

P H A R E



Assistance for
economic restructuring
in the countries of
Central and Eastern Europe

An operational guide

COMMISSION
OF THE EUROPEAN COMMUNITIES

Cataloguing data can be found at the end of this publication

Luxembourg: Office for Official Publications of the European Communities, 1992

ISBN 92-826-4205-4

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Printed in Germany

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1. Introduction

Phare is the European Community's particular effort to support the ongoing process of economic reconstruction in the countries of Central and Eastern Europe — Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia — by providing financial and technical support in key areas to the respective governments' actions for creating the conditions for a market-oriented economy based upon private ownership and initiative.

The present booklet describes in general terms Phare's objectives, instruments and implementing procedures, explains the various roles of the European Community's Phare Operational Service and of the governments of the respective beneficiary countries in this context, and answers typical questions from persons and firms interested in taking part in this action. It is for this broad category of consultants, promoters, investors, manufacturers and traders that this booklet is primarily intended, although not to serve as a guide on 'how to do business under Phare': this Community programme does not deal directly with individual business propositions, projects or ventures, but provides funds from which the respective beneficiary governments finance their own various programmes of reconstruction. The question of 'how to benefit from these national programmes' should, therefore, be asked.

The present text of general basic information on Phare is complemented by separate updated documentation containing Phare's legal bases, addresses and programme summaries, which can be obtained on request from the addresses given at the end of this booklet.

2. General outline

International assistance

Aid for the process of reform and economic reconstruction in the countries of Central and Eastern Europe is widespread and takes many forms. It stretches from standby credits of the International Monetary Fund centred upon the achievement

of macroeconomic stability, World Bank loans for project and structural adjustments, to a variety of bilateral aid schemes from individual donor countries, which have become known as the 'Group of 24' (G-24).¹

The European Community

The EC institutions and Member States, directly or indirectly, play a major part in these assistance efforts. The Member States form part of the concerted G-24 assistance efforts, which the Commission coordinates. For example they provide the principal capital support for the newly created European Bank for Reconstruction and Development, whose main objective is to support private investment in Central and Eastern Europe. The Community's European Investment Bank has ECU 1.7 billion available for commitment in 1990-92, with a further ECU 200 million being made available under the European Coal and Steel Community Treaty for projects in these sectors. Specific balance of payments support has been extended to several of the beneficiary countries up to now for a total amount of ECU 2.9 billion.

Trade agreements with these countries, and in particular the broad Association, or European Agreements, recently signed with Poland, Hungary and Czechoslovakia provide a further stable legal framework for cooperation, trade and assistance.

PHARE

The Phare programme, which in some ways has become synonymous with Western assistance as a whole, strictly speaking refers only to a specific Community programme, complementing the other aid schemes by granting financial and technical support for the beneficiary governments' specific actions of economic reconstruction, aiming to create the conditions of a market-oriented economy relying upon private ownership and initiative.

Which are the beneficiary countries?

As its title indicates — Poland and Hungary action for restructuring of the economy — Phare was initially set up for Poland and Hungary alone, but was extended in mid-1990 to Bulgaria, Czechoslovakia, Yugoslavia and Romania. (The German Democratic Republic was initially a beneficiary of certain early programmes but, since German unification, is no longer eligible.)

¹ The G-24 is composed of the 12 Member States of the European Community, Australia, Austria, Canada, Finland, Iceland, Japan, New Zealand, Norway, Sweden, Switzerland, Turkey and the USA.

Since the end of 1991, Albania and the three Baltic Republics, Estonia, Latvia and Lithuania, have been included. Yugoslavia was initially one of the beneficiary countries, but has since ceased to exist and for the time being only Croatia and Slovenia as independent States could be eligible for Phare aid.

For the former Soviet Union and now the republics forming the Commonwealth of Independent States, a specific Technical Assistance Programme has been set up, distinct from Phare, providing ECU 400 million in 1991 and ECU 500 million in 1992 for selected reconstruction projects in a limited number of sectors. Responding flexibly to political development, specific assistance programmes are being negotiated now individually with these countries according to practices applicable to Phare instead of the initial programme for the USSR as such.

What funds are available to Phare?

The Phare programme is financed from funds which are specifically made available for this purpose in the annual Community budget. For 1990, ECU 300 million was provided for Poland and Hungary, and a further ECU 200 million was set aside for the other beneficiary countries (Bulgaria, Czechoslovakia, GDR, Romania and Yugoslavia). For 1991, budget allocations amount to ECU 785 million; for 1992, a figure of ECU 1 000 million is available.

These funds are made available as non-reimbursable grants to finance reconstruction programmes and not in the form of loans for commercial activities.

What are Phare funds used for?

Phare provides financial and technical assistance in key areas to the beneficiary governments' efforts to restructure their economies towards the market-oriented system, and contributes to creating the administrative, regulatory, financial and commercial environment without which a market could not function and private investment could neither be attracted nor flourish and succeed.

