



**EUROPEAN COMMISSION**  
Employment, Social Affairs and Equal Opportunities DG  
Audit, Controls  
ESF Audits

**Final Systems Audit<sup>1</sup> report for**  
**2007BG051PO002 –Administrative Capacity**  
**A-Rep N° <2010 - 1165><sup>2</sup>**

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Authorities subject to audit:

Managing Authority (Ministry of Finance, Directorate Managing Authority OP AC)

Certifying Authority (National Fund, Ministry of Finance)

Country: Bulgaria

Region: Sofia

Period subject to audit: 1/1/2007 until 31/12/2009

Dates of the audit field work: 19-24 – September 2010 (system audit)

4-7 – October 2010 (projects audit)

Closing Meeting – 8 October 2010

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Report written on: 20 November 2010

Signature

Mark Schelfhout  
Head of Unit

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<sup>1</sup> Systems audit also includes follow-up missions and thematic missions

<sup>2</sup> This number should be mentioned in all correspondence relating to this audit

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## **1. EXECUTIVE SUMMARY**

### **1.1. Introduction**

In accordance with its work plan for 2010 and in the context of compliance with Council Regulation (EC) No 1083/2006, Council Regulation (EC) No 1081/2006 and Commission Regulation (EC) No 1828/2006, Unit I/4, DG EMPL<sup>3</sup> conducted a systems audit on the Operational Programme 2007BG051PO002 (hereafter – OP Administrative Capacity). Between 19 September 2010 and 24 September 2010 (including an on-site audit of 9 operations between 4 – 8 October 2010), the ESF auditors examined the design, efficiency and effectiveness of the MCS existing for the duration of OP Administrative Capacity from 1 January 2007 to 31 December 2009 and implemented by the Ministry of Finance (former Ministry of State Administration and Administrative Reform (MA) and National Fund Ministry of Finance (CA) of Bulgaria (hereafter - the auditees). An exit meeting with the authorities concerned was held on 8 October 2010.

### **1.2. Common authorities subject to audit**

The following auditees, which were the subject of this audit, have responsibilities and/or functions common to other Structural Funds or the Cohesion Fund:

<u>Authority/Body</u>	<u>Responsibility/Function</u>	<u>Funds</u>
National Fund, Ministry of Finance of the Bulgaria (CA)	Certification of the expenditure to the EC	ERDF, CF, ESF

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<sup>3</sup> DG Employment, Social Affairs and Equal Opportunities, Directorate I: Audit, Controls, Evaluation, Unit I/4: ESF Audits

### 1.3. Findings

#### 1.3.1. Management control<sup>4</sup>

The management control findings are summarised below:

Finding n°	Management control issue	Reply MA/IB/CA	Conclusion EC auditors
1	Insufficient evaluation criteria for adequately assessing the candidates' operational, administrative and financial capacities.	Accepted	Finding confirmed
2	Insufficient evidence in relation to justification of hourly rates charged to projects under civil contracts Lack of evidence of the activities carried out.	Accepted	Finding confirmed
3	Lack of appropriate arrangements concerning treatment of Indirect Costs according to art 11/3b of 1081/2006.	Accepted	Finding confirmed
4	The checklists for management verifications and on the spot visits in the framework of art 13 of Commission Regulation 1828/2006 are not adequate enough. On the spot visits are made too late, financial checks and physical checks are not done simultaneously.	Accepted	Finding confirmed
5	Lack of audit trail concerning reconciliation of real costs incurred for projects in the framework of staff costs. Using arbitrarily set fees without adequate reconciliation with real time worked for project.	Partially accepted	Finding confirmed
6	Majority of payments are cash. For several projects the accountancy of the operation was not available to be checked.	Accepted	Finding confirmed
7	Insufficient follow up of the findings from system audits carried out by the	Accepted	Finding confirmed

<sup>4</sup> Control system tested against designed control model (Guidance note on the evaluation of MCS)

