transition Facility programmes are designed in a dynamic environment which may evolve during their implementation. The Commission may agree to minor adaptations and reallocations in order to achieve targeted objectives and in the interest of sound financial management.

[4] C (2002) 3303-2, 1.3.1
[5] Taxes are not eligible for co-financing
[6] C(2002) 3303-2, 6.9.2002

7. Financing Decisions

The Commission will adopt annual Financing Decisions on national and multi-beneficiary programmes. Individual projects outlined in the Financing Decisions are presented according to a template provided by the Commission. Financing Decisions will be notified to the beneficiary Member States.

Any changes to the objectives described in the Financing Decisions as well as significant financial reallocations require a new Financing Decision.

B. NATIONAL PROGRAMMES – PROGRAMMING AND IMPLEMENTATION

1. Programming Financing Decisions

a) General approach to programming

Programming will follow the same rules as those established for Phare Institution Building actions. The Member States will be consulted through the Phare Management Committee, as maintained in place by § 3 of art 34 AA, followed by a Commission Decision (according to the template provided under Annex 1), which will be notified to the beneficiary Member State.

In order to have an overview over the three-year period and including, where appropriate, sequencing of projects, the Transition Facility will be programmed indicatively for the entire three-year period, though financing decisions will remain annual. Projects must thus be grouped according to priority and annual budgets available.

The group of projects scheduled for the 2004 budget allocation will be binding and immediately converted into a Financing Proposal, followed by a Commission Decision and notification to the beneficiary Member State. The projects scheduled for 2005 and 2006 will be indicative and presented in a planning document, subject to further annual Financing Proposals. This provides for both continuity, flexibility and the possibility of addressing newly arising issues in years 2005 and 2006, especially if safeguard clauses are or risk being invoked.

The Commission will continue to play its role, as described in the Phare Programming Guide. The relevant line DGs will continue to be closely involved in the identification of priorities and ensuring that project proposals are designed to address the needs identified.

b) Specific priorities

Each new Member State shall devote the necessary amount of Transition Facility funds to adequately address the needs identified and to further reinforce their operational and administrative capacity to protect the Communities' financial interest and to fight against fraud, including further development of their **Anti-Fraud Co-ordination Service (AFCOS**).

Given the importance of new Member States ensuring a high level of **nuclear safety**, Institution Building needs identified in relation to nuclear safety regulators and radioactive waste management agencies shall be treated as a priority; allocation of the appropriate funds from the Transition Facility to these issues is mandatory.

The new Member States are responsible for conducting **interim evaluations** of actions funded by the Transition Facility. Appropriate funding should be foreseen in the national envelopes.

In the event of a political settlement, the national envelope for **Cyprus** may be adjusted, within the limits of the overall allocation, to take account of needs in the **northern part of the island**.

Finally, a maximum of €1.5 million per year may be reserved in an **unallocated envelope for Institution Building** needs which arise unexpectedly between Financing Decisions. The Commission must approve the use of these funds.

c) Timing

Programming of the Transition Facility funds should start early, based on the monitoring reports of February, May and July 2003, but in no case later than immediately after publication of the Comprehensive Monitoring Report in November 2003, which should be the base for fine-tuning. The target must be to have a Financing Proposal for the year 2004 and indicative programme for 2005 and 2006 ready in early 2004 for consultation and opinion from the Phare Management Committee as soon as possible after entry into force of the Accession Treaty.

No Commission Decision can be adopted or budgetary commitment made before the date of accession, but all preparatory programming work may be finalised and Decisions may be taken immediately after the date of accession.