Phare is not a macroeconomic stabilization fund. It is evident that the immediate priority of the economic reform in Central and Eastern Europe centres upon macroeconomic stabilization, involving rigorous monetary and fiscal policies and liberalization of trade and prices, together with the financing of the foreign debt as well as the provision of investment capital. However, Phare grants are not intended to support the economies of the beneficiary countries as a whole nor to cover their general financing or investment needs. Such large-scale financing operations are beyond the scope of Phare grant aid and the responsibility of other institutions such as the International Monetary Fund, the World Bank, the European Investment Bank and the European Bank for Reconstruction and Development to which the European Communities contribute. Investment capital has to

come from other sources, multilateral or Community development banks or the private sector.

Phare is not a Community export guarantee scheme. Phare's aim is not to promote or guarantee Western exports to the beneficiary countries. Regulation (EEC) No 3906/89 authorizes expenditure on imported supplies, only where they are required as a necessary and integral part of a specific sectoral development programme. This means that to be eligible import programmes must form an integral part of structural adjustments or humanitarian aid. For example, a programme to develop agriculture might not only provide for technical assistance and training for small farms but also include start-up supplies of seeds, fertilizers, insecticides and machinery. Similarly, monitoring equipment may be bought as part of environmental protection programmes, or informatics support in other cases.

Phare is not a private investment guarantee fund. Its grants are not intended to contribute to the capital or financing needs of individual commercial or industrial ventures, where the appropriate financial source is a loan from a bank, whether local or international. This does not exclude, however, the granting of Phare financial assistance for operations that are part of normal commercial activity within the framework of sectoral reconstruction programmes, e.g. credit lines or guarantee funds for starting up small and medium-sized enterprises and joint ventures, or equity funding for restructuring a privatization agency.

Financing the transition to a market economy

In the terms of Phare's basic legal text — Regulation (EEC) No 3906/89 — aid must be used primarily to support the process of reform in the beneficiary countries, in particular by financing or participating in the financing of projects aimed at economic restructuring in certain priority areas: agriculture, industry, investment, energy, training, environmental protection, trade and services.

In practice, this implies the transformation of the production and distribution system with an emphasis on private ownership and investment as well as the establishment of the broader regulatory, organizational and commercial infrastructure and environment without which a competitive market economy can neither function properly nor attract investment. This includes the necessary framework of laws, regulations and institutions, a reform of accounting procedures, company laws, banking and insurance.

Thus, the core areas of this process, closely interlinked and directly related to the establishment of a market system are:

- abolition of State monopolies;
- restructuring and privatization of public enterprises;
- modernization of financial services, covering restructuring of the banking

system to operate on a commercial basis, development of capital and securities markets, insurance systems and reformed credit, accounting and taxation systems including the development of rural financial networks;

- promotion of the private sector, particularly small and medium-sized enterprises, together with the appropriate support services, including vocational training;
- development of the labour market and social sector including the reform of social security and welfare policies.

Important as it is, such transformation must be accompanied and complemented by support actions in related priority sectors which are essential for balanced economic development and sustainable economic growth, such as energy, environmental protection, telecommunications, transport, health and agriculture.

In this area the focus is equally on providing the inputs needed for strengthening institutions, improving policy and strategy formulation, and project preparation, in order to attract the substantial investment needed to modernize infrastructure and related facilities. Moreover, a proportion of Phare funds can be spent on humanitarian aid.

3. How does Phare work?

Designed to finance specific national reform measures in the recipient countries, Phare operates in several consecutive phases:

- in a dialogue at the political and administrative level between the Commission and the respective governments, annual 'indicative programmes' set out the priority areas of Phare funding, on the basis of which specific sectoral, regional or multilateral programmes are then identified and appraised, and the necessary funds committed;
- the subsequent implementation phase is managed by the responsible national authorities, and provides the supplies and technical assistance required by the agreed programmes through normal procurement procedures.

PROGRAMME DEFINITION

It is clearly the responsibility of the governments of the recipient countries to define the respective policies, priorities, sequence and timing of the restructuring of their economies. It is for them to decide for what particular purposes and measures Phare aid should be used.

The Commission responds to the recipient countries' requests providing financial support, supplies, technical assistance, training and studies for particular programmes of reform in key sectors as appropriate.

Who can initiate a Phare programme?

It follows therefore that Phare programmes have to be initiated by the respective national authorities and presented to the Commission through the designated official coordinators. Preference is given to sectoral development programmes to support policy reforms rather than to one-off individual projects.

Any ideas for programmes and projects should therefore be submitted not to the Commission but to the appropriate interlocutors or governmental authorities in Bulgaria, Hungary, Czechoslovakia, Poland, Romania and Yugoslavia. If such proposals are accepted by the recipient countries as part of a wider reconstruction programme, they may be presented to the Commission for financing.

How are Phare programmes established?

