



EUROPEAN COMMISSION
Employment, Social Affairs and Inclusion DG

Audit, Control
ESF Audits

Limited¹

Final Systems Audit² report for
Human Resources Development OP – Bulgaria, 2007BG051PO001
A-Rep N° 2013-1577

Authorit(y)(ies) subject to audit:	Managing Authority, Intermediate Body – Ministry of Education, Youth and Science, Intermediate Body – Employment Agency, Intermediate Body – Agency for Social Assistance
Country:	Bulgaria
Region:	n/a
Period subject to audit:	01/01/2012 – 31/12/2012
Dates of the audit field work:	18 – 20 March and 8 – 12 April 2013
Auditors:	Zdravka Fournadjieva, Franco Rinaudo, Christina Chaparro-Ramirez, Jose Ferreira

Report written on: 02/05/2014

Signature

Mark Schelfhout
Head of Unit

¹ Only for use within the European Union institutions, other offices and agencies established by virtue or on the basis of the Treaties, EU Member States and public administrations. Distribution on need to know basis. Not for publication.

² Systems audit also includes follow-up missions, re-performance audits and thematic missions

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY	3
1.1. Introduction	3
1.2. Common authorities subject to audit.....	3
1.3. Findings	3
1.3.1. Management & control findings.....	3
1.3.1. Financial findings	4
2. OPINION	5
3. THE ENGAGEMENT CONTEXT.....	6
3.1. Legal Basis	6
3.2. Audit scope.....	6
3.3. Audit objectives.....	7
3.4. Audit methodology.....	7
4. DETAILED FINDINGS AND RECOMMENDATIONS	9
4.1. Management and control findings:.....	9
4.2. Financial findings:.....	19
Annex 1	28

1. EXECUTIVE SUMMARY

1.1. Introduction

In accordance with its audit plan for 2013 and in compliance with Council Regulation (EC) No 1083/2006, Council Regulation (EC) No 1081/2006 and Commission Regulation (EC) No 1828/2006, DG EMPL³ conducted a systems audit on the Operational Programme Human Resources Development, CCI: 2007BG051PO001 (hereafter – OP-HRD). Between 18 March 2013 and 12 April 2013 (including an on-site audit of 8 provider's projects from 08/04/2013 to 12/04/2013), the ESF auditors examined the design, efficiency and effectiveness of the Management and Control Systems of OP-HRD from 01/01/2012 to 31/12/2012, and implemented in Bulgaria by the Managing Authority of the European Social Fund (MA), intermediate body Ministry of Education, Youth and Science (IB-MEYS), intermediate body Employment Agency (IB-EA) and intermediate body Agency for Social Assistance (IB-ASA) (hereafter jointly or severally - the auditee).

1.2. Common authorities subject to audit

None of the auditees, which were the subject of this audit, have responsibilities and/or functions common to other Structural Funds or the Cohesion Fund.

1.3. Findings

1.3.1. Management & control findings⁴

The management & control findings are summarised below:

Finding n°	Management & control issue	Comments from audited body MA	Conclusion EC auditors
1	Long time for processing of payment requests by training/service providers	Recommendation accepted and implemented.	Finding closed.
2	Weaknesses in public procurement aspect of management verification checks	Recommendation accepted and implemented.	Finding closed.

³ DG Employment, Social Affairs and Inclusion, Directorate H: Audit, Controls, Unit H2 & H3

⁴ Control system tested against Guidance note on a common methodology for the assessment of MCS in the MS – COCOF 08/0019/00

1.3.1. Financial findings

The financial findings are summarised as follows:

Finding n°	Compliance issue	Amount considered ineligible €	Comments MA	Conclusions EC auditors
3	Public procurement shortcoming	25% of historical and future expenditure under contract with [REDACTED]	<p>Partially accepted.</p> <p>The Beneficiary explains that Law on Public Procurement (ZOP) is not applicable as [REDACTED] is not a Contracting Authority. Instead CMD No. 55/2007 applies.</p> <p>For shortcomings in the selection of the service provider, 10% financial correction on the procedure is proposed taking into account the seriousness of the issues.</p>	<p>Finding and recommendation open.</p> <p>The Commission will follow-up and monitor subsequent correspondence with national authorities on the applicability of 'Contracting Authority' status to [REDACTED]</p> <p>The financial finding will be closed upon implementation of the correction of 10 % on the amount of the procedure.</p>

2. OPINION

Based on the audit results, the audit team expresses an opinion on the management and control systems (MCS) in place. The audit opinion at 12/04/2013 (date of the end of the audit on the spot) is:

Qualified with minor observations:

Based on the work carried out as indicated in chapter 3 of this audit report, the auditors of DG EMPL have obtained reasonable assurance that the management and control systems in place as at 12/04/2013 are functioning effectively and in compliance with the applicable regulations (Council Regulation (EC) No 1083/2006, Council Regulation (EC) No 1081/2006 and Commission Regulation (EC) No 1828/2006); except for the following **minor deficiencies** which affect key element(s) of the systems:

- Procedures in place implying long time for processing of payment requests by training/service providers;
- Weaknesses in horizontal aspects of management verification checks – public procurement, state aid

Limitation of scope: The audit team has not tested the compliance of the IT system UMIS with the applicable European regulations.

The level of assurance obtained from the effectiveness of the systems can be classified as:

Category 2. Works, but some improvements are needed.⁵

The assessment, per key requirement, is as follows:

Managing Authority/Intermediary Body	Works well	Works, but some improvements needed	Works partially. Substantive improvements are needed	Essentially does not work
Key requirement 1: Clear definition, allocation and separation of functions between and within the managing authority/ intermediate bodies		X		
Key requirement 2: Procedures for the selection of operations adequate	X			
Key requirement 3: Adequate information and an adequate strategy to provide guidance to beneficiaries	X			
Key requirement 4: Adequate management verifications		X		
Key requirement 5: Adequate audit trail	X			

⁵ Some deficiencies were found. These deficiencies have a moderate impact on the functioning of the key requirements/authorities/system. Recommendations have been formulated and should be implemented by the audited body.

Managing Authority/Intermediary Body	Works well	Works, but some improvements needed	Works partially. Substantive improvements are needed	Essentially does not work
Key requirement 6: Reliable accounting, monitoring and financial reporting system exist and in computerised form	n/a	n/a	n/a	n/a
Key requirement 7: Necessary preventive and corrective action where systemic errors are detected by the Audit Authority	X			

This systems audit represents the assessment and evaluation of the design of the management and control systems of OP-HRD at a specific point in time. Hence, this systems audit does not provide assurance for future periods in view of risks such as the weakening of the internal controls resulting from changes in conditions, or possible deterioration of the degree of compliance with legal requirements or procedures.