2. Implementation

National programmes under the Transition Facility will be implemented by the new Member States under the rules for decentralised implementation according to article 53 (1) b of the Financial Regulation[7] .

a) Principles

To provide the legal framework for the implementation of the Transition Facility by the beneficiary Member States, the Commission will sign a Memorandum of Understanding with each beneficiary Member State, setting out responsibilities and administrative and financial rules and procedures for the implementation of the programme. The model is provided in Annex 2. It contains, in particular, the detailed provisions for payments, a clearance of

[7] (EC, Euratom) No 1605/2002, 25.6.2002, OJ L 248 16.9.2002, p.1

accounts procedure and recovery of funds unduly spent, reporting audit and publicity requirements.

b) Implementation structures

Following in-depth assessment of the management and control systems, prepared according to the criteria defined in the Regulation on co-ordinating aid to the applicant countries[8] and article 164 FR, the Commission will take a Decision on conferral of management of aid provided under Phare to Implementing Agencies in the beneficiary countries – (EDIS Decision). The Commission will also assess the capacity of certain Implementing Agencies to ensure that they are adequately staffed and thus in a position to implement the Transition Facility. Approved Implementing Agencies will be designated in the Financing Decision for each annual national programme, which will therefore also constitute the Commission Decision to entrust management to the authorities of the beneficiary Member States in accordance with Article 164 of the Financial Regulation. A model template for the Financing Decision to be notified to each beneficiary Member State can be found at Annex 1.

c) Tools for national programmes

The principal tools for implementation of the Transition Facility are:

- Twinning and Twinning light between current Member States' administrations and their counterparts in the new Member States.
- Technical assistance (commercially tendered or according to the special rules for contracts in the field of nuclear safety)
- Co-financing for small-scale equipment related to the implementation of the acquis,

d) Special provisions Co-financing

As enshrined in article 34 AA, the provisions for **Twinning projects** between public administrations in the present and new Member States foreseen in the Twinning manual for Phare continue to apply. Thus, the matching of partners shall be channelled through the network of contact points in the present Member States. Furthermore, the amounts earmarked for twinning projects will cover the eligible costs for implementing the work plan agreed between the present and new Member State. The eligible costs may include costs incurred by the selected present Member State during the preparation of the twinning covenant in the period between notification of the Financing Decision and the final signature of the covenant. Commission headquarters will provide a clearing-house for identification of partners through the network of National Contact Points in the present Member States and consultation of Commission services on acquis relevance of projects.

[8] (EC) 1266, 21st June, 1999

e) Reporting, monitoring and evaluation

The beneficiary Member States are responsible for ensuring that the national authorities maintain a viable technical and financial reporting system for all Transition Facility funds. That shall include communicating cases of (suspected) fraud and other irregularities and a satisfactory treatment of cases of (suspected) fraud and other irregularities. The Commission shall be responsible for ex-post evaluation and control and financial corrections, where necessary.

These reporting requirements and other obligations are detailed in the draft Memorandum of Understanding on the Implementation of the Transition Facility in Annex 2.

C. HORIZONTAL/MULTI-BENEFICIARY PROGRAMMES

1. Programming

A limited number of horizontal/multi-beneficiary programmes may be programmed by the Commission for new Member States to draw down on. The Commission will explore the justification for continuing to fund the following programmes, previously funded by Phare:

- TAIEX for multi-country information, monitoring and training placements in priority areas
- Sigma to address in particular horizontal systems of governance, in particular public administration reform/civil service issues, as well as financial and budgetary/audit subjects and public procurement
- Statistics to further enhance the administrative capacity of the new Member States in the field and promote exchange of data and information at EU level.
- Audit and evaluation

2. Implementation

Multi-country/horizontal programmes funded by the Transition Facility will be implemented by the Commission, according to the rules for centralised management (article 53 (1) a FR), as appropriate.

Table 1 Overview of calculation of indicative allocations as per part 5 a)

TOTAL AMOUNT - in € million per year 2004 prices			
2004	2005	2006	2004-2006
221	136	69	426
51,88%	31,92%	16,20%	100%

Allocation key :