On the basis of Regulation (EEC) No 3906/89 and the Commission's guidelines, an annual indicative programme is agreed with each country, defining the objectives and priorities of that assistance as well as a broad sectoral allocation of funds. Specific projects and programmes are then identified and prepared in close cooperation with the Phare Operational Service in the Commission and the respective national coordinators, who, at Minister or State Secretary level are responsible for coordinating and selecting the projects at national level. Once the feasibility study and appraisal are completed, the final version of each programme, together with a corresponding financing proposal, is submitted for opinion to a Management Committee composed of the representatives of the EC Member States. The Commission then adopts the Financing Decision to commit the necessary funds. A corresponding Financing Memorandum signed by the Commission and the beneficiary government concludes this procedure.

Thus, for example, the indicative programme for Hungary emphasized the need to direct the main thrust of Community assistance towards privatization and support of small and medium-sized enterprises and set aside ECU 21 million for that purpose.

On that basis, a specific programme for small and medium-sized enterprises was set up to support the efforts of the Hungarian Foundation for the Development of Enterprises (HFDE). Phare funds are used as a contribution to the HFDE's credit guarantee scheme, and finance a credit line enabling loans to SMEs through local banks and an SME support-services facility to strengthen the associations and bodies which provide services to SMEs. The HFDE's staff comprises several Western experts to run this programme, whose services are paid for by Phare.

Scope of Phare programmes

National programmes

Responding to each recipient country's particular needs and possibilities, the programmes are agreed on a bilateral basis with the nature, scope and content of the different programmes varying from country to country. Under pressure to meet the Communities' budgetary deadlines in 1990, a highly pragmatic course had to be taken in defining suitable programmes, emphasis naturally being put upon the recipient countries' most urgent needs: agriculture supply and credit programmes, environmental protection, human resources and training.

Most of the measures agreed in 1990 concern national sectoral development programmes with a strong element of technical assistance and training. A few, particularly the Polish crop-protection and animal-feed programmes, are essentially supply operations, although also containing a technical assistance component.

Others, especially as regards the environment, provide for a broad range of specific separate projects to be undertaken by means of a global financing facility.

For 1991-92 Phare assistance is directed more to providing systemic support in a longer-term perspective to the national programmes for economic restructuring and the transformation to a market system, focusing on longer-term measures in the fields of demonopolization, privatization, joint ventures and small and medium-sized enterprises.

The promotion of small and medium-sized private enterprises, modernization of the financial sector and banking systems as well as the development of the labour market and social sector form other areas of Phare activities.

A typical example constitutes the recent programme for 'Demonopolization, enterprise restructuring and privatization in Poland'. ECU 50 million have been granted as specific assistance to the Ministry of Industry and of Ownership Changes, the Industrial Development Agency and the Foreign Investment Agency. The programme concerns the privatization of selected large State enterprises, a mass privatization programme to prepare a large number of smaller enterprises for private ownership, the restructuring of viable enterprises and the promotion of investment opportunities. For Hungary, a similar programme of ECU 40 million has been agreed.

Regional programmes

In addition to measures reflecting the particular policies and priorities of a single beneficiary country, in 1991 a number of cross-national or regional programmes were introduced on a pilot basis, involving Phare beneficiary countries where

common interests could best be served by joint programmes. Among them come measures such as the risk capital mechanism to support joint ventures or the core technical assistance for Tempus. Other areas such as transport, telecommunications and environment, or professional training for customs officials or statisticians, for example, also fall under this heading.

PROGRAMME IMPLEMENTATION

Typically, Phare programmes call for technical assistance by Western experts and consultants, the procurement of supplies or provision of start-up funds.

Who is responsible?

In line with Phare's general approach, it is normally the recipient countries' role to purchase the necessary supplies and contract the services using Commission procedures. In many instances, a special programme implementation unit is set up by the recipient government agencies to undertake these functions.

What is the Commission's role?

The implementation units act in close cooperation with the Commission's services: its Phare Operational Service in Brussels and its Delegations in the respective capitals of Central and Eastern Europe. They not only help prepare tender specifications and contracts in accordance with Community financial regulations but also monitor and audit tendering proceedings, contract awards and payments. Whatever their participation in any given project may be, however, responsibility and decision lie ultimately with the recipient countries.

What procedures are used?

In providing these forms of assistance Phare follows established Community procedures in the area of external aid, governed by the financial regulation applicable to the general EC budget.

As a general rule, contracts may only be awarded by direct agreement when their value does not exceed ECU 50 000; in excess of that amount, open or restricted tendering procedures are applied.

As far as procurement of supplies is concerned, an open tenders procedure is used in which all interested parties from the Community and any of the recipient countries can participate on equal terms. The calls for tender are published in the respective country according to its normal practices, an abbreviated 'Notice of

tender' being published in Series 'C' or supplement 'S' of the EC Official Journal in all official Community languages.

For the contracting of consultants or other services essentially the same rule applies, but the very special nature of most of the technical expertise and professional proficiency required in each particular case renders it more expedient to restrict contracts and tenders to firms or persons with already proven success and experience in the relevant field.

