

Management of Resources from the European Structural and Investment Funds Act

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Text in Bulgarian: Закон за управление на средствата от Европейските структурни и инвестиционни фондове

Chapter One GENERAL PROVISIONS

Article 1. (1) This Act shall govern:

1. the national institutional framework for the management of resources from the European Structural and Investment Funds, hereinafter referred to as "ESIF";
2. the procedure for providing financial support through grants;
3. special rules for the selection a contractor by a beneficiary of a grant;
4. the rules for verification and certification of eligible expenditure and for making payments and financial corrections.

(2) (Supplemented, SG No. 85/2017) Within the meaning of this Act, the ESIF resources shall comprise resources from the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund, provided under programmes to the Republic of Bulgaria. The national co-financing envisaged under the programmes shall also be considered ESIF resources.

(3) The Public Finance Act shall apply to the regime of the accounts for ESIF resources and for the financial relationships in the management of ESIF funds.

Article 2. (1) The ESIF resources shall be managed in compliance with legality, sound financial governance and sustainable development to ensure their efficiency and effectiveness, through partnership and multilevel governance aimed to reduce the administrative burden on the beneficiary and to ensure publicity and transparency.

(2) When managing ESIF resources no conflict of interests shall be allowed within the meaning of Article 57 of Regulation (EU, EURATOM) No. 966/2012 of the European Parliament and of the Council of 25 October 2015 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No. 1605/2002 (OJ, L 298/1 of 26 October 2012), hereinafter referred to as "Regulation (EU) No. 966/2012".

Article 3. (1) The management of ESIF resources shall be carried out in accordance with the applicable EU law for the programming period and with a partnership agreement of the Republic of Bulgaria laying down the ESIF support, hereinafter referred to as "the Partnership Agreement", the requirements of the programmes, the provisions of this Act and the acts for its

implementation.

(2) The ESIF resources shall be made available under the programmes included in the Partnership Agreement, subject to their prior approval by the European Commission.

Article 4. (1) Grants shall be made available for projects aimed to achieve the objectives of the programmes under Article 3, paragraph 2, and in accordance with the conditions set out therein.

(2) Grants may be furthermore provided in combination with other forms of financial support – prizes, repayable assistance or financial instruments.

(3) Grants may not have as an end or effect the generation of profit.

(4) Grants may not be awarded to finance costs which have already been financed with ESIF resources or through other instruments of the European Union in accordance with Article 65, paragraph 11 of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006 (OJ, L 347/320 of 20 December 2013), hereinafter referred to as "Regulation (EU) No. 1303/2013", as well as with other public resources other those of the beneficiary.

Article 5. (1) Financial instruments financed with ESIF resources, with the exception of those referred to in Article 39 of Regulation (EU) No. 1303/2013, shall be implemented through a Fund of Funds.

(2) The Fund of Funds shall be set up as a separate financial resource from the programmes under Article 3, paragraph 2 and shall be managed in accordance with a financing agreement entered into between the head of the managing authority of the relevant programme and the person managing the Fund of Funds. The bank servicing of the person managing the Fund of Funds shall be carried out by the Bulgarian National Bank.

(3) (Amended, SG No. 58/2017, effective 18.07.2017) The person managing the Fund of Funds shall be designated by the Council of Ministers and its managing authorities shall comprise persons designated by the deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources, the minister of labour and social policy, the minister of finance, the minister of regional development and public works, the minister of economy, the minister of environment and water, and the minister of agriculture, food and forestry, as well as persons with proved professional expertise in the field of financial instruments.

(4) (New, SG No. 43/2016) The provision of Article 153, paragraph 8 of the Public Finance Act applies to the person under paragraph 3, as well as to other legal entities, which are controlled by the State and which, by virtue of a legal act, are responsible for such management of European Union funds and their banking service is carried out by the Bulgarian National Bank.

Article 6. Management of the ESIF resources, provided under the European territorial cooperation programmes shall be implemented in accordance with relevant European Union law and international treaties ratified, promulgated and entered into force for the Republic of Bulgaria.

Chapter two

INSTITUTIONAL FRAMEWORK

Section I

Bodies and structures for the management of the ESIF resources

Article 7. (1) The bodies of the executive responsible for the management of the ESIF resources shall be:

1. the Council of Ministers;
2. the deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources;
3. the minister of finance.

(2) The Council of Ministers shall:

1. approve the draft Partnership Agreement prior to its submission to the European Commission;
2. approve the draft programmes referred to in Article 3, paragraph 2 prior to their submission to the European Commission;
3. determine the structures responsible for the development of the programmes under Article 3, paragraph 2 and for the management, control, coordination and audit of ESIF resources;
4. adopt the regulations for the management of the ESIF resources as laid down herein.

(3) The deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources shall:

1. act as a central representative of the Republic of Bulgaria to the European Commission and other European institutions for the management of ESIF resources;
2. carry out coordination in connection with the participation of the Republic of Bulgaria in the decision-making process of the European Union in the field of Cohesion Policy, the Common Agricultural Policy and the Common Fisheries Policy in the part covered by ESIF;
3. manage the process of the design of the institutional framework and legislation related to the management of ESIF resources;
4. coordinate and control the management of the programmes under Article 3, paragraph 2; shall give compulsory methodological instructions to the bodies under Article 9 in connection with the management of the programmes under Article 3, paragraph 2 without prejudice to the requirement to ensure the independence of the audit authority;
5. coordinate the support provided by the international financial institutions and the JASPERS tool for preparation, implementation and management of projects financed with ESIF resources;
6. be responsible for carrying out the procedure for the designation the managing and certifying authorities within the meaning of Article 124 of Regulation (EU) No. 1303/2013, as well as for monitoring the implementation of the criteria in accordance with Annex XIII of the said Regulation;
7. coordinate the activities for improving the administrative capacity at central, regional and local levels in the management of ESIF resources;
8. coordinate the effective application of the measures of publicity and transparency in the management of ESIF resources.

(4) The minister of finance shall:

1. (amended, SG No. 85/2017) identify, organise and control the processes of receiving and transferring funds from the financial aid granted to the Republic of Bulgaria under the European Regional Development Fund, the European Social Fund and the Cohesion Fund, and the related national co-financing;
2. carry out the national policy for the implementation of the financial instruments;
3. (repealed, SG No. 43/2016);
4. (supplemented, SG No. 43/2016) determine by a legal act the rules for making payments, verification and certification of

expenditure, reimbursement and writing off of irregular expenditure and for accounting, and the time limits and rules for the closing of the accounting year within the meaning of Article 2, item 29 of Regulation (EU) No. 1303/2013 on the programmes funded by the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

Article 8. (1) Permanent consultative bodies for coordination in the Executive branch in defining and implementing the government policy in the field of the management of ESIF resources shall be:

1. the Coordination Council for Management of EU Funds, which coordinates the measures for the implementation of the government policy on economic, social and territorial development of the country, financed with ESIF resources;
2. the Coordination Council for Countering Offences Affecting European Union's Financial Interests, which ensures coordination of the activities of government bodies in preventing and combating offences in the management of ESIF resources.

(2) The councils under paragraph 1 shall be set up by the Council of Ministers in accordance with Article 22a of the Administration Act. The composition, functions and organisation of the activities of the councils shall be determined by the acts of their establishment.

Article 9. (1) The authorities for the management and control of ESIF resources shall be the managing, certifying and audit authorities.

(2) The same managing, certification or audit authority may be designated for several programmes under Article 3, paragraph 2. Insofar as is relevant under the European Union law and with due regard for the principle of separation of functions, the managing, certifying and audit authorities may be part of the same administration.

(3) Intermediate bodies may be determined for the management of part of a programme or for the performance of certain tasks of the managing or certifying authority.

(4) The managing, certifying and audit authorities and intermediate bodies shall be set up as a unit of administration under the Administration Act or the Local Self-Government and Local Administration Act, or as a separate administration. Insofar as is relevant in accordance with the European Union law, the functions of such a body may be assigned for implementation to another body or organisation.

(5) (Amended and supplemented, SG No. 85/2017) The managing authorities shall be responsible for the overall programming, management and implementation of the programme, as well as for preventing, detecting and correcting irregularities, including for making financial corrections. The head of the managing authority shall be the head of the administration or the organisation within the structure of which the managing authority is, or a person designated thereby. The powers of a head of the managing authority under this Act can be also exercised by the person authorised thereby.

(6) The certifying authorities shall carry out specific control activities to confirm to the European Commission the legality and the eligibility of the expenditure incurred in the performance of projects financed under the programmes referred to in Article 3, paragraph 2, and shall draft and send to the European Commission annual accounts on each programme. They shall provide information to the European Commission and shall communicate with it in connection with the activities implemented thereby.