CY	0,6%
CZ	10,2%
EE	1,9%
HU	10,7%
PL	58,5%
SI	1,6%
LT	5,3%
LV	4,0%
SK	6,8%
MT	0,4%

Indicative allocation per country per year, fixed and pro rata

in € million	2004			2005			2006			2004-2006		
	Fixed	Pro rata	Total	Fixed	Pro rata	Total	Fixed	Pro rata	Total	Fixed	Pro rata	Total
Total			52,0			11,5			8			71,5
												0,0
												0,0
												0,0
												0,0
CY	8,5	0,5	9,0	6	0,4	6,4	3	0,2	3,2	18	1,1	18,6
CZ	8,5	8,6	17,1	6	6,6	12,6	3	3,2	6,2	18	18,3	35,8
EE	8,5	1,6	10,1	6	1,3	7,3	3	0,6	3,6	18	3,5	21,0
HU	8,5	9,0	17,5	6	6,9	12,9	3	3,3	6,3	18	19,2	36,7
PL	8,5	49,1	57,6	6	37,7	43,7	3	18,1	21,1	18	105,0	122,5
SI	8,5	1,4	9,9	6	1,0	7,0	3	0,5	3,5	18	2,9	20,4
LT	8,5	4,4	12,9	6	3,4	9,4	3	1,6	4,6	18	9,5	27,0
LV	8,5	3,3	11,8	6	2,6	8,6	3	1,2	4,2	18	7,1	24,6
SK	8,5	5,7	14,2	6	4,4	10,4	3	2,1	5,1	18	12,2	29,7
MT	8,5	0,4	8,9	6	0,3	6,3	3	0,1	3,1	18	0,8	18,3
TOTAL	85	84	221	60	65	136	30	31	69	175	180	426

Annex 1

Model

COMMISSION DECISION

of […]
awarding a grant from the European Union Transition Facility to finance projects according to the annexed Financing Proposal in [name of State]

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession 2003, in particular its Article 34(3)[9],

Whereas:

- Article 34 of the Act of Accession establishes the Transition Facility to assist the new Member States to address the continued need for strengthening institutional capacity in certain areas through actions which cannot be financed by the Structural Funds,
- Article 34 § 4 of the Act of Accession cites Article 53 §1(b) of Council Regulation 1605/2002 (Financial Regulation)[10] and leaves room for implementation of the Transition Facility according to the decentralised system.
- In the preparation for the Decision for conferral of management of aid provided under Phare, the Commission has satisfied itself that the Implementing Agency designated by this Decision complies with the criteria set out in Article 164 of Council Regulation 1605/2002 (Financial Regulation)[11] and that it has adequate staff resources.

The measures provided for by this Decision are in accordance with the opinion of the Committee on Aid for Economic Restructuring in certain countries in Central and Eastern Europe, rendered in its meeting on dd/mm/yyyy,

[9] (EC) AA 2003. final of 16 April, OJ L 236 23.9.2003
[10] (EC, Euratom) 1605/2002 of 25. June 2002; OJ L 248 of 16.9.2002, p. 1
[11] (EC, Euratom) 1605/2002 of 25. June 2002; OJ L 248 of 16.9.2002, p. 1

HAS ADOPTED THIS DECISION:

Article 1

The Commission hereby awards a grant of € …. from the European Union Transition Facility to [State], hereinafter called 'the Beneficiary State', to finance actions as referred to in the attached Financing Proposal.

Article 2

- This Decision shall be implemented on a decentralised basis, in accordance with the Memorandum of Understanding on the Implementation of the Transition Facility, signed with [Member State] on dd/mm/yyyy.
- Having satisfied itself in the context of preparation for conferral of management of aid provided under Phare, as well as through a number of other checks, that the criteria listed in Art. 164 of the Financial Regulation are fulfilled, the Commission designates the [CFCU] as Implementing Agency for the Programme.

Article 3

1. Secondary commitments covered by the grant shall be signed no later than 15 December n+2
2. The deadline for execution of secondary commitments shall be 15 December n+3

Article 4

This Decision is addressed to [Member State].

Done at Brussels, […]

For the Commission

[…]
Member of the Commission

ANNEX FINANCING PROPOSAL ON THE IMPLEMENTATION OF THE TRANSITION FACILITY IN [STATE] FOR YYYY

- **IDENTIFICATION**

The Programme identification should be completed as follows:

