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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 Accession Treaty[2] under Article 34, Title I, part 4. 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 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.

[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 is the last year of programming pre-accession assistance for the 10 countries scheduled to join the EU in 2004. Implementation of pre-accession assistance 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 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 is scheduled to publish 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. 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 will primarily be 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 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 under Title I, Part 4 of the Act of Accession establishes the Transition Facility. §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 practise under Phare-funded Institution Building projects, co-financing is considered 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 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

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

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

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 Artciel 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

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.

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

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

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
MBP's			41,0			19,0			11			71
												0,0
												0,0
CY	9	0,5	9,5	6	0,3	6,3	3	0,2	3,2	18	1,0	19,0
CZ	9	9,2	18,2	6	5,8	11,8	3	2,9	5,9	18	17,9	35,9
EE	9	1,8	10,8	6	1,1	7,1	3	0,5	3,5	18	3,4	21,4
HU	9	9,6	18,6	6	6,1	12,1	3	3,0	6,0	18	18,7	36,7
PL	9	52,6	61,6	6	33,3	39,3	3	16,4	19,4	18	102,3	120,3
SI	9	1,4	10,4	6	0,9	6,9	3	0,5	3,5	18	2,8	20,8
LT	9	4,8	13,8	6	3,0	9,0	3	1,5	4,5	18	9,3	27,3
LV	9	3,6	12,6	6	2,3	8,3	3	1,1	4,1	18	6,9	24,9
SK	9	6,1	15,1	6	3,9	9,9	3	1,9	4,9	18	11,9	29,9
MT	9	0,4	9,4	6	0,2	6,2	3	0,1	3,1	18	0,8	18,8
TOTAL	90	90	221	60	57	136	30	28	69	180	175	426