3. THE ENGAGEMENT CONTEXT

3.1. Legal Basis

The legal base for the audit is Articles 72(2) of Council Regulation (EC) No 1083/2006.

Article 72(2) "*Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective functioning of the management and control systems, which may include audits on operations included in operational programmes.*"

3.2. Audit scope

The audit was conducted on the cumulative expenditure declared to the European Commission up until 31 December 2012. However, the sample has been selected among the projects for which expenditure has been declared between 01/01/2012 and 31/12/2012.

The audit included review of the management and control systems of the authorities concerned (MA, IB-MEYS, IB-EA and IB-ASA) and an audit on 8 randomly selected projects drawn from the above mentioned expenditure declarations.

Scope limitation: Bulgaria uses a platform called UMIS for recording and reporting of transactions in relation to the Structural Funds. The reliability of accounting data and management information on the system has not been covered by the audit, thus the audit team expresses no conclusion in relation to Key Requirement 6.

3.3. Audit objectives

With reference to the MCS the audit objectives were to:

- Assess the effectiveness of the MCS relevant to each authority;
- Identify weaknesses in the MCS where a control or a series of controls did not reasonably prevent or detect risks with potential adverse impact on the MCS' objectives of providing reasonable assurance that:
 - the declarations of expenditure for the programme are reliable;
 - the objectives have been achieved; and
 - the European and national legislations have been complied with.

- Assess the adequacy of the controls in place on the auditee's activities;

Review whether the relationship between the OP-HRD's objectives and the internal controls implemented by the auditee ensure that the risks associated with the delivery of the OP-HRD's objectives, the policies and the achievement of its goals are effectively mitigated, focusing, inter alia, on the reasonable prevention, detection and correction of errors, irregularities and potential fraud.

3.4. Audit methodology

The audit was conducted in accordance with international standards for the professional practice of auditing and the European Social Fund Audit Manual. The audit team examined and evaluated, on a test basis, evidence relating to the design and operating effectiveness of the MCS of OP-HRD against the criteria established in the "Guidance note on a common methodology for the assessment of MCS in the Member States (2007-2013 programming period)" and other policies, manuals, procedures, directives and guidelines related to the programme's execution or implementation.

A letter, announcing this audit, was sent to the Member State on 11 February 2013 (Ref. Ares 171085).

The Member State provided electronically the requested documents using Circa – a portal of collaborative workspace for partners of the European Institutions.

The audit was planned in conformity with the audit planning requirements identified in the Audit Reference Manual for Structural Funds and the European Social Fund Audit Manual. A risk analysis was applied to identify the areas representing a high risk. On the basis of this risk analysis, the analysis of system descriptions, and other relevant information, the audit sample was determined.

The following operations were selected for desk review and on-the-spot visit:

UMIS, Project No.	Date	Claimed, BGN	Verified, BGN	Certified, BGN	Beneficiary
BG051PO001-6.1.07-0001-C0001-M0003	02/05/2012	109,042.94	103,617.59	103,617.59	General Labour Inspectorate
BG051PO001-2.1.11-0001-C0001-M0016	01/09/2011	1,274,640.00	856,395.00	856,395.00	Employment Agency
BG051PO001-7.0.01-0136-C0001-M0002	03.10.2012	35,920.02	35,920.02	35,920.02	
BG051PO001-5.2.07-0022-C0001-M0007	20/03/2012	56,291.05	61,777.91	61,777.91	
BG051PO001-4.2.05-0001-C0001-M0002	01/06/2012	3,518,012.97	2,108,018.24	2,106,805.98	Ministry of Education, Youth and Science
BG051PO001-1.2.01-0001-C0001-M0002	03/04/2012	307,893.89	199,569.93	199,569.93	Employment Agency
BG051PO001-1.1.03-0001-C0001-M0005	10/02/2012	2,598,764.90	2,570,277.00	2,570,277.00	Employment Agency
BG051PO001-4.1.03-0409-C0001-M0004	03/08/2012	31,607.01	21,256.13	21,256.13	
BG051PO001-2.1.14-0001-C0001-M0006	15/06/2012	1,253,350.00	1,205,450.00	1,205,450.00	Employment Agency
BG051PO001-3.1.06-0001-C0001-M0004	20/09/2012	8,749,126.54	5,973,496.44	5,973,496.44	Ministry of Education, Youth and Science
BG051PO001-1.1.06-0001-C0001-M0002	16/07/2012	432,840.55	388,988.34	388,988.34	Employment Agency
BG051PO001-5.2.07-0177-C0001-M0002	03.09.2011	25,541.32	25,997.27	25,997.27	
BG051PO001-2.1.03-0001-C0001-M0006	04/11/2011	65,617.68	61,441.92	61,441.92	

The value of this sample amounts to a total of BGN 13,610,993.53 (€ 6,959,190.49) of certified expenditure. This represents approximately 5.1% of the total expenditure declared (total BGN 266,087,869.25).

4. DETAILED FINDINGS AND RECOMMENDATIONS

4.1. Management and control findings:

The management and control findings are as follows:

Finding n°: 1	Key requirement 1 (Adequate procedures in place)
	Long time for processing of payment requests by training/service providers
Responsible body: MA/IBs	Volume of funding affected by the finding:
<p>Description of the finding:</p> <p>For the period under review, the national authorities implemented a separate set of procedures for administration and processing of ESF projects at different levels: the Managing Authority, the Intermediate Body, and a public beneficiary body. The latter has often in itself three additional management layers - national, regional, domestic.</p> <p>Moreover, the sets of procedures vary for individual calls for proposals (more than 100). However, the set of instructions at each management level covers identical procedures for processing of payment claims and carrying out management verification work. As a result identical procedures were being performed repetitively from lower to upper levels in the administration, with little or no added value.</p> <p>The above observation is valid especially where the beneficiary is a public beneficiary body of national scale, such as [REDACTED] of the IB - EA or [REDACTED] of the IB - [REDACTED]</p> <p>Adding layers of beneficiary's internal ESF controls to the ESF controls at IB and MA level, leads to re-performance of controls for a second or third time before certification of expenditure to the Commission, which is a resource and time consuming exercise. In addition, the dispersion of rules to various manuals or instructions increases the administrative burden of their application and increases the risk of errors as controls are also dispersed. The latter impacts negatively on the quality of the management verification process.</p> <p>It is acknowledged that the Managing Authority introduced in 2013 a uniform Manual of Procedures at MA/IB level.</p>	
<p>Risks: Existence of excessive number of procedures with the same objective – to ensure sufficient and adequate checks on ESF expenditure – increases the risk of administrative errors in their application by limited number of staff. In addition, the time for processing of payment claims by training/service providers can be unreasonably long until a transaction is filtered through the numerous controls. The cost of controls increases too.</p>	
<p>Recommendation:</p> <p>The Managing Authority should synchronize operational procedure manuals at MA/IB level. In addition, the beneficiaries can receive guidance on increasing of efficiency and cost effectiveness of ESF internal controls required at beneficiary level.</p>	

The Managing Authority should ensure that a sufficient number of meaningful controls remain in the system for certification and verification of ESF expenditure.