	Audit Authority.		
8	Insufficient CA's work to mitigate the risks resulting from weaknesses in MA's MCS (high reliance on MA work). Insufficient work of CA regarding its responsibilities art 61.3 of 1083/2006.	Accepted	Finding confirmed

### 1.3.2. Findings concerning specific matters

Finding n°	Findings concerning specific matters	Reply MA/IB/CA	Conclusion EC auditors
9-10.	Publicity shortcomings. The period of eligibility of expenditure is not clear to beneficiaries. It allows retrospective expenditure to be claimed after the start of project. Appeal rights are not defined.	Accepted	Finding confirmed
11	Insufficient documentation during tender evaluation process.	Accepted	Finding confirmed

### 1.3.3. Financial findings

The financial findings are summarised as follows:

Finding n°	Compliance issue	Amount considered ineligible €	Comments MA/CA	Conclusions EC auditors
12-16	Ineligible expenditure  (* under condition that the reply from MA is not satisfactory)	168 567.85*  84 350.24*  38 956.65  10% of contract N°31.1/17.04/2008  10% of contract N°147/15.12.2008	12,13 and 15- Partially  14- Accepted  16 – Not accepted	12-16 Finding confirmed  15- Finding not confirmed

## 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 is:

### Qualified

The ESF auditors reviewed the systems in place and the selected projects in accordance with the audit scope and objectives set out in sections 4.2 and 4.3 of this audit report.

In our opinion, based on the audit methodology (section 4.4) and work performed (section 5), we have reasonable assurance that the management and control systems in place as at 08.10.2010 are functioning effectively and in compliance with the applicable regulations (Council Regulation (EC) No 1086/2006, Council Regulation (EC) No 1081/2006 and Commission Regulation (EC) No 1828/2006); except, however, for the following material deficiencies which affect key elements of the systems:

- Key requirement 2 : Adequate procedures for the selection of operations
- Key requirement 3: Adequate information and strategy to provide guidance to beneficiaries
- Key requirement 4: Adequate management verifications
- Key requirement 5: Audit Trail
- Key requirement 7- Preventive and corrective actions following Audit Authority reports.
- Key requirement 10: Adequate arrangements for the certification of expenditure to be reliable and soundly based

At the end of the audit field work, the level of assurance obtained from the effectiveness of the systems can be classified as: **Category 3: Works partially; substantial improvements are needed.**<sup>5</sup>

This systems audit represents the assessment and evaluation of the design of the OP Administrative Capacity MCS 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.

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<sup>5</sup> Deficiencies were found. These deficiencies have led or may lead to irregularities. The impact on the effective functioning of the key requirement/authorities/system is significant. Recommendations and/or an action plan have been formulated and should be implemented by the audited body.

Summary of assessment per key requirement:

Following these facts, we suggest the assessment here below:

<b>Managing authority/intermediate body/intermediary body level 2</b>	
Key requirement 1 (definition, allocation and separation of functions)	Green
Key requirement 2 (selection procedures)	Orange
Key requirement 3 (information and guidance for beneficiaries)	Orange
Key requirement 4 (management verifications)	Orange
Key requirement 5 (audit trail)	Yellow
Key requirement 6 (computerised reporting systems)	Green
Key requirement 7 (preventive and corrective actions)	Yellow
<b>Certifying authority</b>	
Key requirement 1 (definition, allocation and separation of functions)	Green
Key requirement 2 (audit trail and computerised system)	Green
Key requirement 3 (reliable and soundly based certifications)	Orange
Key requirement 4 (account of recoveries)	
<b>Overall assessment</b>	Orange

### 3. SUBSEQUENT EVENTS AND CONCLUSIONS

After the end of the audit field work and before the end of the contradictory procedure, the Bulgarian authorities sent an action plan addressing the issues raised in the exit meeting and other bilateral follow-ups. The Commission assessed this action plan and considered it useful to have some additional elements clarifying the position of the Managing Authority as well as some further corrective actions needed to remedy the shortcomings identified.