(7) The audit authorities shall perform specific audit activities to provide an independent and objective assessment of the effectiveness of the systems for financial management and control and for obtaining reasonable assurance on the completeness, accuracy and truthfulness of the annual accounts and the legality and regularity of the associated costs.

Article 10. (1) The Central Coordination Unit shall coordinate the actions of the authorities and units referred to in Article 9, paragraphs 1 and 3, while supporting them in the implementation of the European Union law and Bulgarian legislation related to the management of ESIF resources. The Central Coordination Unit shall be the point of contact and shall provide information to the European Commission.

(2) The Central Coordination Unit shall perform the functions of:

1. administration supporting the deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management ESIF resources;

2. a secretariat of the Coordination Council for the Management of EU Funds.

Article 11. (1) The Protection of the European Union Financial Interests Directorate (AFCOS) within the structure of the Ministry of Internal Affairs shall report irregularities to the European Anti-Fraud Office and shall exercise control on the application of the procedures for the administration of irregularities affecting ESIF resources.

(2) The Council of Ministers may establish other structures that carry out functions related to the management and control of ESIF resources by a law or a regulation.

(3) Unless otherwise provided for herein, a legal act of the Council of Ministers shall lay down the rules for the relationships between the managing, certifying and audit authorities, their relationships with the European Commission, and with the other bodies and structures under this Chapter.

Section II

Committees for monitoring and partnership in the management of ESIF resources

Article 12. (1) Programming, implementation, monitoring and assessment of the Partnership Agreement and the programmes under Article 3, paragraph 2 shall be carried out in partnership with the central and the territorial bodies of the central government, municipalities, national representative organisations of the employers and the employees, with organisations representing civil society, and with representatives of the academic community.

(2) The partnership principle shall also apply to the establishment of a Steering Committee for the implementation and monitoring of a joint action plan.

Article 13. (1) Monitoring of the Partnership Agreement shall be carried out by a Committee for the Monitoring of the Partnership Agreement.

(2) The committee referred to in paragraph 1 shall be a collective body that:

1. shall monitor the progress of implementation of the strategic priorities of the Partnership Agreement;
2. shall discuss and approve all proposals for changes in the Partnership Agreement;
3. shall examine information on the implementation of relevant programmes and their contribution to the implementation of the strategic priorities of the Partnership Agreement;
4. shall monitor the progress in the implementation of the preconditions which are not met at the date of approval of the Partnership Agreement by the European Commission;
5. shall adopt a National Communication Strategy for the respective programming period after consultation with the committees referred to in Article 14, paragraph 1 and shall monitor its implementation;
6. shall monitor the overall progress of the implementation frameworks for the various programmes and shall approve the national proposal for allocation of the reserve implementation funds among different programmes;
7. shall also review other issues related to the implementation of the Partnership Agreement.

Article 14. (1) The implementation of a programme under Article 3, paragraph 2 shall be monitored by a committee. A committee may be established for the monitoring of one or more programmes.

(2) The monitoring committee of a programme or programmes under Article 3, paragraph 2 shall be a collective body that:

1. shall approve, on a proposal by the head of the managing authority of the respective programme, the methodology and

criteria to be used for the selection of operations;

2. shall coordinate, on a proposal by the head of the managing authority of the respective programme, indicative annual work programmes;

3. shall examine the implementation and shall monitor the progress made towards achieving the objectives and priorities of the respective programme in relation to the indicators defined therein;

4. shall monitor the progress of the implementation of the preconditions not met at the date of approval of the respective programme by the European Commission;

5. shall consider and approve proposals for amendments to the respective programme, including for reallocation of funds by priority axes or priorities;

6. shall also review other issues related to the implementation of the respective programme.

(3) The Management Committee for the Joint Action Plan shall be created for the implementation of activities under Article 108, paragraphs 1 and 2 of Regulation (EU) No. 1303/2013 following the approval of the joint action plan by the European Commission.

Article 15. (1) The Committee for the Monitoring of the Partnership Agreement and the committee for monitoring of a programme or programmes under Article 3, paragraph 2 shall consist of the chairperson, members and observers in an advisory capacity.

(2) The committees referred to in paragraph 1 shall be created and their composition shall be determined by a legal act of the Council of Ministers in accordance with the requirements of Article 5 and Article 48 of Regulation (EU) No. 1303/2013 and the Commission Delegated Regulation (EU) No. 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds (OJ, L 74/1 of 14 March 2014). The legal act shall lay down the criteria and the procedure for the election of the representatives of the partners under Article 12, paragraph 1.

(3) The composition of the Steering Committee for the Joint Action Plan shall be determined by the head of the managing authority of the programme under Article 3, paragraph 2 under the conditions and by the procedure provided for in the act referred to in paragraph 2.

(4) The committees referred to in paragraph 1 shall adopt internal working rules and a code of conduct.

Article 16. (1) The Committee for the Monitoring of the Partnership Agreement shall meet at least once a year.

(2) The monitoring committee of a programme or programmes under Article 3, paragraph 2 shall meet at least twice a year.

(3) The committees referred to in paragraphs 1 and 2 shall take decisions unanimously. In cases where this is not possible, decisions shall be taken by a two-thirds majority of the members present entitled to vote.

(4) The composition of the committees under paragraphs 1 and 2 and information about their operations and decisions taken shall be published on the website of the programme concerned, and in the Single Information Web Portal for general information about the implementation and management of ESIF, hereinafter referred to as "the Single Information Web Portal".

Article 17. (1) The deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources, jointly with the authorities and bodies referred to in Article 9 – Article 11 shall hold regular meetings with representatives of the partners under Article 12, paragraph 1 and of the beneficiaries of financial support on current issues relating to the management of ESIF resources.

(2) The meeting referred to in paragraph 1 shall be held at least once quarterly, and the agreements reached shall be published on the Single Information Web Portal.

Section III

Information and communication aimed at the general public concerning the financial support from ESIF

Article 18. (1) Information and communication measures on the financial support from ESIF, provided on the programmes under Article 3, paragraph 2 shall be implemented in accordance with a National Communication Strategy for the respective programming period, adopted by the Committee for the Monitoring of the Partnership Agreement.

(2) The National Communication Strategy shall approve a single handbook for application of the rules on information and communication, which shall be binding on the beneficiaries.

Article 19. (1) The Central Coordination Unit shall establish and maintain the Single Information Web Portal.

(2) The information entered and the procedure for its entry shall be determined by a legal act of the Council of Ministers.

Article 20. (1) For the promotion of ESIF in the Republic of Bulgaria a network of information centres shall be set up for providing up-to-date, free and expert information on the possibilities of financial support with resources from these funds. The information centres shall be established at regional level with the cooperation of the municipality by their location.

(2) To promote the programmes under Article 3, paragraph 2 the managing authorities shall develop an annual action plan, including all planned activities for information and communication.

(3) The promotion of ESIF in the Republic of Bulgaria and of relevant programmes under Article 3, paragraph 2 may be carried out by other organisations as well.

Section IV

Information system for the management and monitoring of ESIF resources

Article 21. (1) The Central Coordination Unit, the bodies for the management and control of ESIF resources, the applicants and beneficiaries shall enter, collect and systematise correct and reliable information on the activities for the implementation, management, monitoring, assessment and control of the programmes under Article 3, paragraph 2 and the projects according to their competence in the Information System for Management and Monitoring of ESIF Resources (UMIS).

(2) The information referred to in paragraph 1, including individual data contained therein, may be used for statistical research and be published and distributed as statistical information under the conditions and pursuant to the Statistics Act.

Article 22. (1) The Information System for Management and Monitoring of ESIF Resources shall be supported by the Central Coordination Unit and shall ensure the electronic exchange of information and documents between it, the bodies for the management and control of ESIF resources and the applicants and beneficiaries of financial support.

(2) Proceedings before the managing authorities hereunder may also be conducted via UMIS under conditions and in accordance with the procedures laid down by the act under Article 23.

Article 23. The conditions, the procedure and the mechanism of UMIS functioning, as well as the requirements for the structure and content of the entered information as per Article 21, paragraph 1 shall be determined by a legal act of the Council of Ministers.

Chapter Three

AWARD OF GRANTS

Section I General Provisions

Article 24. (1) Grants shall be awarded by the head of the managing authority with an administrative contract or with an order where the managing authority and the beneficiary are in the same administrative structure or organisation on the basis of approved: a project proposal, a project proposal for systemic project, a financial plan for a budget line. In case of an integrated project proposal the aid shall be granted jointly by the heads of the managing authorities of the programmes concerned.

(2) Grants for the implementation of the "Community-led local development" approach, hereinafter referred to as the "CLLD" approach, shall be provided by the bodies referred to in paragraph 1 on the basis of a project proposal submitted by the respective local action group.

(3) The grants for major projects and for a joint action plan within the meaning of Article 100, respectively Article 104 of Regulation (EU) No. 1303/2013, shall be provided by the bodies referred to in paragraph 1 subject to a decision on a major project or a decision on a joint action plan respectively under Article 102 or Article 107 of the said Regulation.