Deadline for implementation of recommendation: 3 months from receipt of this report

Importance of the recommendation: Medium⁶

Comments from the responsible body (auditee):

MA accepts the recommendation made. MA has identified the need to harmonise and streamline the OP HRD procedures which was duly reflected in the Programme Manual whereby the MA and IB control procedures have been rendered consistent.

1. The Manual for Management and Implementation of Operational Programme Human Resources Development 2007-2013 was approved by force of Order No. PĐ01-34/15.01.2013 of the head of MA - MLSP (amended by Order No. PĐ01-1497/26.06.2013) and is based on and in line with the provisions of the European and national legislation. The Manual outlines the internal rules and procedures for the management of Operational Programme Human Resources Development applied by the MA - MLSP and the three Intermediary Bodies. The full management cycle of the operational programme - from programming to assessing the impact of the financial operations - has been incorporated in the Manual. The Manual and the audit trails contained therein give reasonable grounds to be confident that all the information subject to processing and reporting is correct and that the OP HRD management and control system includes procedures which ensure the accuracy and reliability of the expenditures claimed under the programme and cover the administrative, financial, technical and physical aspects of the operations.

Attachment 1: Manual for Management and Implementation of Operational Programme Human Resources Development 2007-2013 (Order No. PĐ01-1497/26.06.2013 for amending it).

Also, specifically in terms of the operation of the Intermediate Body - Employment Agency (EA) in November 2012 the EA made and effected significant changes in the allocation of responsibilities and functions relating to implementing projects which the EA has been designated a Concrete Beneficiary (CB) for. The Employment Agency has identified the potential risks related to the submission of the first requests for payments by the [REDACTED] within EA and the following measures have been taken:

1. All internal rules, guidelines and instructions relating to the delegated functions of IB EA have been aligned with the General Procedure Manual.

⁶ See annex 1

2. The control system and the levels of checks carried out have been improved as follows:

At the level of Contracting Authority /CA/ - GD EFIP:

- the controls have been simplified and optimised – the obligation to carry out a second technical verification was abolished upon the Manual for Management and Implementation of Operational Programme Human Resources Development 2007-2013 entering into force.

- the requirements for all schemes with [REDACTED] have been harmonised.

A Guidance document was issued and approved by the head of the CA on 01.08.2012 concerning the records keeping practice in compiling a dossier for the requests for payment submitted by the [REDACTED]. The document aims to facilitate, harmonise and outline in detail the terms and procedure for keeping records and compiling a request for payment dossier for projects granted by an order of the Executive Director of the Employment Agency under Priority Axes 1 and 2 of Operational Programme Human Resources Development 2007 – 2013. It describes in detail the processes and documents necessary for submitting a request for advance payment, [REDACTED] and [REDACTED].

Attachment 2– Guidance documents concerning all schemes with [REDACTED] - 13.

- the timelines for carrying out verifications have been fully optimised and shortened - the verification rates and respectively the rate of ensuring limits by IB EA were accelerated considerably in 2012 and in the first half of 2013.

- The practice of partial verification of RIPs submitted has been introduced in order to reduce the time and provide the necessary financial resource for payments under the projects. As is illustrated in the table attached the CA carries out verification within the timelines provided for in the legislation (within 40 days) and even faster.

Attachment 3– Table containing information about the requests for payments by [REDACTED] and the letters to the CB about verifications carried out

- Ongoing control is exercised by the CA at regional level before the request for payment of the CB is submitted in order to speed up the verification process.

- carrying out of verification and payments made within the timelines laid down in the legislation.

At the level of [REDACTED]

- A unified Manual for the [REDACTED] in terms of direct grant schemes under Operational Programme Human Resources Development 2007 – 2013 designed to regulate the working processes and technology, minimise irregularities and harmonise the documentation under all the schemes with this concrete beneficiary.

- Based on the results achieved in covering certain types of costs (scholarship costs, travel expenses, employment provision costs) one level of control by the [REDACTED] has been eliminated. As of January 2013 the payment of the above costs to

the contractors under the different schemes is made at the level of Directorate Regional Employment Services (DRES). The concrete procedures are described in detail in Section VI „Procedure for payment of scholarships and reimbursement of travel expenses for unemployed and employed persons” and Section IX „Provision of employment and cost reimbursement for employers hiring unemployed persons following training” of the Manual for the Operation of CB GD ES under OP HRD.

This resulted in accelerated cost reimbursement to employers and representatives of the target groups, and also in the elimination of one control level in the CB - of three previously (Labour Offices Directorate (LOD), DRES, project team in the Central Administration of EA), the control levels have been reduced to 2 (LOD and DRES). The CB control is in line with the applicable Bulgarian and European legislation, the OP HRD project implementation rules and procedures and the "four eyes" principle.

The funds for scholarships and travel expenses are reimbursed to the persons in training by the last day of the month following the reporting period (Section VI „Procedure for payment of scholarships and reimbursement of travel expenses for voucher training for unemployed and employed persons” of the Manual).

The requests for payment for completed trainings submitted by the training providers (TPs) are received in the CA of EA by the 6th day of the month following the month when the documents were filed. The payment of funds for voucher trainings to the TPs is made within 60 days from the date on which the documents were filed with LOD. The timelines for document processing by [REDACTED] and CA of EA are laid down in Section VII. „Voucher Reimbursement” of the Manual.

Vouchers are reimbursed by the Concrete Beneficiary Employment Agency via the General Directorate Employment Services to the TPs providing voucher trainings to the amount of the voucher value for the respective training only upon the final completion of the training for the voucher holder. For the purpose the TP submits with the LOD on whose territory the training takes place a Request for Payment by the TP in BGN and with all the requisite data correctly filled out. The LOD is tasked with making sure that the approved template of a Request for Payment is submitted. Training providers that submit Request for Payment for one completed training course for holders of vouchers issued by more than one LOD should file the documentation with the LOD on whose territory the training takes place. The location where the training course started is taken into consideration. TPs which conduct remote trainings submit Requests for Payment with the LOD on whose territory the company is incorporated.