Beneficiary	*The name of the Transition Facility beneficiary country*
Programme	*Title of the programme.*
CRIS-Number	*(to be inserted after global commitment has been given by E2)*
Year	*The budget year from which the Programme is to be financed.*
Cost	*The total value of the actions to be financed from the Transition Facility* € … million.
Implementing Authority	*The name of the overall Implementing Authority (i.e. the Ministry in which the CFCU is located) or Operational Services in Brussels as well as DGs authorised by sub-delegation if this system is not to be applied.*
Expiry Date	Contracting: *(give exact date, -* ***day, month and year*** *-by which all funds will be contracted, in general 15.12.n+2)*; Execution of contracts: *(give exact date -* ***day, month and year*** *- by which programme will be fully executed, in general 15.12.n+3).*
Sector Code	*(according to* DAC-list*)*
Group	*Insert relevant code*
Budget Line	
Commission Task Manager	

- **SUMMARY**

- **STRATEGY**

- **OBJECTIVES AND DESCRIPTION**

- **BUDGET**

example for structure of budget table (can be adapted by Task Manager according to need):

Objective	**Transition Facility Funding**			**Total**
	Institution Building (IB)	**Invest ment (I)**	**Transition Facility Total IB+I**	
Objective 1:				
…				
Objective 2:				
…				

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 Transition Facility assistance.

Investments in small equipment must receive co-financing from national public funds. The Community contribution may amount to up to 75 % of the total eligible[12] public expenditure.

- **SPECIAL CONDITIONS**

In the event that agreed commitments are not met for reasons which are within the control of the Government of ……, 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 Transition Facility.

[12] Taxes are not eligible for co-financing.

Annex 2

TEMPLATE

(subject to adaptations required by specific circumstances and prior approval by the Commission)

MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN COMMISSION AND [GOVERNMENT OF THE MEMBER STATE] FOR THE IMPLEMENTATION OF THE TRANSITION FACILITY

Whereas Article 34 of the Act of Accession establishes the Transition Facility[13] as a temporary instrument for the period from accession to the end of 2006;

Whereas the Transition Facility is intended to continue to assist the new Member States in their efforts to strengthen their administrative capacity to implement Community legislation, as a continuation of similar support financed by pre-accession instruments;

Whereas it is important to maintain stability, continuity and simplicity as regards the implementation structures and systems;

Therefore

The European Community, represented by the European Commission, hereinafter referred to as "The Commission", on one part, and

[The Government of Member State] hereinafter referred to as "The Beneficiary", on the other part,

have agreed as follows:

GENERAL

Article 1

Definitions

<u>1. National Fund (NF)</u>

The National Fund is the central treasury entity within the Ministry of Finance through which the Transition Facility funds are channelled to the Beneficiary.

<u>Central Finance and Contracts Unit (CFCU)</u>

<u>2. Central Finance and Contracts Unit (CFCU)</u>

[13] EU Act of Accession 2003, OJ L 236, 23.9.2003

The Central Finance and Contracting Unit (CFCU) is a body within the national administration, in charge of tendering, contracting and payments for Institution Building projects and other projects if so specifically provided. Technical implementation of projects is the responsibility of SPOs.

3. Implementing Agency (IA)

The Implementing Agency (IA) is an implementing body within the national administration in charge of tendering, contracting, payments and technical implementation of projects if so specifically provided. The CFCU can act as an Implementing Agency, e.g. for Twinning projects.

4. National Aid Co-ordinator (NAC)

The National Aid Co-ordinator (NAC) is a representative of the national administration (ministerial or state secretary rank) in charge of the programming within the Beneficiary. The NAC also ensures co-ordination with other Community financial assistance, and is responsible for the monitoring and assessment of Transition Facility programmes.

5. National Authorising Officer (NAO)

The National Authorising Officer (NAO) is a representative of the national administration (ministerial or state secretary rank) who has the overall authority and responsibility for the implementation of Transition Facility funds. The National Authorising Officer may delegate his/her responsibilities to a maximum of two other officials, but shall remain ultimately accountable for all the responsibilities vested in him/her in this Memorandum of Understanding and other agreements.

The National Authorising Officer may not simultaneously hold the office of the National Aid Co-ordinator.

6. Programme Authorising Officer (PAO)

The Programme Authorising Officer (PAO) is a representative of the national administration at the head of the CFCU or an IA. The PAO is appointed by the NAO in consultation with the NAC and is responsible to the NAO for the operations of the CFCU/IA and for the sound financial management of the projects to be implemented.