In the framework of the contradictory procedure, a meeting was held on the 14/07/2011. As a result of that meeting, the Bulgarian authorities sent a letter Ares (2011)784085 on the 18/07/2011 (N° 37-01-193) which contains further corrective actions agreed to be implemented.

Based on the mitigating actions taken by the Managing Authority and Certifying Authority, and based on the action plan suggested by the Managing Authority (see chapter 6: Subsequent events), the Commission auditors could in principle raise the level of assurance to:

#### **Category 2: Works, but some improvements are needed.<sup>6</sup>**

This level of assurance is based on information concerning the mitigating actions we received and analysed after the end of the audit field work. As such and also because this action plan is in the phase of implementation by the national authorities, no audit work to test its effectiveness could be performed yet. The level of assurance is therefore subject to the correct and timely implementation of the action plan by the national authorities and its effectiveness will be subject to a revision by the

<sup>6</sup> 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.



Commission after the end of its implementation. Hence, no legitimate expectation can be derived from this provisional and conditional level of assurance.

Following the analysis of the action plan, we suggest the re-assessment here below subject to the completion of the corrective actions which are being implemented and of the financial corrections.

Nevertheless, at this stage, we could suggest the below re-assessment based on the information on the corrective actions already completed.

<b>Managing authority/intermediate body/intermediary body level 2</b>	
Key requirement 1 (definition, allocation and separation of functions)	Green
Key requirement 2 (selection procedures)	Yellow
Key requirement 3 (information and guidance for beneficiaries)	Yellow
Key requirement 4 (management verifications)	Yellow
Key requirement 5 (audit trail)	Yellow
Key requirement 6 (computerised reporting systems)	Green
Key requirement 7 (preventive and corrective actions)	Green
<b>Certifying authority</b>	
Key requirement 1 (definition, allocation and separation of functions)	Green
Key requirement 2 (audit trail and computerised system)	Green
Key requirement 3 (reliable and soundly based certifications)	Yellow
Key requirement 4 (account of recoveries)	
<b>Overall assessment</b>	Yellow

## **4. THE ENGAGEMENT CONTEXT**

### **4.1. Legal Basis**

The legal basis for this audit are Articles 14(2)(a) and 72 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the Structural Funds.

### **4.2. Audit scope**

This audit covers expenditure declared up until 31 December 2009.

Using risk assessment, the audit aimed to assess the system implementation at two bodies, the Managing Authority and the Certifying Authority, as part of the system audit, and at beneficiaries as part of the on-the-spot checks (10 operations selected and 9 audited as described in section 4.4).

The AA was not in the scope of the audit engagement.

### **4.3. Audit objectives**

The audit objectives were to:

- Determine the degree of the effectiveness of the MCS relevant to each authority's activities;
- Identify weaknesses in the MCS where a control or a series of controls did not reasonably prevent or detect risks that could have had an 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
  - European and national legislation is complied with;
- Assess the adequacy of the internal controls in place on the auditee's activities; and
- Review whether the relationship between the OP Administrative Capacity's objectives and the internal controls implemented by the auditee ensures that the risks associated with delivery of the OP Administrative Capacity's objectives and policies and achievement of its goals are effectively mitigated, focusing, inter alia, on the reasonable prevention, detection and correction of errors, irregularities and presumptive fraud.

#### *4.3.1. Objectives related to the assessment of the MA*

The audit objectives were to assess whether there were:

Clear definition, allocation and separation of functions between and within the managing authority;

Adequate procedures for the selection of operations;

Adequate information and strategy to provide guidance to beneficiaries;

Adequate management verifications;

Adequate audit trail;

Reliable accounting, monitoring and financial reporting systems in computerised form;

The necessary preventive and corrective measures when systemic errors detected by the audit authority

Whether authorities' accounting records correspond with supporting documents held by the body/firm;

Whether the nature and timing of the relevant expenditure comply with Community provisions and correspond to the approved specifications of the operation and the work actually executed;

Whether the use or intended use of the operation is consistent with the use described in the application for Community co-financing;

Whether the Community financial contributions are within the applicable limits provided for in the applicable regulations and are paid to the final beneficiaries without any reduction and unjustifiable delay, if applicable;

Whether the appropriate national co-financing has in fact been made available;

Whether the body/firm has complied with Community rules and policies including on publicity, information, competition, award of public contracts, equality of opportunities, and protection of the environment.