Measures were taken to ensure the timely processing of the TPs and employers' requests for payments by the MA of OP HRD. A working group was established for the purpose by force of Order No. PД01-413/18.05.2013 of the Deputy Minister of Labour and Social Policy comprised of representatives of the MA of OP HRD and IB-EA. The group is tasked with drafting guidelines and a methodology for simplifying the verification process by the Contracting Authority and optimising the project implementation activities under OP HRD in the EA. Within a short period of time the working group is expected to draft a new updated Manual for the Operation of the Concrete Beneficiary (CB) - [REDACTED] for direct grant schemes under OP HRD which will further optimise and accelerate the operation of the CB - GD ES.

The funds expended for the salaries of the unemployed hired under the schemes are reimbursed to the employers by the CB within 20 working days following the submission of correctly filled documents (Section IX. „Provision of employment and cost reimbursement for employers hiring unemployed persons” of the Manual).

Please account for the fact that the requests for payment falling within the scope of this audit had been verified before the above changes in the internal procedures and manuals for the operation of IB EA of OP HRD took effect.

- Payments to employers, TPs and final beneficiaries under different schemes are made within the legal timelines and the parallel processes of compiling the documentation for verification do not affect the timeline in which the final beneficiaries and contractors receive the funds due.

- The Concrete Beneficiary maintained the practice for the documentation of employers, TPs and final beneficiaries to be submitted at LOD level in order to facilitate access, make it easier for businesses and ensure direct contact with the people.

The following were put in place to support the employers, training providers and final beneficiaries:

- Manual for the Training Providers under Operational Programme Human Resources Development 2007 – 2013 pursuant to CMD No. № 251/2009 as updated in March 2013 after the Information System for Reporting on Completed Remote Trainings integrated into the Platform for E-submission of Documents by Training Providers under OP HRD was put in operation (ISTP);

- A procedure for the organisation of the activities and reporting of the training providers conducting remote or mixed voucher trainings under CMD No. 251/2009;

- Updated information and documentation for employers, TPs and final beneficiaries under PA 1 and PA 2 of OP HRD is published on the web site of the Employment Agency in the section devoted to the scheme and in the News, Relevant Information and What's New on the Site sections.

Relevant information on all schemes being implemented by IB EA under PA 1 and PA 2 of OP HRD is universally accessible and updated on a daily basis at the following URL: <http://www.az.government.bg/OPHR/default.asp> A letter was received (Ref.Ares (2013)2537437-28.06.2013) from Directorate General Employment, Social Affairs and Inclusion relating the Methodology drafted by MA of OP HRD for applying a uniform cost-accounting standard for the activities delegated by the state, Social Insurance Function, in reporting expenditures under direct grant schemes BG051PO001-5.2.13 Living in the Community and BG051PO001-5.2.12 Let's Not Abandon Any Child – Component 2 aimed at simplifying the reporting procedure for the above schemes, which letter did not contain additional questions by the Commission and such additional questions have not been posed to date as of the date the Methodology was submitted (more than two months). By applying simplified expenditures based on standard scales for a product unit the administrative burden for the beneficiaries will be reduced and the verification process will be simplified with the focus being on best attainment of the project objectives and results.

Analysis of the reply by the Commission:

The Managing Authority submitted evidence for implemented measures addressing the

issues described in the finding. These measures have effect on the expenditure after the audited period and include:

1- Elimination of the second technical verification step in the process of preparation of payment claims, introduced effectively with the Manual for Management and Implementation of OP Human Resources Development (2007BG051PO001), approved on 15/01/2013 and further modified with effect from 26/06/2013 [Annex 1 to the Member State reply]. Moreover, the Public Beneficiary Body Employment Services reduced the control levels from 3 to 2, by eliminating a central check at the head office in addition to a preceding check at regional level.

2 – Harmonisation of the requirements for ESF schemes and introduction of unified Manual for the Operation of the Public Beneficiary Body – General Directorate Employment Services coherent with the MA/IB guidance documents [Annex 2 to the MS reply]. It is considered good practice that the harmonised procedures include the record keeping and compilation of a request for payment dossier.

3 – Introduction of the practice of partial verification of interim payment requests, including on-going control at regional level by the Contracting Authority before submission of expenditure declaration by the Public Beneficiary Body Employment Agency.

In addition, e-platform was put into operation (ISTP) to facilitate the claim process and ensure maintenance of audit trail, and one scheme of the Employment Agency commenced application of standard scale of unit cost.

Finding and recommendation closed: The Commission acknowledges the numerous measures reported to have been implemented in the framework of the contradictory procedure. These actions address procedurally the issues raised in the finding. Assessment on the effectiveness of the implemented measures may subject to subsequent assessment in the future.

Finding n°: 2	Key requirement 4 (Procedures and checklists for verification)	
	Weaknesses in public procurement aspect of management verification checks	
Responsible body: MA/IBs		Volume of funding affected by the finding: €
<p>Description of the finding:</p> <p>The EC Audit team found that there is no substantial difference in the management control checklists at the various levels of the national public services, but rather (repetitive) controls of administrative, qualitative (technical) and horizontal checks.</p> <p>DG EMPL audit team observed that the controls are fragmented with the objective to ensure specialisation of the staff in financial, operational controls or checks on horizontal matters as public procurement, state aid, etc.</p> <p>In at least one example, the DG EMPL audit team found nevertheless that purchase of equipment following a fair and transparent process has not been checked [REDACTED]</p> <p>Besides, excessively fragmented checks create a long pattern of controls, which may delay processing of payment claims as at each step clarifications with ultimate beneficiaries may be outstanding for unlimited period of time. As a result the management verification process becomes cumbersome, with an open ended duration.</p> <p>The EC Audit team observed also that the use of software to facilitate management controls can be further improved. Example – Employment Agency has a tool to register presence of participants under the voucher schemes, but to verify the eligibility criterion of 80% participant's presence one has to do it manually.</p> <p>Risks: Acquisition of goods and services through fair, transparent and competitive process may not always be ensured. Secondly, open ended duration of management verification risks the timely implementation of activities under OP-HRD.</p> <p>Recommendation:</p> <p>The Managing Authority should review verification checklists and ensure that the principles of fair, transparent and competitive acquisition of goods and services apply for purchases through procurement as well as through grant process.</p> <p>The Managing Authority should ensure closure of outstanding queries arising in the management verification process after a reasonable period of time has elapsed.</p>		
Deadline for implementation of recommendation: 3 months from receipt of this report		Importance of the recommendation: Medium ⁷

⁷ See annex 1

Comments from the responsible body (auditee):

1. With regards to the finding "The audit team of the EC also noted that the use of software to facilitate management checks may be further improved. Example – the Employment Agency uses a tool for registering trainee attendance in the voucher trainings, but the check of the eligibility criterion referring to 80% attendance, is carried out manually."