7. Senior Programme Officer (SPO)

The Senior Programme Officer (SPO) is an official of the national administration (ministry/agency) responsible to the PAO of the CFCU for the technical implementation of the projects in cases where the CFCU is responsible for the administrative and financial implementation of the projects.

8. Joint Monitoring Committee (JMC)

The Joint Monitoring Committee (JMC) is a committee, consisting of the NAO, NAC and Commission representatives, in charge of the review of Transition Facility programmes

9. Perseus

Perseus is the current financial reporting system of the European Commission.

10. Financial Regulation (FR)

The Financial Regulation (FR) is applicable to the general budget of the European Communities. Council Regulation (EC, Euratom) 1605/2002 of 25 June, 2002; OJ L 248 of 16.9.2002, p.1

Article 2

Responsibilities of the National Authorising Officer

§1

The overall responsibility for the implementation of Transition Facility funds shall lie with the National Authorising Officer.

The National Authorising Officer shall have the full overall accountability for the use of Transition Facility funds until the closure of the programme. S/he shall ensure that the Community rules and procedures pertaining to reporting and financial management, as well as to procurement, competition and state aid are respected, and that a reporting and project information system is operational. This includes responsibility for ensuring that all suspected and actual cases of fraud and irregularity are reported to the Commission.

§2

The National Authorising Officer shall maintain a financial reporting system for all Transition Facility funds. The National Authorising Officer shall be responsible for carrying out all tasks necessary to fulfil his/her responsibility, inter alia, the following:

(i) request and manage the funds from the Commission

(ii) appoint and supervise Programme Authorising Officers (PAOs) in the Central Finance and Contracts Unit (CFCU) and each Implementing Agency (IA), where applicable, after consulting with the National Aid Co-ordinator.

(iii) sign Financing Agreements with the CFCU and each of the Implementing Agencies, where applicable.

(iv) Make payments to the Central Finance and Contracts Unit (CFCU) and Implementing Agencies (IA) where applicable, according to the mechanism set out in the Financing Agreement.

(v) ensure the flow of national and other co-financing resources as set out in National Programmes for Transition Facility programmes.

(vi) ensure that a financial reporting system (Perseus) for Transition Facility funds is regularly updated and reporting procedures properly respected by the NF, CFCU or IA (where applicable).

(vii) recover unused funds from the CFCU/IA at the end of the programme

(viii) participate with the Commission and National Aid Co-ordinator in the Joint Monitoring Committee.

§3

Failure to carry out any of the responsibilities set out in this Memorandum of Understanding will lead to reimbursement of Transition Facility funds to the Commission.

Article 3

Implementing Agencies

§1

Implementation of the Transition Facility shall be entrusted by the NAO to the [CFCU/IA], for which the Commission has established compliance with the criteria as set out in Art 164 FR.

§2

The Commission may withdraw its approval of the CFCU/IA at any time, if it is found not to comply with the requirements of Article 164 FR.

PROCUREMENT

Article 4

Procurement

§1

Procurement will be carried out by the CFCU/IA according to Part 1, Title V FR ensuring free access, fair competition and transparency.

§2

For Twinning projects, the Twinning Manual as applied to Phare continues to apply, in accordance with the provision of §4 in article 34 Act of Accession.

Article 5

Taxation

§1

Projects covered by Transition Facility funds are subject to national tax laws.

§2

Taxes, customs and duties are not eligible for funding by the Transition Facility. VAT does not constitute eligible expenditure except where it is genuinely and definitely borne by the final beneficiary. VAT which is considered recoverable, by whatever means, cannot be considered eligible, even if it is not actually recovered by the final beneficiary or individual recipient.

FINANCIAL FLOWS

Article 6

Bank Accounts

§1

The National Fund shall, for each National Programme funded by the Transition Facility, open up a bank account in the Central Bank or in a bank account agreed with the Commission.

This bank account shall have sub-accounts from which the CFCU/IAs are authorised to execute payments. In cases where this system cannot be implemented, specific arrangements can be agreed between the Commission and the National Fund.

§2

The bank accounts shall, in principle, be interest-bearing. The amount of interest earned on the bank accounts shall be communicated to the Commission.