#### **4.4. Audit methodology**

The audit was conducted in accordance with the general and specific standards for the professional practice of auditing, the Structural Funds Audit Manual, 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 Administrative Capacity's 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 OP Administrative Capacity's execution or implementation.

A letter ARES (2010)346265; announcing this audit was sent to the Member State on 17.06.2010.

The audit was planned in conformity with the audit planning requirements identified in the European Social Fund Audit Manual. A risk analysis was applied to identify the high-risk areas. On the basis of this risk analysis, the analysis of system descriptions, information received from the Member State and other relevant information, an agenda was drawn up and sent to the auditee.

A random sample of 10 projects was selected from the list of projects for which expenditure was declared. The result of this selection was:

Number project	Beneficiaries ( BG)	Names EN	Total Expenditure claimed (LV)
07-23-280	██████████ ██████████ ██████████	████████████████████	87,965.11
KB08-33-4	BCC	Supreme Judicial Council	767,495.54
K08-13-3	Министерски съвет	Council of Ministers	2,187,231.58
K07-22-1	МДААР - дирекция УЧРДА	MSAAR- directorate MHR	7,749,294.19
08-12-87	████████████████	████████████████	130,990.36
07-23-326	██████████ ██████████ ██████████ ████████████████	██████████ ██████████ ██████████ ██████████	47,845.44
08-12-14	██████████ ████████████████ ████████████████	██████████ ██████████ ████████████████	84,350.24
07-23-123	██████████ ████████████████ ██████████ ██████████	████████████████	127,154.91
K08-22-2	Българска академия на науките - Институт за правни науки	BG Academy of Sciences- Law Dept	754,390.38
08-23-47	████████████████ ████████████████	████████████████	168,567.85
	<b>TOTAL</b>		<b>12,105,285.60</b>

**Note:** The operation 08-12-87 ██████████ was taken out of the sample because the Managing Authority presented a report based on art 13, Regulation (EC) 1828/2006 on the spot visit which revealed possible irregularities and fraud. EMPL/I4 forwarded with a letter ARES (2010)695383 from 27.09.2010 the information to OLAF.

The substitution of ██████████' with another project became difficult because of the time consumed by the audit of project K07-22-1 MSAAR. In the latter, there were problems with providing access to the documentation and with the presence of the representatives of the successor-Beneficiary (MSAAR not existent anymore) which took more time for the on the spot audit than initially planned.

The value of the audited sample amounts to a total of **12 105 285, 60 BGN** certified expenditure. This represents 42.11 % of the total expenditure declared (total BGN 28 741 541).

Therefore, an on-the-spot visit to 9 Final Beneficiaries/Promoters was carried out to assess the compliance of the systems with the European Structural Funds Regulations.

## 5. DETAILED FINDINGS AND RECOMMENDATIONS

### 5.1. Management and control findings:

The management and control findings are as follows:

Finding n°1:	Key requirement 2: Adequate procedures for the selection of operations
	Objective: Assess whether there is an adequate appraisal and approval of projects
Responsible body: MA	Volume of funding affected by the finding: € Non-quantifiable

Description of the finding: Systemic issue ( all projects)

The audit team observed that the checklists for project proposal evaluation ("Table for administrative evaluation", "Table for eligibility evaluation" and "Table of quality evaluation") are not detailed and explicative enough as to give information about the analysis of proposed budgets, the evaluation of their soundness and the analysis of the activities proposed against the expenditure budgeted. These checklists are found to be too general of nature and provide insufficient value as to evaluate the content of a given action and the capacity of a given candidate. In the Table for administrative evaluation and Table for eligibility evaluation the questions are of the type "Yes/No" without offering any references and explanations as regards the answers. On the other hand, when using a 5 point scale in the Table of quality evaluation, explanation are due only in case of awarding extreme points (0, 1 or 5 points) so there is a risk that evaluators might award 3 or 4 points without explanations which may result in a decrease of transparency and in the selection of projects not offering the best value for money.