The awarding national authorities rely significantly on suggestions of suitable candidates made by the Phare Operational Service. In general, such suggestions are drawn from the information the Operational Service disposes of through its many working contacts, existing databases in related areas such as Dacron for development aid or inputs from other Directorates-General in their particular fields of activity.

The Operational Service actively tries to broaden this base, continuously receiving and accepting requests from consulting firms to be considered, accompanied by proper presentations which are duly put on file for eventual further reference. Where necessary and appropriate, either with a general purpose or especially for one particular programme prequalification notices are published in the EC Official Journal which invite all interested consultants to manifest their interest and document their qualifications in the respective field of activity. On that basis of proven experience and capacity, suitable consulting firms are then selected for long lists, which are transmitted to the contracting authorities of the various recipient States for reference whenever their services might be required.

Drawing upon these resources and adding the tendering authorities' own proposals, a short-list of firms is established for any given restricted tender for technical assistance, which are then invited to tender. There is no national quota to be imposed; acceptance of tenders being on quality and price.

What specific Community conditions have to be met?

The particular conditions and formalities to be met in each case are set out in the tendering documents themselves. However, the Community imposes general basic requirements for participating in Phare implementation procedures:

- Participation is open on equal terms only to all natural or legal persons and companies having the nationality or being incorporated with their main establishment or place of business in one of the Member States of the European Community as well as those from any one of the beneficiary countries Bulgaria, Czechoslovakia, Hungary, Poland, Romania or Yugoslavia.

- The supplies to be purchased must originate within the European Economic Community according to the general EC concept of origin. This clause is regularly inserted into all contracts and tenders.
- Only the economically most advantageous offer will be retained, giving most value for money. Criteria like technical value and quality of technical assistance, operating costs, delivery periods and, of course, price are mentioned in the tendering conditions of each particular case.
- Prices must be quoted in ecus and are paid either in ecus or the currency of one of the EC Member States or of the recipient country.

Where can information about Phare programmes be obtained?

A summary of the programmes adopted by the Commission is published in press releases issued to the general and specialized media by the Commission's Spokesman's Service each time the Commission adopts a programme. Such summaries may also be obtained from the Phare Operational Services.

Notices of invitation to tender for supplies and prequalification bids are published in all official Community languages in the S supplement of the EC Official Journal which can be obtained from the Commission's Publications Office in Luxembourg and its normal distribution outlets.

The open tender specifications can be obtained from the distribution centres listed in the notices of invitation. All tenders are published by the respective national awarding authorities according to national tradition and procedures.

4. Questions and answers

How to do business under Phare?

Phare provides technical assistance through consultants and experts, credit lines for joint ventures or small and medium-sized enterprises, as well as supplies for equipment and humanitarian aid.

How can a private firm benefit from these measures?

(A) CONSULTANTS — TECHNICAL ASSISTANCE

1. Question: What procedures are applied to select and hire consultants?

Answer: Phare operates according to the general conditions for implementing the EC budget in the field of external aid, which provide for competitive selection.

Contracts under ECU 50 000 may be awarded by direct agreement. All contracts in excess of that value are subject to restricted tendering procedures.

For its own operational purposes and short-term requirements the Phare Operational Service uses the services of a range of consultant firms. These are selected for a specified period of time on the basis of a Community-wide tender.

2. Question: Who hires consultants?

Answer: Phare programmes are implemented by the responsible authorities in the beneficiary countries, and most contracts are awarded by them. The Commission may award contracts for its own purposes under a limited multidisciplinary facility to provide short-term technical advice.

3. Question: Who selects consultants?

Answer: The national implementing authority in cooperation with the Commission's services. The Commission helps draft the necessary specifications and is often asked to provide a list of suitable firms from which the successful candidate is then chosen.

4. Question: What formalities must be observed to figure on such a Commission list proposed to the national authorities? Is there a specific accreditation?

Answer: There is no formal accreditation of consultants to take part in the Phare activities.

Interested firms are, however, invited to make written presentations to the Commission's Phare Operational Service. These presentations should contain full information about fields of activity, specializations, professional qualifications and details of relevant work already carried out. Where required, the Operational Service establishes long lists of suitable consultants for specific areas of activity through Community-wide prequalification notices. From these long lists appropriate consultants are short-listed for each restricted tender.

5. Question: Are there specific Community requirements to be met by a consultant to be awarded a contract?

Answer: Phare funds may only be used to pay for the services of European consultants, either having the nationality of one of the EC Member States or the beneficiary countries or of firms properly established and incorporated there.

(B) PROCUREMENT OF SUPPLIES

6. Question: Who is responsible for purchasing?

Answer: The national implementing authorities are responsible for purchasing. For bulk purchases of general commodities, existing trade organizations or specialized agencies may act as handling agents and work through existing official trade channels. For example, the latest mass imports of protein foodstuffs into Romania, paid out of Phare funds, were handled and distributed by the official Romanian external trade organizations; bulk supplies of medicines were supplied through a procurement agency which handled all the tendering procedures on behalf of the Commission.