§3

The bank accounts shall be operated on the basis of double signature system, requiring the signatures of the National Authorising Officer and a senior accounting officer.

§4

The National Fund shall communicate to the Commission all relevant information regarding all accounts to which Transition Facility funds have been transferred. Relevant information should be understood to mean, inter alia, name and address of the bank, account number, name(s) of account holders, interest rates, and any other information the Commission deems appropriate.

Article 7

Request for funds from the Commission

§1

A first payment of up to 20 % of the funds, representing pre-financing[14] will be sent to the NF following notification by the Commission of the Financing Decision for National Programmes and signature of the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs/CFCU). Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system for management and control 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.

§2

Two further payments representing interim payments[15] and the renewal of pre-financing of up to 30 % each of the funds 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 payment may be requested when 35 % of the total budget in force has been disbursed.

A fourth payment will be made when 70 % of the total budget in force is disbursed and when all contracts have been signed.

Exceptionally, the National Authorising Officer may request more than the percentage agreed where it can be demonstrated by the CFCU/IA, by means of a cash-flow projection, that the cash flow requirements in the subsequent period will exceed such percentage.

§3

In cases where the aggregate of the funds deposited in the National Fund, CFCU and IAs exceeds 15 % of the total budget in force of the programme, the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

[14] as defined in Art. 105 (1) of Commission Regulation 2342/2002
[15] as defined in Art. 105 (1) of Commission Regulation 2342/2002

§4

Request for payments, to be certified and approved by the National Authorising Officer, are submitted to the Commission for approval and transfer.

Requests for payments shall be supported by:

(i) a declaration of expenditure showing the cumulative amount of national (for co-financing) and Transition Facility funds contracted and paid broken down by sub-programme and project and sub-project (where appropriate) - so demonstrating the link between the indicative budget (i.e. National Programme) and the expenditure and payments actually made based on the financial reporting as presented by the CFCU/IA. To this end, a table displaying the Implementing Agencies, the sub-programmes/projects they manage and the relevant contracts and payments should be enclosed.

(ii) appropriate regular financial reporting (Perseus) indicating signed contracts and payments made.

(iii) bank reconciliation, including interest earned, corresponding to the bank accounts opened by the NF and CFCU/IAs.

(iv) progress reports as stipulated in Article 12.

(v) A written declaration by the NAO stating that the information contained in the request for payment is correct and that the implementation of the Transition Facility assistance is progressing at a satisfactory rate and according to the objectives laid down in the National Programme.

The Commission retains the right to request additional information in support of transfers of funds.

§5

The National Fund shall keep detailed account of all payments received for implementing individual Transition Facility funded programmes, sub-programmes, projects, and sub-projects (where appropriate).

§6

If the payments received from the Commission exceed the final certified expenditure then the NF should return the excess to the Commission at the time of submitting the final declaration.

If there are any outstanding payments (with the exception of any contractual retention moneys), the NF should provide an explanation and a forecast, when payment will be finalised. The NF shall report on progress on contractual retention moneys and outstanding payments on a quarterly basis. If they are not paid to the contractor, they should also be returned to the Commission.

Article 8

Clearance of Accounts

§1

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

§2

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

The results of the Commission's checks and its conclusions to exclude expenditure from financing will be notified in writing to the National Fund, which shall be given one month to transmit its reply in writing.

If no agreement is reached within one month of receipt of the NF's written reply, the Commission shall decide and establish the amounts to be excluded having regard in particular to the degree of non-compliance found and the nature and gravity of the infringement as well as the financial loss suffered by the Community.

§3

Following the decision referred to in paragraph 2, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities referred to in Article 18 and subsequent financial corrections.

The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

Article 9

Changes of projects

§1

The NAC and NAO may request changes of a purely technical nature or reallocation of funds from one project to another inside the same National Programme (Programme adjustment).

§2

If changes are of a purely technical nature or cumulated reallocations amount to less than 15% of the project(s) concerned and do not involve a modification of the objectives/results of any projects, the Commission shall be informed in writing (co-signature NAC and NAO). The Commission may raise objections within 10 working days from receipt of the notification. After expiry of that deadline, the Commission is deemed to have given its approval.