In addition, the majority of the questions were not clear as to explain the application of the lack of evaluation criteria. For example in questions "4.1 Reality of the budget" there are no further elements of assessment. Thus, the award of 3 points does not require any additional explanation. However, in this case it is not clear against which criteria a budget is deemed realistic or acceptable. There is no further guidance on the objective criteria which would allow an evaluator to arrive to a reasoned conclusion whether, for example, there is a "Clear justification of the budget items". Therefore awarding points without, on the one hand clear evaluation criteria and on the other hand a motivation of the score, does not offer sufficient insight of the soundness of the selection procedure, as well as the transparent and equal treatment of candidates. In this respect, it is worth noting that the observations of the Commission audit team for weak budget analysis of a project application were confirmed during the on-the-spot visits by a subsequent weak project implementation.

Therefore the Commission audit team considers that there is lack of adequate evaluation criteria of a project proposal which reduces the assurance that the best projects are selected or that the beneficiaries have the administrative, operational and financial capacity to deliver the operation. This leads to a reduced control environment and does not ensure sound financial management.

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Moreover, the limited assessment of the project activities creates further constraints on the selection of the best projects, with adequate activities and a realistic budget. It also poses additional obstacles to ensuring the objective, equal and transparent treatment of applicants

*To illustrate this statement even further, the audit team came across an operation (project 08-23-47 Association of Sommeliers) where the beneficiary had presented a budget in which almost all planned activities were foreseen to be outsourced. The audit team therefore questions what, if any, the added value of the beneficiary in this operation is and whether there exist no methods of implementing the operations in a more efficient manner.*

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Risks: There is a risk that the best projects in terms of content and /or value for money may not be selected because the evaluation process does not have sound mechanisms for in-depth evaluation and does not ensure a transparent selection process and equal treatment of project applications.

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Recommendation:

It is recommended that the evaluation of candidates' applications focuses on the beneficiary's operational, financial and administrative capacity to implement the project presented. Detailed budget analysis and activities analysis should be made in order to determine the link between them both and therefore appraise the candidates' capacity to execute the activity presented. In this respect, the Managing Authority should develop clear and objective project evaluation criteria, including financial criteria, which should be published in the next calls for proposals.

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Deadline for implementation of recommendation: 28 February 2011	Nature of the recommendation: Urgent <sup>7</sup>
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Comments from the responsible body (auditee):

MA accepts the finding and suggests some corrective actions to address it.

The Manuel of OP AC is now updated. (Version 9 31/01/2011). The threshold for approving a project application is increased to 70 points. The importance of the financial indicators in the selection checklist is increased by 25% and the criteria "link between project aims and expected results" by 50%.

MA introduced the requirement that for each expenditure item in budgets of the project proposals, the beneficiary has to provide 2 offers. The aim of this is to enable a more in-depth analysis of the budget and to create a direct link with the project activities.

The responsibilities of the members of the Evaluation Committee to justify in detail their evaluation notes are also part of the updated version 9 of the OP AC Manual. Each "NO" answer from the checklists should be explained. The updated Instructions for Evaluators oblige evaluators to justify and explain the notes (given with a number).

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<sup>7</sup> See annex 1

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MA for OP AC is currently working on an outsourcing project for a survey establishing market prices for different eligibility activities/ expenditures based on information from companies and prices published on the Internet. This information will provide an objective evaluation and maximum realistic budgeted costs.

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Analysis of the reply by the Commission:

We welcome the introduced changes in the updated version of the Manual OP AC. We would like to be kept informed about the outcome of the survey on market prices. We are of the opinion that it will help determining objective criteria for the evaluation of the proposed project budgets.