MA accepts the recommendation made and is of the opinion that it has been partially implemented.

IB - Employment Agency has taken a series of actions aimed at developing new or improving the existing information systems in order to simplify the processes and management controls through applying appropriate software products.

- The verification checklists have been changed; they have been synchronized with MA MLSP in order to ensure compliance with the regulations and the Bulgarian legislation so as to safeguard the principles of fair, transparent and competitive delivery of goods and services via public procurement procedures.

- Improvement of the existing information systems

A public procurement procedure was conducted as per PPA for: maintenance and development of the information system "National Data Base for the Labour Market and the European Social Fund (NDB)" and its alignment with the compatibility and security requirements. A contract was concluded for the maintenance of the data base. A task force has been set up for the update of the system and improvement of its functionalities.

- Information System for Reporting Completed Remote Trainings was developed and put in operation as an integrated part of the Platform for E-Submission of Documents by the OP HRD Training Providers conducting remote and mixed trainings (ISTP).

The Training Providers submit using the system the reports on training hours conducted for remote trainings and the remote training hours under mixed trainings. By the 5th day of the month following the reporting month the provider enters a reporting file generated by the remote training platform of the provider in the format set by the Employment Agency into the ISTP. In this way the system automatically generates the information on the attendance hours of the trainees.

The platform is accessible at: <http://az.adminsoft.bg/dbt>

2. With regards to the findings relating to the beneficiary [REDACTED]
[REDACTED] "In at least one case the audit team of DG Employment, Social Affairs and Inclusion established that the purchase of equipment as a result of a fair and transparent process has not been checked" [REDACTED]
[REDACTED], the position of MA is as follows:

The value of the equipment is BGN12 621, which falls below the procurement threshold and thus the project team surveyed the market and selected a supplier. The checks by IB-MES refer to the compliance of the equipment supplied with the parameters and prices quoted in the contract. The above long-term tangible assets amount to BGN12

621 without VAT as per budget and the technical specifications of the equipment approved by the evaluation committee were laid down in the contract.

The beneficiary submitted a schedule of the planned public procurement procedures (letter No. 1103-69 from 12.07.2011) which was approved by IB-MES by force of a letter from 14.07.2011 which stated that the delivery was to be made pursuant to art. 12, para 2 of CMD No. 55/2007 in effect at that moment. (Amended - SG No. 68 from 2009 and in force from 25.08.2009, SG No. 93 from 2010). As per this decree the beneficiaries had the right not to request three bids when the budgeted value, including the own contribution of the beneficiary, without VAT is:

1. for construction works – up to BGN45 000 including;
2. for supplies and services – up to BGN15 000 including.

Paragraph 4 contains a clear provision that in the cases pursuant to para 2, item 2 the beneficiaries may not sign written contract and support the expenditures made by presenting payment receipts and invoices. Based on the above CA pronounced that the publicity and transparency rules have not been violated and the expenditure complies with the national and European legislation. In the verification process follow-up control was carried out and the equipment was checked.

Attachment 4:

1. approved public procurement schedule;
2. copy of technical report;
3. protocol for the selection of supplier;
4. letter No. 9104-522/2013.

The OP HRD Manual in force does not provide for ex-ante control for supplies below the thresholds whereby a procurement procedure is not required. These orders/contracts are checked during expense verification (Chapter 6, items 6.7 and 6.8 of the OP HRD Manual). The preventive mechanism is applied during the control over the procurement schedule where it is required to also specify the orders without procurement procedure in order to avoid separation of procurements and grouping costs based on similar procurement subject-matter.

As regards to closing objections please bear in mind the following: in the cases when the beneficiary does not agree with the motives of CA/MA for not verifying reported expenditures, the beneficiary has the right to submit an objection within 5 working days from receiving the letter specifying the amount of verified/not verified expenditures (Art. 13.3 of the general provisions of the contract). The beneficiary is free to object again by presenting new facts and circumstances proving the eligibility of the reported expenditures as supported by the respective documents. This approach was described in Letter No. 9104-522/2013 of the MA.

Analysis of the reply by the Commission:

The Commission accepts the explanations given and the follow-up actions suggested and implemented by the Bulgarian authorities.

The management verification checklists at IB level have been modified and aligned to the MA checklists in order to ensure adequate safeguard of the principles of fair, transparent and competitive delivery of goods and services through the application of public procurement procedures (General Procedure Manual of the Managing Authority, Annex 1). The effective synchronisation of the MA checklists with the detailed procedures of the IB is management responsibility.

In relation to the deadlines for processing of payment claims, the Commission acknowledges that the revised procedures address the issue as also evidence by Letter No. 9104-522/2013 of the MA (Annex 4).

Finding and recommendation closed. The Commission received sufficient evidence for introduction of revised management verification procedures by the Intermediate Bodies aligning to the guidance of the Managing Authority.

In addition, it is acknowledged that Intermediate Body Employment Agency made investment in IT reporting under the voucher scheme 2.1.14 ('I can do more') in order to automate the reporting of attendance hours of the trainees. Investments at national level aiming to simplify the ESF management and reporting are seen as a positive, good practice.

4.2. Financial findings:

The financial findings are as follows:

Finding n°: 3 Public procurement shortcoming	Final beneficiary: [REDACTED]
	Project number: BG051PO001-2.1.03
Amount audited: € 44,994.00 Ineligible expenditure: €11,248.50 and 25%	
<p>Description of the finding:</p> <p>During the audit, the audit team identified that invoice No. 222 of 01/09/2010 for EUR 44,994.00, represented an advance payment under a contract for [REDACTED]. The issuer of the invoice is [REDACTED]. Several facts are to be reported:</p> <ul style="list-style-type: none">- there is no evidence to support the publication of the tender in accordance with the Law on Public Procurement (ZOP), but only indirect evidence of publication on the web-site of the beneficiary;- there is no evidence of the evaluation of bidders according to the economically most advantageous criteria; <p>Accordingly, the audit team considers that the procurement process is not in line with the legal requirements and that, as a result, the expenditure cannot be accepted.</p>	
<p>Recommendation:</p> <p>According to the COCOF note for financial corrections (COCOF 07/0037/03-EN) for awarding a contract where advertising requirements were met to some extent, and for applying unlawful selection, we suggest a 25% correction of the value of the contract.</p>	
Deadline for implementation of recommendation: 3 months from the receipt of this report	Importance of the recommendation: Medium
<p>Comments from the responsible body (auditee):</p> <p>With regards to the findings of the audit team MA hereby submits the following explanations:</p> <p>The Public Procurement Act (PPA) is the legislation wherein the provisions of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have been transposed.</p> <p>By force of a letter Ref. No. 91 4J/0006 from 17.02.2011 the Contracting Authority has sent to all social partners the opinion of the Public Procurement Agency and a declaration template which the representatives of the respective organisations can use to declare their status. In the declaration submitted by [REDACTED] it is specified that it is a private benefit organisation which is why [REDACTED] applied contract award procedures as per the CMD</p>	

Attachment 5 – Correspondence with the CB; declaration.