§3

If the change of projects requested is for

– a reallocation of funds below 15% (cumulated) of the budget of the project(s) concerned but involves a change of objectives/results of any of the projects or

– a reallocation of funds exceeding 15% (cumulated) of the budget of the projects concerned or

– a technical modification which involves a change in objectives/results of a project or

– existing projects to be suppressed or new ones created,

the request shall be submitted in writing (co-signature NAC and NAO) to the Commission for approval.

§4

If the sum of reallocations within a National Programme exceeds 15% of its overall budget or if the objective/results of the programme is modified, a new Commission Decision is required.

Article 10

Unallocated Envelopes

The NAC shall seek written approval from the Commission for anything to be financed from unallocated envelopes included in the National Programme for the Transition Facility.

Article 11

Transfer of Funds to Implementing Agencies

§1

The National Fund shall sign Financing Agreements with the CFCU and each IA, where appropriate. Financing Agreements shall satisfy the requirements detailed in Article 5 of Commission Regulation No 438/2001 and make detailed provisions for the transfer of funds.

§2

The National Fund will transfer funds to the CFCU/IAs, on the basis of cash flow estimates.

§3

The CFCU/IAs shall submit transfer requests to the National Fund according to its needs as set out in the relevant Financing Agreement.

§4

On the basis of the request and supporting documentation, the National Authorising Officer shall verify the disbursement level of the preceding tranche by the CFCU/IAs and, if the request is justified, the NAO shall approve the release of the next tranche of funds. The CFCU/IAs shall only make payments relating to signed contracts.

§5

The National Fund and NAO shall be held ultimately responsible by the Commission for verifying that the transfers are made properly and based on correct information.

§6

(where applicable) Where the National Fund acts as a paying agent for a project, the National Fund shall effect the payments to contractors following requests from the Implementing Agency (CFCU/IA). The NF shall report the payments to the CFCU/IA to enter the data in Perseus without delay.

REPORTING, FINANCIAL CONTROL AND AUDIT

Article 12

Reporting

§1

The CFCU/IA will provide, every 6 months, a report to the Commission on implementation of projects under its responsibility, according to a format to be provided. The NAC will provide to the Commission an overall report on project implementation at least twice a year, in preparation of the JMC, more frequently, if the JMC meets more often.

§2

The National Fund shall operate an appropriate analytical accounting system covering all contractual and other financial operations pertaining to all Transition Facility financed programmes.

§3

The National Authorising Officer shall ensure that the NF (where appropriate), the CFCU and IAs maintain a viable technical and financial reporting system (Perseus, including i.a. pre-qualification and tendering data) for all Transition Facility funds, including funds transferred to the CFCU and IAs, where applicable.

§4

The National Fund shall compile quarterly reports on the financial status of the programme, on schedules for upcoming tenders, effected tender evaluations and contracts awarded, how the projects are implemented, problems encountered (if any), prospects for the future, and any other necessary information requested by the Commission. Where the circumstances require, the Commission may request additional ad-hoc reports.

§5

Written records of the entire financial management, tendering and contracting process shall be kept for at least five years from the date on which the European Parliament grants discharge for the last budgetary year related to the implementation of the Transition Facility..

Documents relating to operations not definitely closed or subject to judicial proceedings shall be kept for longer than provided in the first subparagraph, that is to say, until the end of the year following , as the case may be, that in which the operations are closed or that in which a final judicial ruling has occurred.

Article 13

Management and Control Systems

§1

In order to ensure sound financial management of the Transition Facility in accordance with generally accepted principles and standards, a system for management and control of assistance must be put in place by the Beneficiary. This system shall fulfil the requirements set out in Art. 164 FR[16], and in particular provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

§2

The Beneficiary State's management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001[17].

[16] Council Regulation (EC, Euratom) No. 1605/2002 of 25. June 2002; OJ L 248, 16.9.2002, p. 1
[17] Commission Regulation 438/2001 of 2. March 2001; OJ L63, 3.3.2001, p. 21

§3

The competent National Financial Control Authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme.

Article 14

Audit

§1

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.