(4) (New, SG No. 43/2016) The authorities referred to in paragraph 1 may furthermore provide grants for major projects within the meaning of Article 100 of Regulation (EU) No. 1303/2013 and prior to a decision on a major project under Article 102 of the said Regulation on the basis of a decision of the Council of Ministers. The decision of the Council of Ministers shall indicate the source of funding of the project in the case of a negative decision on a major project.

(5) (Renumbered from Paragraph 4, SG No. 43/2016) When a grant is combined with a financial instrument, the financial support shall be provided in accordance with Article 37, Paragraph 7 of Regulation (EU) No. 1303/2013.

Article 25. (1) The grant shall be provided through:

1. selection of project proposals, including integrated project proposals and project proposals based on approved strategies for community-led local development, hereinafter referred to as "strategies for CLLD", as well as major projects within the meaning of Article 100 of Regulation (EU) No. 1303/2013;

2. direct award to a particular beneficiary.

(2) Excluded from participation in the selection procedure under paragraph 1, item 1 shall be and no grant may be provided to persons in respect whereof the circumstances for removal from participation in a public procurement procedure apply under the Public Procurement Act or who have not complied with an order of the European Commission for the recovery of the provided unlawful and incompatible State aid.

Article 26. (1) The head of the managing authority of the programme, the flagship programme respectively, shall approve guidelines and/or another document for each procedure, setting out the conditions for application and the conditions for implementation of the approved projects. The documents shall meet the requirements of Article 59, paragraph 2.

(2) The documents referred to in paragraph 1 in the part laying down the conditions for application shall be developed by the managing authority or by a local action group applying the CLLD approach in accordance with the methodology and criteria used for the selection of operations, approved by the monitoring committee of the programme, and according to a standard model, approved by an order of the deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources.

(3) (Supplemented, SG No. 43/2016) Before submitting the draft documents under paragraph 1 for approval, they shall be coordinated for compliance with the applicable State aid rules with the minister of finance in accordance with a procedure set out thereby and according to his powers under the State Aids Act.

(4) In case of a procedure through selection, the draft documents under paragraph 1 shall be published on the website of the respective programme and in UMIS before submitting them for approval. The managing authority shall ensure that the persons concerned can submit written objections and proposals within a reasonable period, which may not be less than one week. For any issues not dealt with herein and relating to public discussion, Chapter Five, Section II of the Administrative Procedure Code shall apply.

(5) In a procedure for direct award the managing authority of the programme shall send the draft documents under paragraph 1 to the specific beneficiaries for suggestions and objections within a reasonable period, which may not be less than one week.

(6) The approved documents under paragraph 1 shall be published on the website of the relevant programme and in UMIS together with the notice of initiation of the procedure through selection or shall be sent to the specific beneficiaries together with the notice of participation in the procedure through direct award, and shall also be published on the website and in UMIS.

(7) After the initiation of the procedure through selection the approved documents under paragraph 1 in the part laying down the conditions for application may be amended only:

1. in the event of changes in European Union law and/or the Bulgarian legislation, in the policies at European and/or national level based on a strategy document or changes in the relevant programme which require compliance of the documents therewith;

2. to increase the financial resources of the procedure;

3. to extend the time limit for the submission of project proposals; cases in which the period may be extended shall be determined by the act under Article 28, paragraph 1, item 1.

(8) An applicant in a procedure may request clarifications on the documents referred to in paragraph 1 within three weeks before expiry of the time limit for application. The clarifications shall be approved by the head of the managing authority or by a person authorised thereby. The clarifications shall refer to the conditions for application, shall not contain an opinion on the quality of the project proposal and shall be mandatory for all applicants.

(9) The clarifications under paragraph 8 shall be communicated in accordance with paragraph 6 within two weeks before expiry of the time limit for application.

Article 27. (1) The administrative acts referred to in this Chapter may be challenged before a court under the Administrative Procedure Code, and the administrative contract may be challenged in accordance with the procedure set out for challenge of individual administrative acts.

(2) Challenging of individual administrative acts and administrative contracts shall not suspend their implementation. The documents referred to in Article 26, paragraph 1 may be challenged within the time limit laid down for challenging an individual administrative act.

(3) An individual administrative act shall not be subject to judicial control under paragraph 1, when the authority that issued it and the beneficiary are within the same administrative structure.

(4) Actions in the proceedings for the award of a grant shall not be subject to a separate challenging. In the event of termination under Article 34, paragraph 4, item 2 the decision may be challenged within one week of notification pursuant to Chapter Ten, Section IV of the Administrative Procedure Code. The complaint shall not suspend further conduct of the relevant procedure for the award of a grant.

(5) The administrative cases shall be examined and the court shall issue a judgement within two months, and in the case referred to in paragraph 4, sentence two, within 20 days of receipt of the challenging.

(6) (Amended, SG No. 74/2016, supplemented, SG No. 85/2017) In contesting individual administrative acts hereunder, the stamp duties collected for legal proceedings shall be proportionate and shall amount to 1 per cent of the material interest, but no more than BGN 1,700, and in cases where the material interest is over BGN 10,000,000 the stamp duty shall be BGN 4,500. For proceedings under Chapter Ten, Section IV of the Code of Administrative Procedure and for proceedings in private claims before the Supreme Administrative Court a proportionate fee amounting to 10 per cent of the stamp duty due under sentence one shall be collected, but not less than BGN 100.

(7) Budgetary organisations within the meaning of § 1, item 5 of the additional provisions of the Public Finance Act shall be exempt from payment of stamp duties.

Article 28. (1) The Council of Ministers shall lay down by a legal act:

1. detailed rules for the application of this Chapter for the relevant programming period;
2. rules for coordination between the managing authorities of the programmes and the local action groups in connection with the implementation of the CLLD approach for the relevant programming period.

(2) The deputy prime minister or the minister responsible for the overall organisation, coordination and control of the system for the management of ESIF resources shall endorse templates of: a form for pre-selection of concepts for project proposals, an application form with a project proposal, an application form with a project proposal for a systemic project, and an administrative contract form. The minister of finance shall endorse a template of a financial plan for a budget line.

Section II

Award of grants through selection

Article 29. (1) The selection of project proposals for which grants are awarded shall be carried out in accordance with the following principles:

1. free and fair competition;
2. equal treatment and non-discrimination;
3. publicity and transparency.

(2) In the course of a procedure through selection the following shall be carried out:

1. evaluation of each project proposal, which shall include:
 - (a) assessment of the administrative conformity and eligibility;
 - (b) technical and financial evaluation;
2. ranking of the approved project proposals in descending order;
3. selection of project proposals for which funding is awarded.

Article 30. (1) The date of commencement of the proceedings for the award of a grant through selection shall be the date of publication of the notice of initiation of the procedure through selection under Article 26, paragraph 6.

(2) A procedure through selection may be initiated with two or more time limits for submission of project proposals. In such cases the starting date and the deadline for application for the second and subsequent proceedings shall be indicated in the notice. In setting the deadline, the minimum time limits under Article 32, paragraph 1 shall not apply.

Article 31. (1) Pre-selection of concepts of project proposals shall be carried out if this is provided for in the documents referred to in Article 26, paragraph 1.

(2) The concepts of project proposals shall be submitted in the pre-selection form within one month from the date of publication of the notice of the initiation of the procedure, unless it provides for a longer period.

(3) The concepts of project proposals shall be evaluated within one month of the deadline for their submission according to the criteria and the procedure set out in the documents referred to in Article 26, paragraph 1. On the basis of the evaluation made,

the head of the managing authority shall approve the candidates to be invited to participate with project proposals.

Article 32. (1) The application form must be submitted within the period specified in the notice, in the invitation under Article 31, paragraph 3 respectively, which may not be less than 60 days, and for infrastructure projects – 90 days. The cases in which shorter periods may apply shall be determined with the act under Article 28, paragraph 1, item 1.

(2) The application form shall contain the project proposal, which shall be developed in accordance with the requirements of the documents referred to in Article 26, paragraph 1, and the documents specified therein shall be enclosed thereto.

Article 33. (1) The evaluation and ranking of project proposals shall be carried out by a commission, appointed by the head of the managing authority within two weeks of the deadline for their submission. In case of integrated project proposals the commission shall be appointed by the head of the managing authority's flagship programme, and it shall also include representatives of the other programmes from which grants are awarded.

(2) The commission shall evaluate and rank the project proposals within three months of its appointment, and in the cases under Article 30, paragraph 2 - within three months for each individual proceeding, unless as an exception in the order for its appointment a longer period is specified, which may not be longer than 4 months. The commission's work shall end with an evaluation report to the head of the managing authority of the programme or the flagship program.