7. Question: What procedures are to be followed?

Answer: The normal competitive procedures governing EC external aid. Major contracts are subject to open tenders, published in Series C or supplement S of the EC Official Journal, the specifications being drawn up in cooperation with the Commission's services. External consultants may be asked to assist in drafting the necessary documents defining the technical specifications.

8. Question: Who may participate?

Answer: Offers are only accepted from firms which have the nationality of an EC or beneficiary country or are incorporated and established with their principal place of business in the Community or the beneficiary countries.

9. Question: What goods may be purchased?

Answer: As a rule, only those goods may be purchased which originate in the Community or in one of the Phare beneficiary countries according to the EC's general rules of origin.

10. Question: From whom may the relevant tendering documents be obtained? To whom have they to be addressed?

Answer: Tendering documents may in general be obtained from the Commission's Phare Operational Service and the EC Offices in the different Member States or in the beneficiary countries. The invitation to tender, published in the EC Official Journal, expressly indicates the national or other authorities from which the detailed documents may be obtained, and contains the address of the responsible agency to which the tenders are to be sent.

11. Question: In what currency are prices quoted and paid?

Answer: Prices have to be quoted in ecus and are paid either in ecus or the currency of one of the EC Member States or the local currency of the beneficiary country.

(C) PRIVATE INVESTORS

A private firm has put together a business project in one of the beneficiary countries or wants to sell goods or services, to organize congresses, seminars or training programmes on a commercial basis.

12. Question: Should a private business project be submitted to the Commission for financing?

Answer: No. Phare funds are not made available for individual projects but for broader sectoral or regional redevelopment programmes and only at the request of the particular beneficiary country. However, individual projects could indirectly benefit from Phare funds as part of such public programmes.

13. Question: To whom then should an investor or promoter apply?

Answer: To the banks, financial institutions or authorities within the beneficiary countries responsible for the implementation of programmes and credit schemes financed from Phare funds.

14. Question: What kind of expenses or costs can be covered by Phare assistance?

Answer: Phare funds are not intended to finance costs of acquisition, capital provision, modernization or investment in commercial ventures, nor to cover operating costs. Such expenses must be financed from other sources, normally by bank credits.

SOURCES OF FURTHER INFORMATION

1. Invitations to tender are published in the EC Official Journal, Series C and supplement S, available from EC official sales outlets.
2. The basic legal texts concerning the Phare programme, descriptions of Phare programmes approved to date, and full tendering documents are available from Commission Offices in the EC countries and Delegations in the Phare countries (Poland, Hungary, Yugoslavia: Delegations open. Czechoslovakia,

Bulgaria, Romania: Delegations planned but not yet open at time of going to press).

3. The Phare Operational Service within the Commission can also supply the full tendering documents. Consultants wishing to take part in restricted tenders should send their written presentation to the Operational Service.

5. Basic texts

Annex I

Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,²

Whereas the Community and its Member States have decided to make a concerted effort together with certain third countries, in order to implement measures intended to support the process of economic and social reform under way in Hungary and Poland;

Whereas the Community has concluded Agreements on trade and commercial and economic cooperation with the Republic of Hungary and the Polish People's Republic;

Whereas the Community must have the necessary means at its disposal to be able to implement such measures;

Whereas the fields in which measures are to be undertaken should be determined;

Whereas it is necessary to estimate the amount of Community financial resources needed to carry out these measures in 1990;

Whereas the implementation of such measures will help to achieve the Community's aims and whereas the Treaty does not provide, for the measures in question, powers other than those of Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall implement economic aid measures in favour of the Republic of Hungary and the Polish People's Republic in accordance with the criteria laid down in this Regulation.

Article 2

The amount of Community resources as necessary to carry out the measures introduced by this Regulation amount to ECU 300 million for the period expiring on 31 December 1990.

Article 3

1. The aid shall be used primarily to support the process of reform in Poland and Hungary, in particular by financing or participating in the financing of projects aimed at economic restructuring.

¹ OJ L 375, 23.12.1989.

² Opinion delivered on 14 December 1989 (not yet published in the Official Journal).

Such projects or cooperation measures should be undertaken in particular in the areas of agriculture, industry, investment, energy, training, environmental protection, trade and services; they should be aimed in particular at the private sector in Hungary and Poland.

2. Account shall be taken, *inter alia*, of the preferences and wishes expressed by the recipient countries concerned in the choice of measures to be financed pursuant to this Regulation.

Article 4

The aid shall be granted by the Community, either independently or in the form of cofinancing with the Member States, the European Investment Bank, third countries or multilateral bodies or the recipient countries themselves.

Article 5

Community aid shall in general be in the form of grants. They may generate funds that can be used for financing cooperation projects or measures.