Nevertheless, we would like to insist on some questions from the checklist for the technical/quality evaluation. We believe more points should be given to the assessment of the technical capacity of the candidate. (1 point currently). Furthermore, the questions on experience n°1.1 and 1.2 are identical and generate additional number of points. We are of the opinion that although it is an important asset, the experience with ESF/ projects should not be a blocking factor. Creating diversity of projects and beneficiaries should be tolerated rather than the opposite.

Having in mind the importance of the finding and the fact that the remedial measures are not fully implemented yet, the recommendation will remain open and will be followed up.

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Colour code: Yellow

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Finding n°2:	KR 2 – Adequate procedures for the selection of operations	
	Objective: Assess whether there is an adequate appraisal and approval of projects	
Responsible body: MA		Volume of funding affected by the finding: €
		Non-quantifiable

Description of the finding: All projects

The audit team observed the use of civil (labour) contracts for staff working on the project. These contracts relate to activities which fall outside the normal labour contracts. It was noted that the (hourly) rates charged to the project varied significantly between contracts. There was weak evidence of the existence of binding rules (legal acts, decrees, etc.) justifying the hourly rates for different types of activities, grades and profiles. Moreover, there are no thresholds to limit the use and/or the rates charged under these contracts. When employees work under civil contracts for ESF co-financed projects, the monthly salaries vary from beneficiary to beneficiary and comparison with similar salaries for non-ESF activities is lacking. Secondly, usually the civil contracts do not unambiguously mention the number of hours which need to be worked. As such there is no convincing evidence of the exact hours worked or of their relevance to the activity, thus not allowing an evaluation of the value of for money. As already stated in observation N° 1, the absence of clear and unambiguous (financial) evaluation criteria does not provide for a control environment which ensures sound financial management.

*For example project "Hope for the Roma" there were numerous contracts (example Contract from 13.11.2008) for teachers for 2 days of general training "Health system for the Roma in Bulgaria". Each of these civil contracts was for 800lv but it was not possible to relate this salary or the hourly rate applied to any legal bidding national act. A similar situation was observed at "Intercity Associates" where for the elaboration of an analytical study for 20 days for two experts the salary was 8000lv. Again, no justification for the level of this salary was provided to the auditors.*

Risks: There is also a risk to approve projects with inflated and non-equitable costs.

Recommendation:

The MA should evaluate, during the project evaluation phase, the absolute necessity to apply civil contracts by a beneficiary. This evaluation should be carried out in the assessment of the beneficiary's operational, administrative and financial capacity to implement the operation. This should be done at the stage of selection (detailed description of the tasks and methods of project implementation) and at the stage of verification (time-sheets and reconciliation of working time, activities, deliverables). The MA should issue detailed grids with hourly salary rates regarding ESF projects, based on which civil contracts should be concluded, taking into account the expertise level of the trainers and the trainees. Hourly rates for ESF activities should not differ from hourly rates for non-ESF activities.

It should not be promoted (especially in the national administration structures) to



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apply a practice of working over time and cumulating different contracts topping up the incomes of the employees. MA should explore the opportunities within existing national legislation for remuneration of civil servants, for more appropriate and transparent arrangements for the labour costs of civil servants in ESF projects.

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Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Urgent
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Comments from the responsible body (auditee):

MA accepts the finding and presents the following remedial actions:

In the "Instructions for Evaluators", it is required that the costs of the items in the budget under chapter "Salaries" should be also presented with 2 offers (based on price/hour). In the Budget table, there is a column named "Activity" linking the cost item with a project activity. Within the implementation of the project, the wages fall under requirements of National Procurement Act and other procurement Acts. In the Guidance for candidates from January 2011, it is explicitly said that the wages are based on an hourly rate. On the 5.09.2010 and 31.01.2011, the Head of MA has approved the "Guidance of establishing wages for projects under OPAC". In this guidance note, there is fixed maximum amount for management costs (6-10 lv/h).