(3) The structure and the requirements to the persons participating in the commission, as well as the rules for its work shall be determined by the act under Article 28, paragraph 1, item 1.

Article 34. (1) On the basis of the checks carried out for administrative compliance and eligibility the commission under Article 33 shall draw up a list of the project proposals not admitted to technical and financial evaluation. The list shall indicate the grounds for ineligibility. The list shall be published on the website of the programme concerned and in UMIS and ineligibility shall be communicated to each candidate included therein, in accordance with Article 61 of the Administrative Procedure Code.

(2) Where during the check under paragraph 1 the commission establishes missing documentation and/or other irregularity, it shall send a notification to the applicant of the irregularities established and shall set a reasonable time limit for their removal, which may not be shorter than one week. The notification shall also contain information that the failure to remove the irregularities in the prescribed period may result in the termination of the proceedings in respect of the applicant. Removal of irregularities may not lead to improvement of the quality of the project proposal.

(3) An applicant whose project proposal is included in the list under paragraph 1 may file an objection in writing to the head of the managing authority within one week of notification.

(4) The head of the managing authority shall make a decision on the merits of the objection within one week of its receipt and shall:

1. return the project proposal for technical and financial evaluation;
2. terminate the proceedings in respect of the applicant.

Article 35. The technical and financial evaluation shall be carried out in accordance with criteria and methodology set out in the documents referred to in Article 26, paragraph 1. On the basis of the results, the commission under Article 33 shall draw up an evaluation report which shall include:

1. a list of the project proposals submitted for funding, arranged in the order of their ranking, and the amount of the grant to be awarded to each of them;
2. a reserve list of project proposals, arranged in the order of their ranking, which have successfully passed the evaluation, but for which there is not sufficient funding;
3. a list of the project proposals proposed for rejection and the reason for their rejection.

Article 36. (1) Within 10 days of receipt of the evaluation report with the documents annexed to it, the head of the managing authority shall:

1. approve the report;
2. return the report for conducting evaluation and ranking from the stage where infringements have been made, where they are subject to removal;
3. not approve the report when material infringements of the procedure have been committed.

(2) (Amended, SG No. 85/2017) Upon approved evaluation report the applicants from the list under Article 35, item 1, and in the cases under Article 37, paragraph 2 – from the list under Article 35, item 2, shall be invited to submit evidence, within 30 days, that they meet the requirements for beneficiaries, including the conditions set out in the documents referred to in Article 26, paragraph 1, if such evidence has not been attached to the application form.

(3) The head of the managing authority shall terminate the procedure:

1. in the cases referred to in paragraph 1, item 3;
2. when no project proposals have been submitted within the prescribed time limit or all submitted proposals have been withdrawn;
3. on suspending the funding of the programme concerned or of a part thereof.

Article 37. (1) Within two weeks of approval of the evaluation report, or the presentation of the evidence referred to in Article 36, paragraph 2, the head of the managing authority shall take a decision on providing grants on any project proposal included in the list under Article 35, item 1.

(2) In case of residual financial resources, grants may furthermore be awarded to project proposals in the list under Article 35, item 2 in the order of their ranking.

(3) The decision of the head of the managing authority to award a grant shall be objectified by an administrative agreement with the beneficiary, by an order respectively. The administrative contract, the order respectively shall contain:

1. the name and registered office of the addressee – beneficiary of aid;
2. name, amount, primary activities, indicators and deadlines for implementation of the project for which the grant is awarded;
3. maximum amount of the grant, as well as the programme, the priority axis and the procedure on which it is provided;
4. specification of the conditions for implementing the project;
5. the conditions for the recovery of financial support granted in the form of repayable assistance in the cases under Article 4, paragraph 2;
6. where applicable, the information that the grant has the nature of eligible State aid or de minimis aid, indicating the act of the European Union by which it is provided or approved.

(4) The approved project and the documents referred to in Article 26, paragraph 1 in the part laying down the conditions for implementation shall be an integral part of the contract, of the order respectively.

Article 38. Within 10 days of approval of the evaluation report or expiry of the time limit under Article 36, paragraph 2 the head of the managing authority shall issue a reasoned decision, rejecting to award a grant:

1. for any project proposal included in the list under Article 35, item 3;
2. for a project proposal included in the list under Article 35, item 1 or Article 35, item 2 respectively – in case the applicant refuses to enter into an administrative contract;
3. to an applicant which does not meet the requirements for a beneficiary or has not delivered evidence within the prescribed

time limit;

4. for project proposals for which financing is provided in violation of Article 4, paragraph 4;

5. for project proposals for which State aid is prohibited or which exceed the threshold of the permissible State aid or the de minimis thresholds laid down in an act of the European Union.

Article 39. (1) The administrative contract, including the project approved thereby, may be amended and/or supplemented at the initiative of the managing authority or at the request of the beneficiary, where this is based on changes related to changes in European Union law and/or the Bulgarian legislation, in the policies at European and/or national level resulting from a strategic document, or changes in the relevant programme.

(2) The project approved with the administrative contract may furthermore be amended and/or supplemented at a reasoned request of the beneficiary outside the cases referred to in paragraph 1. The change may not result in a breach of the principles set out in Article 29, paragraph 1.

(3) Where it is not possible to bring the administrative contract in line with the change under paragraph 1, and in case of disagreement of the other party with it, the administrative contract may be unilaterally terminated.

(4) The financing with a grant shall be terminated unilaterally by the head of the managing authority when the beneficiary does not enter into a contract with the contractor within 12 months of the expiry of the period laid down for its conclusion. Cases in which this period shall be suspended, shall be determined by the act under Article 28, paragraph 1, item 1.

(5) The head of the managing authority may furthermore unilaterally terminate the administrative contract in order to prevent or remedy serious consequences for the public interest.

(6) Paragraphs 1 – 5 shall also apply when the grant has been awarded by an order of the head of the managing authority.

Article 40. (1) The selection of project proposals for the implementation of the CLLD approach shall be carried out by the local action groups on the basis of approved CLLD strategies.

(2) The CLLD approach shall apply to rural and fishing areas, and to areas with specific characteristics, as defined by an act of the Council of Ministers on the proposal of the minister of regional development and public works.

(3) The CLLD strategies shall be designed by local action groups with the participation of representatives of the public and private local socio-economic interests in compliance with the requirement of Article 32, paragraph 2, (b) of Regulation (EU) No. 1303/2013. The strategies shall have at least the content referred to in Article 33, paragraph 1 of the said Regulation.

Article 41. (1) The selection of CLLD strategies shall be carried out by a committee appointed by the head of the managing authority of the programme responsible for the CLLD approach in accordance with the Partnership Agreement for the respective programming period. At least one representative of each managing authority of a programme providing grants for the CLLD approach shall participate in the committee. The structure of the committee shall be determined by the act under Article 28, paragraph 1, item 2.

(2) The selection of CLLD strategies shall be carried out simultaneously for ESIF resources designed for the CLLD approach and based on the criteria approved by the monitoring committee of the programme.

(3) The selection criteria shall be published on the website of the managing authority and in UMIS, along with the call for participation in the procedure through selection. Local action groups may present strategies in a period not shorter than one month of publication.

(4) The committee referred to in paragraph 1 shall assess and rank in descending order the strategies presented within the prescribed time limit. The head of the managing authority responsible for the CLLD approach, in consultation with the heads of the managing authorities of the programmes providing the financing, shall approve the strategies for which ESIF resources have been allocated, in the order of their ranking. The decision approving the CLLD strategy shall also set out allocations of ESIF resources by funds and programmes.

Article 42. (1) When awarding grants for project proposals in pursuance of CLLD strategies the rules of this section shall apply, unless otherwise provided for in the respective programme or in the act under Article 28, paragraph 1, item 2.

(2) The tasks of the local action groups under this Act shall be limited within the minimum requirements under Article 34, paragraphs 3 – 5 of Regulation (EU) No. 1303/2013.

(3) For the performance of its tasks, the local action group may be set up as an association under the Non-profit Legal Entities Act or select one of its participants as an administrative and financial lead partner in accordance with Article 34, paragraph 2 of Regulation (EU) No. 1303/2013, unless otherwise provided for in the Partnership Agreement for the respective programming period.

Section III

Direct award of grants

Article 43. (1) In a direct award procedure the grant shall only be provided to an applicant specified in the relevant programme under Article 3, paragraph 2 or in a document approved by the monitoring committee of the programme as a specific beneficiary for the relevant activity.

(2) A grant under paragraph 1 shall be made available on the basis of:

1. a project proposal, including an integrated project proposal;
2. a project proposal for a systemic project;
3. a financial plan for a budget line;
4. a major project within the meaning of Article 100 of Regulation (EU) No. 1303/2013;
5. a joint action plan within the meaning of Article 104 of Regulation (EU) No. 1303/2013 with included project proposals therein.