Article 6

1. The aid may cover expenditure on imports and local expenditure needed to carry out the projects and programmes.

Taxes, duties and charges and the purchase of property shall be excluded from Community financing.

2. Maintenance and operating costs may be covered for training and research programmes and for other projects; however, for the latter such costs may be covered only in the start-up stage and shall be degressive.

3. However, in the case of cofinancing, account shall be taken in each case of the procedures applied by the other providers of capital.

Article 7

1. In the case of assistance exceeding ECU 50 000 for which the Community is the sole source of external aid, participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons of the Member States and of Poland and Hungary.

2. Paragraph 1 shall apply also to cofinancing.

3. In the case of cofinancing, however, the participation of third countries in invitations to tender and contracts may be authorized by the Commission, but only on a case-by-case basis, after examination of the case.

Article 8

The Commission shall administer the aid taking into account the procedure laid down in Article 9. The general guidelines applicable to the aid and to sector-based programmes shall be adopted in accordance with that procedure.

Article 9

1. A committee on aid for economic restructuring in Poland and Hungary is hereby set up at the Commission, consisting of representatives of the Member States and chaired by the Commission representative. An observer from the European Investment Bank shall take part in the committee's proceedings with regard to questions concerning the Bank.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt decisions which shall apply immediately. However, if these decisions are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event the Commission shall defer application of the measures which it has decided for a period of six weeks.

The Council, acting by a qualified majority, may take a different decision within the time-limit referred to in the first subparagraph.

Article 10

From 1990 the Commission shall draw up each year a report on the implementation of cooperation operations. The report shall be sent to the European Parliament, the Council and the Economic and Social Committee.

Article 11

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 December 1989.

For the Council
The President
R. DUMAS

Annex II

Council Regulation (EEC) No 2698/90 of 17 September 1990 amending Regulation (EEC) No 3906/89 in order to extend economic aid to other countries of Central and Eastern Europe¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,²

Having regard to the opinion of the European Parliament,³

Whereas the Community and its Member States have decided to take concerted action with certain non-member countries in the form of measures intended to support the process of economic and social reform under way in Hungary and Poland; whereas Regulation (EEC) No 3906/89⁴ lays down the conditions for the provision of economic aid to these countries;

Whereas the Group of 24 countries and the Community decided at the ministerial meeting on 4 July 1990 that the situation in certain other countries of Central and Eastern Europe warranted an extension of the economic restructuring aid to these countries;

Whereas provision must be made annually in the general budget of the European Communities for appropriate Community financing.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3906/89 is hereby amended as follows:

1. This title is replaced by the following:
'Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe.'
2. Article 1 is replaced by the following:

'Article 1

The Community shall make economic aid available to the countries of Central and Eastern Europe listed in the Annex in accordance with the criteria laid down in this Regulation.'

3. Article 2 is deleted.

4. In Article 3 (1)

- 'in Poland and Hungary' and 'in Hungary and Poland' are replaced by 'in the countries referred to in Article 1' and 'of the countries referred to in Article 1' respectively,
- the following subparagraph is added:

'The aid may also be used to provide humanitarian assistance'.

5. In Article 7 (1) and in Article 9 (1), 'of Poland and Hungary' and 'in Poland and Hungary' are replaced by 'of the countries referred to in Article 1' and 'in the countries referred to in Article 1' respectively.

6. The following Annex is added:

'ANNEX

BULGARIA
CZECHOSLOVAKIA
GERMAN DEMOCRATIC
REPUBLIC
HUNGARY
POLAND
ROMANIA
YUGOSLAVIA'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 September 1990.

For the Council
The President
G. DE MICHELIS

Annex III

Council Regulation (EEC) No 3800/91 of 23 December 1991 amending Regulation (EEC) No 3906/89 in order to extend economic aid to include other countries in Central and Eastern Europe

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Whereas the Community and its Member States have decided to make a concerted effort together with certain third countries in order to implement measures intended to support the process of economic and social reform underway in Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia; whereas for this purpose Regulation (EEC) No 3906/89,³ as amended by Regulation (EEC) No 2698/90,⁴ lays down the conditions for the supply of economic and humanitarian aid;

Whereas the representatives of the Group of 24 agreed in September 1991 to extend economic assistance respectively to Albania, Estonia, Lithuania and Latvia;

Whereas extending the scope of Regulation (EEC) No 3906/89 to include those countries constitutes an appropriate means of implementing the commitments undertaken;

Whereas, moreover, the conditions for such an extension pertain in these countries;

Whereas German unification, achieved on 3 October 1990, means that the entry 'German Democratic Republic' should be deleted from the Annex to Regulation (EEC) No 3906/89 listing the countries of Central and Eastern Europe which qualify for economic aid,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EEC) No 3906/89:

1. the following countries are hereby inserted: 'Albania, Estonia, Latvia and Lithuania';
2. the following entry is hereby deleted: 'German Democratic Republic'.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

¹ OJ C 313, 4.12.1991, p. 13.