In the updated management verifications checklists, there are additional controls foreseen on the civil contracts (check for overlapping of activities and salaries). There is a draft prepared for changing the PMS 231 from 2007 stipulating the detailed eligibility rules for OP AC where the following texts are proposed:

"-Management costs are accounted proportionally to the worked time for the project with a report on worked time.

-Cost for additional salaries for employees who do some kind of project outside of their normal activities, are accounted for with report on worked time. "

Given the horizontal nature of the finding, MA OP AC initiated discussion at national level for limiting the use of civil contracts.

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Analysis of the reply by the Commission:

EC agrees with the of additional comments:

For management costs we would like MA to confirm that the salaries for project are fixed at the same rates as salaries for non project activities (if additional contract). Overtime and work during weekends should be very limited as it is not ESF goal to make people work overtime. New recruitments rather than accumulating contracts for already employed people should take place.(see sentence on p.2 of Guidance on salaries)

Since MA mentions in Finding 1 the outsourced market survey to determine prices for different activities, EC suggests this survey covers also salary rates so that a horizontal principle of treatment of salaries could be ensured.

Having in mind the importance of the finding and the fact that the remedial measures are not fully implemented yet, the recommendation will remain open and will be followed up.

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Colour code: Yellow



Finding n°: 3	Key element 3: Adequate information and strategy to provide guidance to beneficiaries
	Objective: Assess whether there is an adequate strategy to provide guidance to beneficiaries
Responsible body: MA	Volume of funding affected by the finding: Non quantifiable

Description of the finding: Systemic issue: All projects under calls 07-23, 08-12 and 08-23

#### Indirect Costs

For the audited period there was no agreement between EC and MA for implementation of Art. 11(3) (b) of Reg. 1081/2006. According to the Council of Ministers' PMS 62 from 21.03.2007, art 8(3).2 (setting out eligibility rules under Structural Funds Operational Programmes) - indirect expenditure is allowed up to 20% of the direct expenditures of the Beneficiary. The auditors were not presented with the methodology of how indirect costs are defined. There were three levels of indirect costs allowed for OP AC (16%, 18% and 20%) but no transparent, justifiable and equitable methodology was approved by the Commission in relation to that. The audit team came across the amounts in Indirect costs which were automatic calculations on the percentage of the direct costs, but was not provided with an audit trail justifying the percentage applied.

The incurred indirect costs were presented by the beneficiaries in their financial reports under Chapter Indirect costs; mainly covering Staff Management Costs.

In relation to this, two issues arise:

Firstly, the civil contracts to which reference is made in observation 2 and which very often concern costs of an indirect nature, are charged in full, as direct cost, to the project. This fact undermines the use of the flat rate calculation applied by the Managing Authority in the sense that the basis for determining the flat rate is distorted by the use of these contracts and more specifically by the fact that they are charged under the "direct cost" heading.

Secondly, in the absence of any audit trail, the use of additional contracts may lead to double funding with the normal salary. Therefore, the accounting of costs for project management as direct costs (due to a separate contract, which can be 100% charged on the specific project) could be the basis for calculation of the flat rate and the costs are charged twice given that the management costs would normally go under the indirect expenditure heading.

Risks: Inflated indirect costs charged to the ESF; risk for double funding

#### Recommendation:

The MA is requested to provide the underlying audit trail justifying the methodology for claiming indirect expenditure on a flat rate basis in line with the

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requirements of art 11/3b) of 1081/2006.

Secondly, in the case there is no audit trail to justify the use of the flat rates applied, appropriate financial corrections should be made, possible on a flat rate basis.

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Deadline for implementation of recommendation: 31May 2011	Importance of the recommendation: Prompt <sup>8</sup>
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Comments from the responsible body (auditee):

**Reply MA -30.05/2011**

MA accepts the finding and proposed to implement 5% flat rate correction on the indirect expenditure already certified to EC. On the 23.08.2010, a letter was sent to the EC where MA states that there will be no indirect cost applied and according to the national rules, only costs for organisation and management will be applied.