(3) Grants for systemic projects may be made available to finance similar and repetitive activities related to the provision of services with national or regional coverage to individuals and carried out by a particular beneficiary pursuant to a legal act. The committee for monitoring of the relevant programme shall pre-approve the funds, eligible activities and expenditures, the expected results and/or indicators and the duration of the project for which the specific beneficiary has applied.

(4) A grant may be provided through a budget line to a specific beneficiary of the administration of the Executive for funding of activities undertaken thereby for the management of ESIF resources within the technical assistance funds allocated in the relevant programme.

Article 44. (1) A project proposal, a project proposal for a systemic project, a financial plan for a budget line, a major project within the meaning of Article 100 of Regulation (EU) No. 1303/2013 and a joint action plan within the meaning of Article 104 of the same Regulation shall be submitted by the specific beneficiary in accordance with the relevant template for evaluation to the managing authorities.

(2) The evaluation of a project proposal, a major project within the meaning of Article 100 of Regulation (EU) No. 1303/2013 and of a joint action plan within the meaning of Article 104 of the same Regulation shall be made within three months from the date of their submission or from the deadline for their submission, if such deadline is specified in the documents referred to in Article 26, paragraph 1.

(3) The evaluation of a project proposal for a systemic project and of a financial plan for a budget line shall be carried out within one month from the date of submission thereof.

(4) When irregularities, omissions and/or discrepancies of the documents referred to in paragraph 1 are found, the relevant

managing authority shall send to the specific beneficiary a notification of the irregularities, omissions and/or discrepancies found and shall set a reasonable deadline for their removal, which may not be less than one week. The notification shall also contain information that the failure to remove the irregularities in the prescribed period may result in the termination of the proceedings in respect of the specific beneficiary. The period referred to in paragraphs 2 and 3 shall be suspended until the date of their removal.

(5) The evaluation shall be carried out under the conditions laid down in the documents referred to in Article 26, paragraph 1 for the relevant procedure.

Article 45. (1) In case of a positive result of the evaluation, the head of the managing authority shall take a decision, within one week of the completion of the evaluation, for:

1. award of a grant for the project proposal approved;
2. award of a grant for a systemic project;
3. approval of a budget line under the terms of the approved financial plan;
4. sending a major project within the meaning of Article 100 of Regulation (EU) No. 1303/2013 for:
 - a) assessment by independent experts in accordance with Article 101, paragraph 3 of Council Regulation (EU) No. 1303/2013 and for the notification pursuant to Article 102, paragraph 1 of the same Regulation;
 - b) approval by the European Commission in accordance with Article 102, paragraph 2 of Regulation (EU) No. 1303/2013;
 - c) approval and notification by the European Commission in accordance with Article 103, paragraphs 2 – 4 of Regulation (EU) No. 1303/2013;
5. sending a joint action plan for approval by the European Commission under Article 107 of Regulation (EU) No. 1303/2013.

(2) The decision of the head of the managing authority to award a grant under paragraph 1, items 1 and 2 shall be objectified by an administrative contract with the beneficiary, an order respectively, which shall contain the requisites set out in Article 37, paragraph 3. The approved project and the documents referred to in Article 26, paragraph 1 in the part laying down the conditions for implementation shall be an integral part of the contract, of the order respectively.

(3) Paragraph 2 shall also apply to the approval of a budget line.

Article 46. (1) The head of the managing authority shall terminate the procedure for direct grant award:

1. where no project proposals have been received, provided a deadline for their submission has been specified, or where all submitted proposals have been withdrawn;
2. on suspended funding of the programme concerned or of a part thereof.

(2) Apart from the cases referred to in paragraph 1, a procedure for direct award of a grant may also be terminated in respect of a particular beneficiary who does not remove an irregularity, omission and/or discrepancy with the requirements within the prescribed period.

(3) Where there is no deadline for submission, the head of the managing authority may terminate the receipt of proposals in the event the total value of approved projects exceeds the financial resources of the procedure.

Article 47. (1) The administrative contract, the order respectively, including the projects approved thereby, may be amended and/or supplemented at the initiative of the managing authority or at the request of the beneficiary, where this is based on the procedure-related changes in European Union law and/or the Bulgarian legislation, in the policies at European and/or national level resulting from a strategic document, or changes in the relevant programme.

(2) The project approved may furthermore be amended and/or supplemented at a reasoned request of the beneficiary outside the cases referred to in paragraph 1.

(3) The financing plan for a budget line shall be updated annually on the basis of the assessment of its implementation carried out by the beneficiary or in the event of emerging circumstances that prompt a change in the necessary financial resources. The updated financial plan shall be provided by the beneficiary for approval to the head of the managing authority.

(4) Requests for amendment and/or supplement of a joint action plan shall be sent to the European Commission after their approval by the steering committee under Article 14, paragraph 3.

Article 48. (1) The administrative contract may be unilaterally terminated where it is impossible to align it with the change under Article 47, paragraph 1, and in case of disagreement with it by the other party.

(2) The financing with a grant shall be unilaterally terminated by the head of the managing authority when the beneficiary fails to enter into a contract with the contractor within 12 months of the expiry of the period laid down for its conclusion. Cases in which this period shall be suspended, shall be determined by the act under Article 28, paragraph 1, item 1.

(3) (New, SG No. 43/2016) The head of the managing authority shall unilaterally terminate the administrative contract concluded under the conditions of Article 24, paragraph 4, in the case of a negative decision on a major project.

(4) (Renumbered from Paragraph 3, SG No. 43/2016) The head of the managing authority may furthermore unilaterally terminate the administrative contract in order to prevent or remedy serious consequences for the public interest.

(5) (Renumbered from Paragraph 4, SG No. 43/2016) Paragraphs 1 – 3 shall also apply when the grant has been awarded by an order of the head of the managing authority.

Chapter Four

SPECIAL RULES FOR THE SELECTION OF A CONTRACTOR BY BENEFICIARIES OF GRANTS

Article 49. (1) The beneficiaries of grants may assign to contractors – external persons to them, activities for the implementation and/or the management of a project, where this is provided for in it for the relevant activity.

(2) For the selection of a contractor for construction works, services and/or supplies of goods – the subject of a public service contract within the meaning of the Public Procurement Act, the rules laid down in the following documents shall apply:

1. the Public Procurement Act – where the beneficiary is a contracting authority within the meaning of the said Act;
2. this Chapter – where the beneficiary is not a contracting authority within the meaning of the Public Procurement Act.

(3) The rules under paragraph 2 shall not apply where as a contractor is selected a person who has been the subject of evaluation by an expert during the approval of the project in accordance with Chapter Three and/or who has been hired under an employment or service contract by the beneficiary. When the activity for the implementation and/or management of the project takes place outside established working hours and the job description of the person, it shall be assigned by the appointing authority or the employer against remuneration under the conditions and in accordance with procedures laid down by the act under Article 59, paragraph 1.

Article 50. (1) The beneficiaries under Article 49, paragraph 2, item 2 shall select a contractor after conducting a selection procedure with a public call in accordance with the principles of free and fair competition, equal treatment and non-discrimination.

(2) The selection procedure with a public call shall be conducted when the amount of the grant is more than 50 per cent of the total amount of the approved project and the estimated value for:

1. construction, including co-financing by the beneficiary, without value added tax, is equal to or greater than EUR 50,000;
2. supplies or services, including co-financing by the beneficiary, without value added tax, is equal to or greater than EUR

30,000.

(3) The selection procedure with a public call is also conducted when the amount of the grant is equal to or less than 50 per cent of the total amount of the approved project, if this is a requirement of the managing authority to the beneficiary.

(4) Beneficiaries shall not conduct a selection procedure with a public call for the acquisition or rental of land, existing buildings or other real estate, as well as in the establishment of limited real rights, except for the financial services related to such transactions.

(5) Beneficiaries shall not conduct a selection procedure with a public call, when the award of the contract to another person would result in a breach of a copyright or other intellectual property rights, or of exclusive rights acquired under a law or an administrative act. In this case, the beneficiary shall notify in advance the managing authority.

Article 51. (1) The public call shall contain at least the following information:

1. details of the beneficiary;

2. object and a description of the subject matter of the procedure and the requirements for the performance of construction works, service and/or the supply of goods;

3. requirements for the offers and the criteria for their evaluation;

4. place and deadline for the submission of offers, and the deadline shall be not less than 7 days from the publication of the call.

(2) The technical specification, if any, and the draft contract shall be an integral part of the public call.

(3) Beneficiaries may include in the notice requirements for the economic and financial status and the technical capacity and/or qualifications of the candidates for a contractor.

(4) Beneficiaries may not include in the call conditions that unjustifiably prevent persons to participate in the procedure, as well as information directing to a specific model, source, process, trade mark, patent or a similar thing that would result in favouring or eliminating certain persons or products, and where this is objectively impossible, given the specificity of the subject matter, the words "or equivalent" shall be added to their designation.