The detailed analysis of the [REDACTED] status further proves that the organisation is not a contracting authority pursuant to the Public Procurement Act (PPA) which is why the selection of a supplier does not have to comply with the PPA. In order for a legal person to be deemed a contracting authority as per PPA it has to be a “body governed by public law”. According to the definitions laid down in §21 of the Additional Provisions of PPA a body governed by public law is a legal person, which is independent from its trade or production nature and is established with the purpose of promoting public interests and which meets at least one of the following conditions:

- more than half of its incomes for the precedent budget year are financed by the state budget, by the budgets of the state public insurance or the National Health Insurance Fund, by the municipal budgets or by a contracting authority under art. 7, item 1 or 3;
- more than half of the members of its managing or control body are determined by the contracting authority under art. 7, item 1 or 3;
- it is subject to managerial control on behalf of a contracting authority under art. 7, item 1 or 3;

The above definition lays down a mandatory requirement for the legal entity to be established with the purpose of promoting the public interest and to meet one of the three conditions above in order to be deemed a body governed by public law.

In its practice the European Court of Justice (Judgement C-283/00) rules that “these are generally needs which are satisfied otherwise than by the supply of goods and services in the marketplace and which, for reasons associated with the general interest, the State chooses to provide itself or over which it wishes to retain a decisive influence”. This definition has been transposed from the similar provision of the Directive and lays down a requirement for the body governed by public law to cumulatively meet the following conditions (Item 21 of Judgement of the Court C-44/96 of UEC):

1. to be established for the purpose of meeting needs in the general interest,
2. to be an autonomous legal person regardless of trade or production nature and
3. to meet at least one of the three conditions laid down in item 21 „a-c” PPA and item 9 „c” of the Directive definitions.

The purpose should be expressly stated as meeting the needs of a definite or definable group of subjects, different from the ones owning the organisation's capital.

Regarding the condition under item 1 of this statement it should be noted that in its activities [REDACTED] represents and protects the labour, social and union rights and interests only of its members – trade union members, workers and employees and in this respect the organisation operates exclusively to promote private benefit. Moreover, the organisation has not specified in its Articles of Association that it will carry out activities to meet needs in the general interest and is not entered into the Central Register of Not-for-Profit Organisations in Public Benefit of the Ministry of Justice (www.justice.government.bg/41/ - item V search). There is only one exception laid

down in Art. 14a, para 2 and 3 of the Public Procurement Act for a body governed by private law to be obliged to apply the legal provisions and it relates to awarding construction contracts when the financing authority is a contracting authority pursuant to art. 7, para 1-4. No other legal option is laid down in the Public Procurement Act for private legal organisations less than 50% of whose budget is financed by public funds.

At the same time the law safeguards the right of association granted to the citizens which makes it possible for other legal entities to perform trade union activities thus ensuring a competitive environment for this type of social relations.

In its activity related to protecting the rights and interests of the workers and employees [REDACTED] focuses exclusively on labour relations. According to the current Bulgarian legislation the relations between the worker/employee and employer are deemed as equal and are regulated as private relations hence a state monopoly or significant involvement of the state in these matters is ruled out.

Please also note the fact that the requirement in the Directive refers to the purpose, and not to the activity. The activity under the project in question is however also not aimed at meeting a need in the general interest.

As evident in the definition as per item 3 of the Directive, it refers to the body being financed and not individual activities of the body being financed by the state. In this case and as argument for the opposite, a conclusion can be made that the public financing of any part of the activity when it does not amount to more than a half of the total financial flow of the organisation, does not constitute public financing.

Source of financing	2010 in BGN	2011 in BGN	2012 in BGN
Total own revenues	5 342 000.00	6 354 000.00	5 381 000.00
Total amount of public funds received [REDACTED]s (revenues from public sources are only from direct grants)	1 893 561.20	1 796 526.20	2 564 110.17
Total	7 235 561.20	8 150 556.20	7 945 110.17
Ratio of public funds to [REDACTED] total revenues for the respective year	26.17 %	22.04 %	32.27 %

The following documents are attached as evidence – Attachment 6.1; 6.2 and 6.3:

1. Profit and loss statement for non-profit and for-profit activities for 2011;
2. Profit and loss statement for non-profit and for-profit activities for 2012;
3. Information about the financial and economic situation of [REDACTED]
4. Direct Grant Contract.

According to the [REDACTED] Articles of Association the members of the governing body of the association are not defined as contracting authorities as per art.7, items 1 or 3 of PPA.

The organisation itself is not under the managerial control of contracting authorities as per art. 7, items 1 or 3 of PPA which provide for one entity to have dominating influence over another entity, which is not the case with [REDACTED]

Regarding the finding:

- „there is no evidence to support the publication of the tender in accordance with the Law on Public Procurement (ZOP), but only indirect evidence of publication on the web-site of the beneficiary”

The [REDACTED]
[REDACTED] is not regulated by the Public Procurement Act (PPA). According to art. 7 of PPA contracting authorities of public procurement are:

1. the bodies of state power, the President of the Republic of Bulgaria, the Bulgarian National

Bank, as well as other state institutions, established by a normative act;

2. the diplomatic and consular representations of the Republic of Bulgaria abroad, as well as the permanent representations of the Republic of Bulgaria to the international organisations;

3. the public organisations;

4. the associations of subjects under item 1 or 3;

5. the public enterprises and their associations, where they carry out one or several of the activities under art. 7a – 7e;

6. the traders or other persons, who are not public enterprises, when on the grounds of special or exclusive rights they carry out one or several of activities under art. 7a – 7e.

[REDACTED] does not fall into any of the above categories which is why it is not obliged to apply the provisions of PPA in selecting suppliers and accordingly in publishing the tender notices.

Pursuant to art. 1, para 1 of CMD No. 55/2007 in selecting contractors under the project [REDACTED] is obliged to comply with the provisions of CMD No. 55/2007 which is applied

to beneficiaries that are not contracting authorities as per PPA.