² Opinion delivered on 13 December 1991 (not yet published in the Official Journal).

³ OJ L 375, 23.12.1989, p. 11.

⁴ OJ L 257, 21.9.1990, p. 1.

It shall apply with respect to Estonia, Latvia and Lithuania from 1 January 1992.

Done at Brussels, 23 December 1991.

For the Council
The President
Y. VAN ROOY

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Annex IV

Special provisions applicable to external aid (extract from EC Financial Regulation, Title IX (a), May 1990)

SECTION I

GENERAL PROVISIONS

Article 105 (a)

1. The provisions of Titles I to VI and XII shall apply to external aid financed from the Community budget, save as otherwise provided in this Title.

2. The appropriations assigned by the Community to its cooperation policy shall be used either under cooperation agreements with a financial protocol ('preferential agreements') or as aid granted unilaterally.

3. The appropriations may be earmarked in particular for grant aid, special loans, risk capital or interest-rate subsidies, and shall be used by the Commission, which may confer authority on behalf of the Community to administer a part thereof, either on the European Investment Bank or, under its responsibility, on other organizations.

This provision shall not prejudice the audit powers of the Court of Auditors under Article 206a of the EEC Treaty.

4. The following provisions shall govern the use of appropriations by the Commission.

5. The amount of special loans and risk capital granted shall be shown in the balance sheet provided for in Article 81.

Article 106 (a)

1. Any cooperation project adopted by the Commission may be covered by:

— a financing agreement drawn up between the Commission, acting for the Community, and the government of the recipient State or the governing bodies of the recipient organizations or institutions, hereinafter referred to as the recipient,

— or a contract with international organizations, or natural or legal persons responsible for carrying out the project.

2. The financing agreement or contract shall determine the financial commitment of the Community for the measure concerned. No expenditure in excess of this amount may be charged to the budget without an additional commitment.

3. In addition, a loan contract shall be drawn up between the Commission, acting for the Community, and the borrower in respect of any investment project financed by a special loan.

SECTION II

IMPLEMENTATION

Article 107 (a)

Projects covered by a financing agreement shall be implemented by the

recipient in close collaboration with the Commission, which shall retain responsibility for the utilization of appropriations.

Article 108 (a)

1. These functions performed by the Commission may be referred to in the preferential agreements or the financing agreements as those of chief authorizing officer.

2. The Commission, in close cooperation with the recipient, shall ensure that participants in tendering procedures can compete on an equal footing, that there is no discrimination and that the tender selected is economically the most advantageous. In particular, it shall approve the terms of the invitation to tender before it is issued, be apprised of the results of the examination of the tenders, and approve the proposal for the award of the contract.

Article 109 (a)

1. In the case of preferential agreements in particular, the recipient may appoint a national authorizing officer to represent the national authorities in all operations relating to projects financed by the Community which are the subject of an agreement between the recipient State and the Community.

2. The recipient shall submit invitations to tender to the Commission for agreement before issuing them. On the basis of the decisions thus endorsed and in close cooperation with the Commission, the recipient shall issue invitations to tender, receive tenders, preside over the examination of tenders and establish the results of the tendering procedure.

The Commission shall normally be represented when tenders are being examined, where the basic price of the invitation to tender exceeds the limit fixed in the financing agreement or contract.

3. It shall transmit to the Commission for agreement the results of the examination of the tendering procedure and a proposal for the award of the contract. It shall sign contracts, additions to contracts and estimates, additions to contracts and estimates and shall notify the Commission thereof. For contracts, additions to contracts, and estimates, the Commission, where appropriate, shall enter into individual commitments in accordance with the procedures laid down in Articles 36 to 39. Individual commitments shall count towards the commitments under the financing agreements provided for in Article 106 (2).

4. Where appropriate, the recipient shall validate and authorize any expenditure which is the subject of an agreement between the recipient and the Community against appropriations committed by the Commission. It shall remain financially liable to the Commission until the Commission clears the operations for the execution of which the recipient is responsible.

Article 110 (a)

1. For the purposes of applying the preferential agreement or financing agreement between the Community and the recipient State, and in respect of the appropriations for which it is the authorizing officer, the Commission may be represented in the recipient State by a representative approved by that State.

2. While operations are in progress the Commission's representative shall verify, on the basis of documents and on the spot, that the work of services comply with their description in the financing agreements, contracts or estimates.

Article 111 (a)

1. For payments in a currency other than that of the recipient State, the Commission shall make payment direct for services provided in connection with projects financed with grant aid.

2. For payments in the currency of the recipient State, accounts denominated in ecus or in the currency of one of the Member States may be opened with a financial institution in the recipient State in the name of the Commission or, by common agreement, of the recipient.

In the case of preferential agreements, the tasks referred to in paragraphs 5 and 6 may be entrusted to a financial institution, referred to as the paying agent.