Article 52. (1) The public call shall be made by the beneficiaries under Article 49, paragraph 2, item 2 and shall be published in the Single Information Web Portal.

(2) Until expiry of the time limit for the submission of the offers public access to the call in the Single Information Web Portal shall be provided.

(3) Any clarification on the call, given at the request of contractor applicants, shall be published in accordance with paragraph 1 in the Single Information Web Portal.

Article 53. (1) An offer may be submitted by any Bulgarian or foreign natural or legal persons, and their associations.

(2) Persons for whom the circumstances for removal from participation in a public procurement procedure apply in accordance with the Public Procurement Act may not be selected as contractors.

(3) The selection of the contractor shall be carried out in compliance with the requirements of effectiveness, efficiency and economy in spending ESIF resources and the beneficiaries under Article 49, paragraph 2, item 2 shall enter into a contract with the applicant for a contractor that has submitted the most economically advantageous offer.

(4) The most economically advantageous offer shall be determined in accordance with the criteria laid down in the public call, which may be: lowest price; level of expenditure, taking into account cost-effectiveness, including the cost for the whole life cycle; optimum best value for money.

Article 54. The rules for examination and evaluation of offers and for entering into contracts in the selection procedure with a

public call shall be determined by a legal act of the Council of Ministers.

Chapter Five

FINANCIAL MANAGEMENT AND CONTROL

Section I

General terms and conditions and eligibility of expenditure

Article 55. (1) Grants and recoverable assistance may take any of the following forms:

1. reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;
2. standard scales of unit costs;
3. lump sums not exceeding the lev equivalent of EUR 100,000 of public contribution;
4. flat-rate financing, determined by the application of a percentage to one or more defined categories of costs.

(2) The forms referred to in paragraph 1 may be combined only where each of them covers a different category of costs.

Article 56. (1) Financial support shall be provided, and it may be used for the financing of costs that are eligible under the applicable European Union law for the programming period, the provisions of this section, the acts on its application and other relevant provisions of the Bulgarian legislation.

(2) In the event of combination of grants with recoverable aid or prizes the costs shall be considered eligible if they are incurred in accordance with the rules for the relevant form of financial support, and in case of combination with a financial instrument – in accordance with Article 37, paragraph 7 of Regulation (EU) No. 1303/2013.

Article 57. (1) The costs shall be considered eligible if the following circumstances apply simultaneously:

1. the costs are made for activities corresponding to the selection criteria for operations and carried out by eligible beneficiaries under the programme concerned under Article 3, paragraph 2;
2. the costs fall within the cost categories, included in the documents referred to in Article 26, paragraph 1, and in the approved project;
3. the costs are made for actually supplied products, services provided and construction works;
4. the costs are incurred in accordance with the applicable European Union law and the Bulgarian legislation;
5. the costs are reflected in the accounting records of the beneficiary through separate accounting analytical accounts or in a separate accounting system;
6. an audit trail is available for the costs incurred in accordance with the minimum requirements of At. 25 of the Commission Delegated Regulation (EU) No. 480/2014 of 3 March 2014 supplementing Regulation (EU) No. 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (OJ, L 138/5 of 13 May 2014), and the requirements for keeping of documents under Article 140 of Regulation (EU) No. 1303/2013 have been complied with;

7. the costs are consistent with the relevant rules for the granting of State aid.

(2) Ineligible shall be costs for projects or activities that are physically completed or fully implemented prior to the submission of the application form by the beneficiary, regardless of whether all associated payments are effected by it.

(3) The amount of the prizes as eligible costs shall not be related to the costs incurred by the participants in the competition.

Article 58. (1) Unless otherwise provided for, the costs shall be eligible if they are paid within the period of eligibility of expenditure for the relevant programming period. In the cases under Article 55, paragraph 1, items 2 and 3, the costs shall be eligible if the actions constituting grounds for their recovery are incurred within the period of eligibility.

(2) Eligible shall be costs under projects which are implemented only within the programme area of the relevant programme under Article 3, paragraph 2 or under the conditions of Article 70 of Regulation (EU) No. 1303/2013, when performed outside the programme area.

Article 59. (1) Unless otherwise provided for in a law, in respect of a programme under Article 3, paragraph 2 the specific national rules and the detailed rules for eligibility of costs for the relevant programming period shall be determined by a legal act of the Council of Ministers.

(2) For each procedure on a programme under Article 3, paragraph 2 the following shall be set:

1. the eligible cost categories and the maximum amount of costs, if any;

2. the method applicable to the determination of costs and the conditions for payment of grants and recoverable assistance when the forms under Article 55, paragraph 1, items 2 – 4 are applicable to them;

3. for revenue-generating projects – the method by which the net income shall be deducted from the cost of the project;

4. the specific conditions the cost shall meet to be treated as eligible, including the conditions under which the project is deemed to be implemented outside the programme area.

Section II

Payments, verification and certification of expenditure

Article 60. (1) The managing authorities shall carry out advance, interim and final payments based on a request of the beneficiary.

(2) The written evidence to be applied by the beneficiary to its request for the relevant payment shall be laid down in the documents referred to in Article 26, paragraph 1.

(3) The costs shall be proved with certified invoices and/or accounting documents of equivalent probative value and other documents required under the applicable Bulgarian law, except in the cases of reporting of costs by using the forms under Article 55, paragraph 1, items 2 – 4 and of the financial support for financial instruments.

(4) No fees or other amounts of equivalent effect may be accrued, charged or deducted from the payments payable to the beneficiary.

Article 61. (1) Advance payments shall be made where these are provided for in the documents referred to in Article 26, paragraph 1. The advance payment shall be made within two weeks of the date of receipt of the request of the beneficiary by the managing authority, unless a longer period is stipulated for it in the documents referred to in Article 26, paragraph 1.

(2) (Amended, SG No. 43/2016) Beneficiaries shall submit securities on the advance payments under conditions set out in the act under Article 7, paragraph 4, item 4.

(3) Where the beneficiary has not attached a document required for making the advance payment or fails to submit a security, the managing authority shall invite it to submit them. The period referred to in paragraph 1 shall be suspended until the date of their submission.

Article 62. (1) Interim and final payments shall be made after verification to confirm the eligibility of the expenditure incurred and in the presence of a physical and financial progress of the project. The managing authority shall make the payment within 90 days of receipt of the request for payment of the beneficiary.

(2) Only eligible expenditure verified by the managing authority may be reimbursed through interim and final payments.

(3) The managing authority shall verify expenditure on the basis of examination of the documents attached to the request for payment, and based on on-the-spot checks, where applicable.

Article 63. (1) The managing authority may require further submission of documents relating to requests for interim and final payments, as well as clarifications by the beneficiary, where:

1. an amount included in the request for payment is not due;

2. no certified invoices and/or accounting documents of equivalent probative value, or other required documents proving the implementation of the activities have been submitted in accordance with the conditions of eligibility referred to in Section I;

3. there is a suspicion of irregularity relating to the expenditure concerned;

4. the documents submitted on the physical and financial progress of the project are incorrectly filled in or do not contain all the required information.

(2) For the submission of the documents and clarifications under paragraph 1 the managing authority shall set a reasonable time limit, which may not be longer than one month. The time limit under Article 62, paragraph 1 shall be suspended until the submission of the documents and clarifications, but for not more than one month in total.

Article 64. (1) (Supplemented, SG No. 85/2017) If a beneficiary fails to submit a document or clarifications under Article 63 within the prescribed time limit, or if an irregularity procedure has been initiated, the corresponding expenditure shall not be verified and may be included in a subsequent request for payment.

(2) (Amended, SG No. 43/2016) If a beneficiary does not make a request for final payment within one month of the completion of all project activities, the managing authority may carry out ex officio completion of the project on the basis of an on-the-spot verification conducted thereby.

Article 65. (1) The managing authorities shall provide to the relevant certification authority by electronic means certification reports, statements of eligible expenditure and information about the implemented procedures and verifications carried out in relation to the expenditure verified.

(2) Included in the documents under paragraph 1 shall be only verified and paid costs to the beneficiaries. As an exception, where such documents are submitted in December of the relevant financial year, the managing authority may include therein verified expenditure which is not paid to the beneficiary.

Article 66. (1) The certification authority shall certify expenditure after verification of the information provided by the managing authority and upon satisfying itself of the eligibility of the expenditure stated.

(2) Within one month of receipt of the documents referred to in Article 65, paragraph 1 the certification authority shall draw up and send to the European Commission an application for payment in accordance with the requirements of Article 131 of Regulation (EU) No. 1303/2013 only for eligible expenditure on each of the programmes under Article 3, paragraph 2.

(3) The certification authority may deny certification or not carry out certification in respect of specific costs included in the documents referred to in Article 65, paragraph 1, where:

1. deficiencies in the management and control systems of the managing authority are found;

2. the verified costs do not meet the conditions of eligibility.