In this respect the Concrete Beneficiary should comply with art.14. Para 2 of CMD No. 55/2007 which at the moment of the tender provided for "publication of the tender notice in at least one national daily. The beneficiary shall send the notice for publication on the web sites of the Executive Agency of the PHARE Programme of the EU, the Managing Authority of the Operational Programme or the Executive Agency of the Financial Mechanism of the European Economic Area." It should be noted that CMD No.55/2007 meets the minimal requirements of the EC Communication from 2006 (2006/C 179/02). As is evident from the above the contract falls within the scope of this particular Communication, i.e. not subject to the Directives as the subject is not deemed a public contracting authority as per PPA or the Directive. In this respect we are confident that the beneficiary complied with the rules and principles deriving from the primary EU legislation as the Communication from 2006 (2006/C 179/02) provides for.

During the ongoing control carried out by the Contracting Authority (CA) it was established that the publication of a tender notice for selecting a contractor for the conduction of trainings and forums was indeed published in a national daily on 17.04.2010. The notice was also published on the web site of the CA on 19.04.2010 in compliance with the obligation as per the second sentence of art. 14, para 2 of CMD No. 55/2007. At the same time, the notice and all attachments thereto were published at the beneficiary's initiative on the [REDACTED] web site, on the web page of the Security through Law, Flexibility through Collective Employment Contracts Project, and also on the Internet portal Labour, Insurance and Social Rights.

According to the above CA has established that no violation of the tender publication rules was in place. The beneficiary created the necessary conditions to ensure compliance with the publicity and transparency principles and to guarantee free and fair competition in selecting project contractors as evidenced by the fact that the trainings and forum contractor is a foreign entity. This finding does not necessitate financial corrections.

With respect to the explanations provided we hereby attach the following documentation: screenshots of the web sites where the tender notice and attachments thereto was published. .

In addition, as proposed by MLSP CMD No. 69/2013 was amended (thus repealing CMD No. 55/2007) by force of Decree No. 230 from 8 October 2013, which lays down a requirement for the beneficiaries to publish in the Official Journal of the EU pursuant to art. 11, para 6 (new) – SG NO. 89/11.10.2013.

Attachment 6 to Finding 1 on [REDACTED] (screenshots of the web sites where the notice was published):

- Screenshots of the EA web site (3);
- Screenshot of the web page of the Security through Law, Flexibility through Collective Employment Contracts Project;
- Screenshot of the [REDACTED] web site;
- Screenshot of the information portal Collective Labour Contracts – Information and Consultation;

- Screenshot of the information portal Labour, Insurance and Social Rights;
- Screenshot of the social portal Labour;
- Log of the documentation received;
- Guidance to the bidders;
- Invitation to EA for opening the bids.

With regards to the finding:

- there is no evidence of the evaluation of bidders according to the economically most advantageous criteria;

According to art.17, para 1, item 7 of CMD No. 55/2007 the tender documentation should contain information about: the selected evaluation criteria, the relative weight of the criteria and the methodology for complex evaluation of the bid in the case when the economically most advantageous criterion is set. In Section IV.2) Evaluation Criteria of the Explanatory Statement (http://knsb-bg.org/index.php?option=com_content&view=article&id=2787%3A2013-06-27-15-39-59&catid=14&Itemid=31&lang=bg), the beneficiary has specified “economically most advantageous bid” as the criterion with indicator 1. relative weight of the proposed price being 30% and indicator 2. technical capacity to perform the action being 70%.

The beneficiary has included a methodology for complex evaluation of the bid which outlines in detail the mechanism according to which the two indicators are evaluated.

By force of an Order No. BG051PO001-2.1.03-BK-4 from 03.05.2010 the Project Leader appointed a Committee for evaluating the bids and selecting a contractor pursuant to art. 20 of CMD No.55/2007. The Committee was comprised of one chairperson, one secretary (without voting rights) and two members. CVs of the committee members were submitted and the composition and decisions of the committee were coordinated with the CA.

In compliance with the above order the committee started work at 11.00 am on 03.05.2010 in the [REDACTED]. The opening of the bids was attended by representatives of the bidders and CA officials and after announcing the names of the applicants, all committee members signed a declaration of impartiality and confidentiality.

A protocol was drafted for the overall operation of the committee where the evaluation stages, the manner in which each bidder's score was formed and the final ranking of the bidders were outlined. The individual evaluation sheets for the bids were attached to the protocol. Each committee member filled out one such sheet per applicant. It is evident from the sheets that in the evaluation process the committee members adhered strictly to the indicators, sub-indicators and evaluation guidelines in the Methodology for complex evaluation and a paper trail for the formation of the score of each applicant was left.

Based on the evaluation [REDACTED] was ranked first. This applicant received the highest score as per the evaluation methodology – 95 points and at the same time this was the applicant that submitted the lowest price offer. The other applicant [REDACTED] was ranked second with 92.3 points.

The Committee proposed to the project beneficiary that the contract be awarded to the applicant ranked first - [REDACTED] The Protocol was signed by the committee members.

Pursuant to the above protocol the beneficiary issued Decision No. BG051PO001-2.1.03-BK-5/1 from 06.05.2010 concerning the ranking of the applicants and the selection of contractor.

The protocol from the work of the evaluation committee and all attachments thereto were consulted with CA by way of letter Ref. No. 92/0380 from 13.05.2010. In this respect the "economically most advantageous" criterion was applied in accordance with the initial notice.

Attachment 7:

- Bid evaluation checklist – 6;
- Declaration of impartiality and confidentiality – 4;
- Letter by [REDACTED] notifying about bid opening session – Our Ref. No.92/0364 from 30.04.2010;
- Methodology for Complex Bid Evaluation;
- Letter by EA approving the evaluation – Our Ref. No. 92/0380 from 13.05.2010;
- Protocol for the work of the committee;
- Decision on the ranking of the applicants and selection of contractor – No. BG 051PO001-2.1.03 –BK-5/1 from 06.05.2010;
- Order for the appointment of the committee - No BG 051PO001-2.1.03 –BK-4 from 03.05.2010.

With regards to the audit carried out MA conducted additional checks of the CB contractor selection documentation kept with CA – EA and concluded the following:

1. No selection criteria were specified in the Explanatory Statement – the requirements for the experts and their qualification were only stated in the Terms of Reference.
2. Cumulative requirements to the expert team were set which limit the circle of potential applicants: 10 years of professional experience of the Team Leader in organising and conducting trainings for acquiring key and professional competences and/or implementation of publicity measures instead of event organisation.
3. The contracting entity included a requirement for transportation to be provided to the trainees, but did not require licenses or permits for transport services to be presented proving the right of the contractor to engage in such activity as per the Tourism Act.
4. In terms of some of the positions in the Terms of Reference the contracting entity did not specify if the contractor was required to provide a venue for the event, materials for the trainees, equipment, transport, accommodation.