3. The accounts referred to in paragraph 2 shall be replenished to meet actual cash requirements. Transfers shall be made in ecus or, exceptionally, in the currency of a Member State as payments fall due, at the exchange rate ruling on the day of payment.

4. Interest on the deposits in the accounts referred to in paragraph 2 shall be used exclusively for the projects concerned, unless agreed otherwise when the functions of paying agent are

being exercised by a public financial institution.

The paying agent shall not be remunerated for his services.

5. Within the limits of the funds available, the paying agent, after obtaining the approval of the Commission's representative, shall make the payments authorized after verifying that the supporting documents provided are substantively accurate and in order.

6. At regular intervals, and at least once a quarter, the paying agent shall send the Commission a statement of actual expenditure and revenue, together with supporting documents.

7. Payments made and revenue received in the currency of the recipient State shall be subject to a clearance procedure before they are finally booked to the budget appropriations. Clearance shall consist of an examination by the Commission to establish that validation, authorization and payment and the collection of revenue have been properly effected, in accordance with this Financial Regulation.

SECTION III

AWARD OF CONTRACTS

Article 112 (a)

Notwithstanding Title IV of this Financial Regulation, the award of contracts financed by the Community for recipients of external aid shall be governed by the following provisions.

Article 113 (a)

The procedure to be followed for the award of works, supply or service contracts shall be specified in the financing agreement or the contract, subject to the following principles.

Article 114 (a)

1. Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of application of the Treaties and to all natural and legal persons in the recipient State.

The specifications shall therefore require tenderers to state their nationality and to present the supporting evidence normally acceptable under their own law.

2. In exceptional cases and with proper justification, it may be decided, on the basis of the specific conditions laid down in the basic instruments governing cooperation and in accordance with the appropriate authorization procedures, to allow nationals of third countries to tender for contracts financed by the Community.

Article 115 (a)

The Commission and the recipient shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms in tendering procedures and other procedures for the award of contracts financed by the Community.

To this end, without prejudice to Articles 116 to 118, care shall be taken in particular to:

(a) ensure advance publication in reasonable time of invitations to

tender in the *Official Journal of the European Communities* and the official gazette of the recipient State;

(b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons of the Member States and of the recipient State.

Article 116 (a)

In urgent cases or where the nature, small-scale or particular characteristics of certain works or supplies so warrant, the Commission or the recipient may, by agreement with the Commission stating the reasons therefor, exceptionally authorize:

- the award of contracts after open invitations to tender, confined to a specific geographical area,
- the award of contracts after restricted invitations to tender,
- the conclusions of contracts by private treaty,
- the performance of contracts through public works departments.

Article 117 (a)

The Commission and the recipient shall ensure that Articles 115, 116 and 118 are observed for each operation and that the tender selected is economically the most advantageous, with due regard notably to the cost of performance, running costs involved, technical merit, the qualifications of and the guarantees offered by the tenderers, the nature and conditions of execution of the works or supplies.

The Commission and the recipient shall ensure that all the selection

criteria are specified in the invitation to tender.

The result of invitations to tender shall be published at the earliest possible date in the *Official Journal of the European Communities*. Where appropriate, it should also be possible to publish the result of invitations to tender in the official gazette of the recipient State.

Article 118 (a)

1. Contracts for services and technical cooperation shall be awarded after restricted invitations to tender.

For contracts for services and technical cooperation, the Commission shall — if need be after a process of preselection — draw up a restricted list of candidates, using criteria which guarantee that they have the requisite qualifications, professional experience and independence, and taking account of their availability for the project in question.

2. However, some contracts may be awarded by private treaty, particularly in the following cases:

- short or small projects,
- projects being carried out by non-profit-making institutions or associations,
- extension to projects already under way,
- where the invitation to tender has been unsuccessful.

3. Contracts for services and technical cooperation shall, as a general rule, be

prepared, negotiated and concluded by the Commission.

4. In the case of preferential agreements, or in cases where express provision is made therefor in the financing agreements, the tasks referred to in paragraph 3 shall be delegated to the recipient, in agreement and in collaboration with the Commission's representative.

Article 119 (a)

Only service contracts awarded in the interests of the Commission shall be governed by the provisions of Articles 56 to 64 of the Financial Regulation.

SECTION IV

AUDITING OF ACCOUNTS

Article 120 (a)

1. Each agreement to finance an investment project shall make express provision for the Court's power of audit.

2. Should the Court of Auditors wish to carry out audits on the territory of recipient States, or States in which recipients are located, it shall do so by agreement with the relevant authorities of the State concerned. Such audits shall be limited to the inspection agreements implemented pursuant to the provisions governing Community aid and shall not apply in respect of the execution arrangements which are the responsibility of the national authorizing officer.

Annex V

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European Communities — Commission

**PHARE: Assistance for economic restructuring in the countries of
Central and Eastern Europe — An operational guide**

Luxembourg: Office for Official Publications of the European Communities

1992 — 33 pp. — 16.2 x 22.9 cm

ISBN 92-826-4205-4