(4) Within one week of sending the payment application the certification authority shall notify the managing authority about the amount of the expenditure included for reimbursement from the European Commission. Non-certified costs shall also be included in the notification, and the reasons therefor.

Article 67. In the course of performance of the certification activities the employees of the certification authority shall enjoy the rights of employees of an audit authority under the Public Sector Internal Audit Act and may conduct audits of managing authorities and their beneficiaries, where this is necessary for the performance of the activity.

Article 68. (Amended, SG No. 43/2016) The programmes financed by the European Regional Development Fund, the European Social Fund and the Cohesion Fund, the relationships between beneficiaries, the managing and certification authorities in connection with the procedures laid down in this Section shall be determined by the acts referred to in Article 7, paragraph 4, item 4.

Section III

Administration of irregularities and making financial corrections

Article 69. (1) The managing authorities shall carry out procedures for administration of irregularities within the meaning of Article 2, items 36 and 38 of Regulation (EU) No. 1303/2013.

(2) The procedure for administration of an irregularity shall start at the initiative of the managing authority of the relevant programme or on a signal.

(3) Where, in connection with the implementation of the activities the authorities under this Act establish sufficient data about existing irregularity, they shall send a signal to the managing authority of the programme.

(4) The managing authorities may launch a procedure for the administration of an irregularity and on a signal given by a natural or legal person when it contains sufficient data about an irregularity committed.

(5) The managing authorities shall keep a register of the received signals and of the established irregularities affecting ESIF resources.

(6) The circumstances subject to entry in the register under paragraph 5, the procedure for detection of irregularities and reporting irregularities to the AFCOS shall be determined by a legal act of the Council of Ministers.

Article 70. (1) Financial support with ESIF resources may be cancelled in whole or in part by a financial correction on the following grounds:

1. where, in respect of the beneficiary, there is a conflict of interests within the meaning of Article 57 of Regulation (EU) No. 966/2012;

2. for breaking the rules for State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union;

3. for a breach of the principles under Article 4, paragraph 8, Article 7 and Article 8 of Regulation (EU) No. 1303/2013;

4. for a breach of the requirement for durability of operations in the cases and within the time limits under Article 71 of Regulation (EU) No. 1303/2013;

5. there is no audit trail for the project or any part thereof and/or analytical cost accounting in the accounting system maintained by the beneficiary;

6. for failure to comply with the information and communication measures, which are mandatory for the beneficiaries;
7. for failure to comply with approved indicators;
8. in case of received incidental revenues in relation to the implementation of the project;
9. (new, SG No. 85/2017) for any irregularity constituting a violation of the rules for determining a contractor under Chapter Four, committed by an act or omission by the beneficiary, which has, or would have, the effect of prejudicing ESIF resources;
10. (renumbered from Item 9, SG No. 85/2017) for any other irregularity constituting a violation of the law of the European Union and/or the Bulgarian legislation, committed by an act or omission by the beneficiary which has, or would have, the effect of prejudicing ESIF resources.

(2) The cases of irregularities for which financial corrections are made under paragraph 1, item 9 shall be specified in a legal act of the Council of Ministers.

Article 71. (1) By making financial corrections the financial support with ESIF resources provided under Chapter Three shall be repealed or the amount of funds decreased, i.e. eligible expenditure on a project shall be reduced so as to achieve or restore the situation in which all costs certified to the European Commission are in accordance with the applicable European Union law and the Bulgarian legislation.

(2) A financial correction may be made for the entire project or for a separate activity, a separate contract with a contractor or for an individual item of expense.

(3) The total amount of the financial corrections on a project may not exceed the amount of the actual financial support provided thereon.

(4) A financial correction may apply only once for the same irregularity.

(5) The financial correction made shall be a ground for the completion of the procedure for administration of the irregularity for the same violation.

Article 72. (1) When determining the amount of financial corrections the nature and gravity of the violation of the law of the European Union and the Bulgarian legislation and its financial implications on the ESIF resources shall be taken into account.

(2) The amount of the financial correction shall be equal to the actually established financial implications of the breach on the costs incurred, i.e. eligible costs.

(3) (Supplemented, SG No. 85/2017) Where by reason of the nature of the breach it is not possible to quantify the financial implications, for the determination of the financial correction a percentage indicator to the costs affected by the breach shall apply. The specified percentage indicator under the first sentence shall also apply to the costs affected by the breach, included in subsequent requests for payments. In such cases a separate decision determining a financial correction shall not be issued.

(4) (New, SG No. 85/2017) If two or more cases of irregularities under Article 70, paragraph 1, item 9 are established, a single correction for all violations affecting the same eligible costs shall be determined at a rate equal to the highest rate applied with regard to each violation in the act referred to in Article 73, paragraph 1.

(5) (Renumbered from Paragraph 4, SG No. 85/2017) The minimum and maximum values of the percentage indicators shall be determined by the act under Article 70, paragraph 2.

Article 73. (1) The financial correction shall be determined in terms of grounds and amount by a reasoned decision of the head of the managing authority which has approved the project.

(2) Prior to issuing the decision under paragraph 1 the managing authority shall enable the beneficiary to submit, within a reasonable period, which may not be less than two weeks, its written objections to the reasons and the amount of the financial correction and, where appropriate, to enclose evidence.

(3) The decision under paragraph 1 shall be issued within one month of the submission of the objections under paragraph 2,

and it shall state in its motives the evidence presented and the objections made by the beneficiary.

(4) (Amended, SG No. 85/2017) The decision referred to in paragraph 1 may be challenged before a court pursuant to the Administrative Procedure Code, and the provisions of Article 27, paragraphs 2 and 3 and paragraphs 5 – 7 shall apply to the legal challenge.

Article 74. Under the conditions and on the grounds of Article 99 of the Administrative Procedure Code the amount of the financial correction determined by the decision under Article 73, paragraph 1 may furthermore be increased by the head of the managing authority on a proposal from a certification or audit authority. For the resumption of the proceedings the time limits and the procedure set out in Chapter Seven of the Administrative Procedure Code shall apply.

Article 75. (Amended, SG No. 43/2016) (1) (Amended, SG No. 85/2017) Financial corrections shall be imposed on the payments under the project that include the costs affected by the violation. Where the decision for determining the financial correction has been issued after the respective payment, financial corrections shall be implemented by voluntary payment by the beneficiary within 14 days, and with regard to cross-border cooperation programmes along the external boundaries of the European Union – within 30 days. After the expiry of the time limit for voluntary payment, the financial correction shall be withheld from the next payment under the project together with the default interest payable, and where this is not applicable – by exercising rights under the security provided by the beneficiary pursuant to Article 61, paragraph 2, in a procedure and manner specified in the statutory instrument referred to in Article 7, paragraph 4, item 4.

(2) (Amended, SG No. 85/2017) Following the final payment on a project, non-effected financial corrections shall constitute a public receivable under Article 162, paragraph 2, item 8 of the Tax-Insurance Procedure Code.

(3) (Amended, SG No. 85/2017) When the financial corrections determined to beneficiaries – budgetary organisations within the meaning of § 1, item 5 of the additional provisions of the Public Finance Act are not recovered by the beneficiary pursuant to paragraph 1, they shall be subject to recovery from the respective budgets of the primary spending units, the spending units with a budget under Article 11, paragraph 9 of the Public Finance Act or the budget organisations under Article 13, paragraph 4 of the same Act, in whose structure the beneficiary is included, according to the procedure and manner laid down in the legal act under Article 7, paragraph 4, item 4.

(4) (Amended, SG No. 85/2017) In case of non-recovery pursuant to paragraphs 1 and 3 of financial corrections determined to beneficiaries – budgetary organisations, the provision of Article 106 of the Public Finance Act may be applied.

Article 76. (Amended, SG No. 43/2016, repealed, SG No. 85/2017).

Article 77. (1) In case of weaknesses in the management and control of the programme under Article 3, paragraph 2, established by the European Commission or the audit authority, the relevant head of the managing authority may adjust the costs submitted for certification to the European Commission, using a flat-rate or an extrapolated financial correction.

(2) The costs under paragraph 1 shall be borne by the budget of the first level spending unit in whose structure the managing authority is.

Chapter Six

ADMINISTRATIVE PENAL PROVISIONS

Article 78. (1) An official in a management or control body, who in the course of his duties allows a guilty violation of a time limit provided for herein, shall be punishable by a fine of 50 to 1,000 BGN, and for a repeated infringement – with a fine of 100 to 2,000 BGN.

(2) The breaches referred to in paragraph 1 shall be established by acts drawn up by inspectors at the inspectorates under the Administration Act.

(3) The penal decrees shall be issued by the head of the administration or organisation in whose structure the management or control body is, or by a person designated thereby.