Based on the above findings and according to the Methodology for Determining Financial Corrections under CMD No.134/2010 to be applied to expenditures relating to the implementation of operational programmes co-financed by the Structural Funds of the EU, the European Agricultural Fund for Rural Development and the European Fisheries Fund the beneficiary is not subject to the provisions of attachment 3 thereto regarding the procedures under Decree No. 69 of the Council of Ministers from 2013, Decree No. 55 of the Council of Ministers from 2007 (promulgated SG No. 24 from 2007; repealed SG No. 27 from 2013) and the Ordinance on Awarding Small Contracts adopted by force of Decree No. 249 of the Council of Ministers from 2004 (promulgated SG No. 84 from 2004; repealed SG No. 17 from 2012) (Attachment 8 Methodology) and taking into account the above irregularities we are of the opinion that the maximum amount of the financial correction is 10% (item 3 Application of unlawful contract award criteria, (COCOF 07/0037/03, irregularity No. 23). MA will propose to the Contracting Authority to impose 10% financial correction on the procedure.

We consider that regardless the identified omissions there is no breach of the principles laid down in Art. 1, para. 4 of CMD 44/2007 for transparency and equality, free and loyal competition. MA will suggest applying 10% financial correction.

Analysis of the reply by the Commission:

The Commission accepts the explanations given and the follow-up actions suggested by the Bulgarian authorities.

We take note of the additional legal clarifications and the additional supporting evidence on the application of the Law on Public Procurement (ZOP) to the Beneficiary, provided by the Bulgarian authorities.

In consideration of this additional information, the auditor's view is that the determination of the status of the Confederation of Trade Unions in Bulgaria in respect of the procurement legislation deserves deeper analysis.

██████████ is a recognized by the Bulgarian law organisation representing workers and employees at national level (Decision of the Council of Ministers No. 825/14.12.2007). The trade union is also part of the tri-partite social dialogue between the Bulgarian government and the nationally recognized organisations of employers and the trade unions (status awarded by virtue of art.36 of the Labour Code of Bulgaria and implemented in accordance with the rules of procedure adopted pursuant to art.3 of the Labour Code). In its capacity of a nationally representative social partner, ██████████ is considered a direct recipient of approximately EUR 5 million under OP 'Human Resources Development' in Bulgaria for the period 2007-2013.

The status of ██████████ as a direct grant recipient under the budget line BG051PO001-2.1.03 is stipulated also in the procedure of the ESF Managing Authority outlining the requirements for this budget direct grant allocation – the procedure under which ██████████ is a nominated beneficiary. Within the context and the rationale for this award procedure and based on its role/status of a nationally-representative social partner, ██████████ activities are considered to be of public benefit nature.

On the other side, the comments in the report display that ██████████ for the purpose of the implementation of the project and on the basis of a self-declaration, claims to operate as a private benefit organisation, including in its capacity of a beneficiary under the audited ESF project. The trade union also states that less than 50% of the overall proceeds of ██████████ annually originate from private sources. Considering separately the preceding two statements, the result is that the trade union appears to be in a *de facto* situation not

to be obliged to apply the Law on Public Procurement for the service object of the audited invoice No. 222/01.09.2010 (transport, accommodation of training participants organisation of seminars), even if the relating contract with [REDACTED] exceeds the thresholds of the Directive 2004/18/EC. This is reasoned on non-applicability of Contracting Authority status to [REDACTED] pursuant to the Bulgarian Law on Public Procurement.

As a result, [REDACTED] utilises a significant amount of money from the EU budget, without any obligation to adhere to public procurement law. In the example of the contract reviewed by the EC audit team, this practice lead to preference being given by [REDACTED] to a company without licence/permit for transportation of people over a licenced tour-operator. The above situation is considered as a breach of the principle of sound financial management. Moreover, for the operation as a whole, neither grant, nor public procurement selection procedure has been carried out in respect of the operation of [REDACTED] as the trade union is a nominated beneficiary, thus benefiting from a direct grant award. The audit team considers that this leads to a situation whereby funds are implemented in a non-transparent manner.

[REDACTED] is not the only organisation subject to similar legal challenges in respect of the applicability of Contract Authority status pursuant to Directive 2004/18/EC. In the period 2007-2013 the Monitoring Committee of HRD-OP determined eight social partners as direct grant recipients. Therefore the situation with [REDACTED] has larger repercussions on the management of ESF funds in Bulgaria. In this regard the EC audit team recommends the national authorities to clarify the legal framework (acts relating to implementation of public procurement directives or/and rules regulating the implementation of EU funded projects) and ensure that organisations receiving direct grants in their capacity of a nationally recognized social partners apply the Law on Public Procurement as a Contracting Authority. The recommendation is valid also for the future, programming period 2014-2020. In the interim, the ESF eligibility rules should be modified without delay, requiring the need to have proper public procurement procedures in place for beneficiaries of similar nature.

In relation to the invoice No. 222 of 01/09/2010 under the contract between the Beneficiary and [REDACTED] on the basis of the additional information on the selection of the service provider (Attachment 7) the Commission accepts that a correction of 10% on the amount of the procedure is appropriate, taking into account the seriousness of the issues with the selection and contract award criteria for the evaluation of the candidates to perform service to [REDACTED]

Finding and recommendation open. The Commission will consider the financial finding to be closed when it would receive a proof of recovery of the irregularity.

In addition, the audit team will follow-up on the applicability of the 'Contracting Authority' status to [REDACTED] for public procurement procedures when the trade union is a EU grant recipient based on its status of a nationally-representative social partner. The recommendation will be closed upon receipt of appropriate evidence demonstrating that social partners nominated as direct grant recipients in the future (including period 2014-2020) will be obliged to adhere to the Law on Public Procurement.

Annex 1

Importance of the recommendations

High: The key controls in the management and control systems are absent or are not complied with on a regular basis. There is a fundamental weakness or deficiency in control which involves a substantial risk of error, irregularity or fraud. There is a substantial risk of failure to achieve those objectives of the management and control systems which concern the reliability of financial reporting for the programme, the effectiveness and efficiency of the operations and activities and compliance with national and community regulations. Such risks could have an adverse impact on the programme's financial report. Urgent remedial action should be taken. The recommendation should normally be implemented one month at the latest after receipt of the final report in the Member State's language.

Medium: There is a weakness or deficiency in control which, although not fundamental, exposes individual areas of the existing management and control systems to a less immediate level of risk of error, irregularity or fraud. Such a risk could have an impact on the effectiveness of the management and control systems and on its operational objectives and should be of concern to the auditee's management. Prompt remedial action should be taken.

Low: There is a weakness or deficiency in control which individually has no major impact but where improved controls would benefit the implementation of the programme and/or allow the auditee to achieve greater effectiveness and/or efficiency. There is a possibility of undesirable effects at the process level, which, combined with other weaknesses, could give cause for concern. Specific remedial action should be taken.