2§

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 the Commission or an outside auditor contracted by the Commission without prejudice to the rights and responsibilities of the Commission and the European Union's Court of Auditors.

MEASURES AGAINST IRREGULARITIES AND FRAUD

Article 15

Definitions

1§

Irregularity shall mean any infringement of a provision of Community law[18], (including the present Memorandum of Understanding), the Commission Decisions on Transition Facility National Programmes and of ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure.

[18] defined as the entirety of Community rules applicable to the beneficiary Member State

2§

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.

§3

Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

Passive corruption is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

Article 16

Measures taken by the beneficiary country

§1

The Beneficiary shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls and shall establish a control and reporting mechanism compliant with Commission Regulation 1681/94[19].

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.

[19] Commission Regulation (EC) 1681/94 of 11. July 1994; OJ L 178; 12.7.94; p. 43-46

§2

The Beneficiary shall take any appropriate measure to prevent and counter any active or passive corruption practices at any stage of the procurement procedure or grant award procedure or during the implementation of corresponding contracts.

Article 17

Measures taken by the Commission

§1

All Financing Decisions 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 European Court of Auditors.

§2

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. 2185/96[20].

§3

The controls and audits described above are applicable to all contractors and subcontractors who have received Community funds.

Article 18

Recovery of Funds in Case of Irregularity or Fraud

§1

Any irregularity or fraud[21] discovered at any time during the implementation of the programme or as a result of an audit will lead to the recovery of funds by the Commission.

[20] Council Regulation (Euratom, EC) 2185/96 of 11. November 1996; OJ L 292; 15.11.1996; p. 2-5
[21] As defined in Article 15 of this document

§2

The Beneficiary Member State shall, in the first instance, bear the responsibility for investigating irregularities.

The measures it takes shall include preventing, detecting and correcting irregularities, notifying these to the Commission. The beneficiary Member State should keep the Commission informed of the progress of administrative and legal proceedings.

The Beneficiary Member State shall make the financial correction required in connection with the individual irregularity. The corrections made by the Beneficiary Member State shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the Transition Facility, in compliance with Article 9 of the present Memorandum of Understanding.

§3

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

(a) either the Beneficiary Member State has not complied with its obligations under Article 18 paragraph 2 of the present Memorandum of Understanding or

(b) the implementation of a project appears not to justify either part or the whole of the assistance allocated or

(b) there are serious failings in the management or control systems which could lead to irregularities,

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

§4

At the end of the period set by the Commission, the Commission may, if no agreement has been reached and the Member State has not made the corrections and taking account of any comments made by the Member State, decide within three months to:

(a) reduce or cancel any payment of the programme in question or

(b) make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

The Commission shall, when deciding the amount of a correction, take into account, in compliance with the principle of proportionality, the type of irregularity or change and the extent and financial implications of the shortcomings found in the management and control systems of the Beneficiary Member State.

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

§4

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 Member State 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 applicable to the general budget of the European Communities.

MONITORING AND EVALUATION

Article 19

Monitoring and Evaluation

§1

Implementation of Transition Facility programmes will be monitored through the Joint Monitoring Committee (JMC). The JMC will consist of the NAO, the NAC and Commission services. It will meet at least twice a year to review all Transition Facility funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Decision for the National Programme. The JMC may recommend a change of priorities and/or the re-allocation of Transition Facility funds.

§2

For the Transition Facility, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), where appropriate, which will include the NAC, the PAO of each Implementing Agency and the CFCU. Commission Services shall be invited as observers. 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, and ensure that these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Transition Facility financed programmes in its sector.

§3

The Commission services will ensure that an ex-post evaluation is carried out after

MISCELLANEOUS

Article 20

Visibility/Publicity

The relevant Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed by the Transition Facility.

Article 21

Final provisions

In exceptional and duly justified cases, individual Financing Decisions may make special provisions for the implementation of the Transition Facility National Programme which will override the present Memorandum of Understanding.

This Memorandum of Understanding may only be amended in writing by common consent of the parties.

This Memorandum of Understanding shall enter into force on the date of its signature by both parties.

Done at	Done at
For the Government of _______ *NAC & NAO*	*For the European Commission* *Director General, DG ELARG*