Article 79. The establishment of the breaches, the issuance, appeal and execution of the penal decrees shall be carried out in accordance with the Administrative Violations and Sanctions Act.

ADDITIONAL PROVISIONS

§ 1. Within the meaning of this Act:

1. "Administrative contract" means an express statement of the will of the head of the managing authority for the granting of financial support through ESIF resources whereby and with the consent of the beneficiary rights and obligations shall be created for the beneficiary to implement the approved project. The administrative contract shall be drawn up in the form of a written agreement between the head of the managing authority and the beneficiary, replacing the issuance of an administrative act.
2. "Repayable assistance" means funds granted to a beneficiary subject to recovery without any interest on the funds.
3. "Integrated project proposal" means a project proposal for the award of grants on two or more programmes under Article 3, paragraph 2, one of which is designated as flagship.
4. "Local action group" means the local initiative group and the local initiative fishery group under the Partnership Agreement, laying down the assistance from the European structural and investment funds for the period 2014 – 2020.
5. "Prizes" means funds allocated as a reward after conducting a competition by a managing authority or a beneficiary of a grant.
6. "Programme area" means a concept within the meaning of Article 2, point 7 of Regulation (EU) No. 1303/2013.
7. "Financial instruments" means a concept within the meaning of Article 2, point 7 of Regulation (EU) No. 1303/2013.
8. (New, SG No. 85/2017) "National co-financing" shall be co-financing provided via a transfer from the executive budget in accordance with Article 60, item 2 of the Public Finance Act.

§ 2. (1) The rules for the award of grants shall furthermore apply to ESIF resources provided as recoverable assistance, unless otherwise provided for in this Act.

(2) When granting financial support in the form of repayable assistance, specified in the documents referred to in Article 26, paragraph 1 shall be the conditions whereunder it is subject to full or partial recovery by the beneficiary.

§ 3. (1) For prizes funded with ESIF resources competitions shall be held, subject to the requirements for publicity, transparency and equal treatment laid down by a legal act of the Council of Ministers.

(2) The ESIF resources for prizes shall be awarded to a beneficiary under the terms of Chapter Three.

§ 4. (1) (Amended, SG No. 58/2017, effective 18.07.2017, SG No. 85/2017) For the Rural Development Programme the functions of management, control and administration authorities hereunder shall be implemented by the Ministry of Agriculture, Food and Forestry, and by State Fund "Agriculture" – Paying Agency, as provided for in the Agricultural Producers Support Act and its implementing acts.

(2) (Amended, SG No. 85/2017) In respect of the programme under paragraph 1, the information under Article 21, paragraph 1 shall be entered, collected and systematised under the conditions and in accordance the procedure established by the Agricultural Producers Support Act.

(3) (Amended, SG No. 2/2018) Awarding grants, as well as payment, verification or certification of expenses under the programme referred to in paragraph 1 shall be performed under the conditions and in accordance with this Act, unless otherwise provided for in Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005 (EAFRD) (OB, L 347/487 of 20 December 2013) and Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ L 347/549 of 20 December 2013) in the Agricultural Producers Support Act or in an implementing act thereof.

(4) For the programming period 2014 – 2020 the CLLD approach shall not apply to settlements supported under sustainable urban development projects.

§ 5. Unless otherwise provided for in the applicable European legislation and in the contracts concluded between the countries, ratified, promulgated and entered into force for the Republic of Bulgaria, this Act shall also apply to the financial support under the European Territorial Cooperation Programmes, as follows:

1. the information under Article 21, paragraph 1 shall be entered, collected and systematised in information systems created and maintained for the relevant European Territorial Cooperation Programmes;

2. the special rules for the selection of a contractor under Chapter Four shall also apply to beneficiaries – partners of the Republic of Bulgaria to the relevant programmes;

3. (amended, SG No. 43/2016) making of payments to beneficiaries, verification and certification of expenditure, reimbursement and write-off of irregular expenditure and accounting for the programmes shall be determined by the act under Article 7, paragraph 4, item 4;

4. in making financial corrections the managing authorities shall apply the categories of irregularities and the minimum and maximum values of the percentage indicators defined herein and in the act under Article 70, paragraph 2;

5. (new, SG No. 43/2016) the draft guidelines and/or another document setting out the conditions for application and the conditions for implementation of the approved projects, before submitting them for approval, shall be agreed to comply with the rules applicable to State aids under Article 26, paragraph 3.

§ 6. Regional inspectorates of education, state and municipal kindergartens, schools and auxiliary units under the Public Education Act and state higher education institutions and scientific organisations under the Higher Education Act may participate in the technical and/or financial implementation, including to make expenditure on projects with the specific beneficiary – the Ministry of Education and Science funded under the Operational Programme "Science and Education for Smart Growth" 2014 – 2020 and the Operational Programme "Regions in Growth" 2014 – 2020, where this is provided for in the methodology and criteria used for the selection of operations, subject to the rules for avoidance of double funding and eligibility of expenditure.

§ 7. (1) This Act provides for measures for the application of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 March 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006.

(2) The provisions of this Act shall apply in compliance with the requirements of delegated acts and implementing acts adopted by the European Commission under Regulation (EU) No. 1303/2013.

TRANSITIONAL AND FINAL PROVISIONS

§ 8. (1) Within 6 months of the entry into force of this Act the Council of Ministers shall adopt or adapt in accordance with it the legal acts for its implementation.

(2) (Supplemented, SG No. 43/2016) The legal acts adopted by the Council of Ministers governing social relations that are subject to this Act, as well as the guidelines issued by the Minister of Finance on the payment of grants, verification and certification of expenditure, organisation of the accounting process, reimbursement and writing off of irregular expenditure and the completion of the operational programmes, shall remain in effect in respect of 2007 – 2013 programming period.

(3) The legal acts under paragraph 2 shall apply until the adoption of the acts under paragraph 1 and for the 2007 – 2013 programming period, insofar as they do not contravene this Act.

(4) Within one month from the entry into force of this Act, the deputy prime minister for EU funds and economic policy and the minister of finance shall approve the templates under Article 28, paragraph 2.

§ 9. The person managing the Fund of Funds shall also perform the functions of a holding fund for the instruments of financial engineering under the Operational Programme "Development of the Competitiveness of the Bulgarian Economy" and Operational Programme "Regional Development", co-financed by the European Regional Development Fund for the 2007 – 2013 programming period, after the expiry of the period of validity of the framework and financing agreements concluded between the Republic of Bulgaria and the European Investment Fund on the Jeremie initiative, and between the Republic of Bulgaria and the European Investment Bank on the Jessica initiative.

§ 10. (1) Pending and unfinished until the entry into force of this Act proceedings shall be completed in accordance with the hitherto effective procedure.

(2) (Amended, SG No. 74/2016) Legal cases initiated until the entry into force of this Act on complaints against statements for financial corrections of the head of the managing authority shall be completed in accordance with Article 27, paragraph 1 and paragraphs 5 – 7.

(3) (New, SG No. 74/2016, effective 25.12.2015) Civil legal proceedings initiated until the entry into force of this Act on statements of claim against statements for financial corrections of the head of the managing authority shall be completed in accordance with the hitherto existing procedure.

§ 11. The funds of the person managing the Fund of Funds available at the entry into force of this Act shall be transferred to an account at the Bulgarian National Bank.

§ 12. The Public Sector Internal Audit Act (promulgated, SG No. 27/2006; amended, SG Nos 64 and 102/2006, Nos 43, 69, 71 and 110/2008, Nos 42, 44, 78, 80, 82 and 99/2009, No. 54/2010, Nos 8 and 98/2011, No. 50/2012 and No. 15/2013) shall be amended and supplemented as follows:

1. In Article 41, items 1 and 2 shall be amended as follows:

"1. audits of the systems, audits of the operations and audits of the reports on all operational programmes co-financed by the European Regional Development Fund, the Cohesion Fund, the European Social Fund, the European Fisheries and Maritime Fund and the Fund for European Aid to the Most Deprived;

2. issuance of a declaration for completion of a programme co-financed by funds of the European Union."

2. In Article 42 the words "the certificate, the declaration respectively" shall be replaced by "the declaration".

3. In Article 43, the words "the structural funds, the Cohesion Fund, and on the pre-accession funds of the European Union" shall be replaced by "the European Regional Development Fund, the Cohesion Fund, the European Social Fund, the European Fisheries and Maritime Fund and the Fund for European Aid to the Most Deprived".

4. In Article 44, paragraph 1 shall be repealed.

5. In Article 48, paragraph 2, item 1, after the word "manuals" "on internal audit" shall be added.

This Act was adopted by the 43rd National Assembly on 10 December 2015 and was stamped with the official seal of the National Assembly.

FINAL PROVISIONS

to the Act Amending and Supplementing the Administrative Procedure Code
(SG No. 74/2016)

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§ 7. Paragraph 6, item 2 "b" shall enter into force on 25 December 2015.