In the reply to the audit report on OPAC, MA states (p.10) that within the indirect expenditures there were salaries of project managers, travels, small office materials, rent, electricity heating, project preparation costs. On p.11 the MA states that the indirect expenditure was not justified to MA with invoices but nevertheless was traceable in the accountancy from the Beneficiary.

In that respect there is a draft prepared for change of the PMS 231 from 2007 stipulating the detailed eligibility rules for OP AC where the following texts are proposed:

"Costs for managing the project will be eligible for administration structures and civil society structures up to 10% from total eligible expenditure. They include costs for salaries and social insurances for project staff, administrative expenditure related to implementation of project and other costs which can't be linked to the main project activities."

EC analysed the reply of the MA in the framework of the contradictory procedure. Although MA states that expenditure should be traceable, EC could not agree with that, so EC reiterated the statement that there is limited audit trail and therefore financial corrections are necessary to be applied. The proposed amount of 5% flat rate correction was insufficient compared to the presumed financial impact of the limited audit trail of the declared expenditure. ( within the three calls declared the indirect expenditure declared was up to 20% )

**Additional contradictory documentation -18/07/2011**

Following the request of the MA, a contradictory meeting was held in /Brussels on the 14/07/2011. Subsequently MA sent letter Ares (2011)784085 (N° 37-01-193/19/07/2011). MA of the AC OP has applied the Indirect Costs for 3 calls for proposals for project of non-governmental organizations: BG051PO002/07/2.3-01, BG051PO002/08/1.2-02 and BG051PO002/08/2.3-02. In the letter, the MA of the AC OP commits to impose 10% financial correction on the expenditures certified to

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<sup>8</sup> See annex 1

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the European Commission under these calls.

Moreover, Before submission of a new Report on Certification to the Certifying Authority, the MA of OP AC will reassess the contracts under these three calls and will impose financial corrections in cases where beneficiary fails to provide a justification and acceptable audit trail for the Indirect Costs.

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Analysis of the reply by the Commission:

In response to the MA initial contradictory comments, EC would like to stress again that for the certified expenditure in the scope of the audit Arep 1165 there was no uniform, coherent and justifiable approach to account for the indirect costs and the notion of indirect costs was interpreted in a different manner amongst the Beneficiaries. Therefore we had a limited audit trail presenting up to 20% declared expenditures.

We acknowledged the initial proposal of MA to make a financial correction but we were of the opinion that 5% is not sufficient to cover the risk associated to this finding.

We had discussion with the MA on the 14/07/2011 and we received letter Ares (2011)784085 (N° 37-01-193/19/07/2011), stating the commitment of the MA to implement 10% flat rate corrections on indirect costs declared prior to the cut off date of the audit (Last certificate received in the EC on the 10/08/2010) and the information about corrections implemented by the MA on expenditure incurred in 2010 and 2011. Taking into account those new elements, we agree with the corrective actions and we will close the issue once the corrections have been implemented and the Commission is provided with evidence.

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Colour code: Yellow

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Finding n°4:	KR 4 - Adequate management verifications
	Objective: Assess whether the management verifications are adequate in determining the eligibility of expenditure claimed.
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

Description of the finding: Systemic issue : All projects

The checklists used for management verifications according to Art 13 of Commission Regulation 1828/2006 lack detail in the sense that the questions asked do not provide an adequate level of information about performance parameters checked. The answers are mainly "Yes/No" and there is insufficient proof that reconciliations of the costs were made by the Managing Authority.

The on the spot visits suffer from the same weakness. On the basis of the documents provided to the audit team, it was not possible to conclude either as to whether the MA proceeded to any mathematical reconciliation on the spot; whether the analysis of the resources implemented for the project compared to the amounts claimed was carried out; whether the rates applied were analysed and whether information from timesheets and activities summaries was verified. Therefore, there is insufficient traceability of controls carried out following art.13 of Commission Regulation 1828/2006.

The audit team observed that the on the spot visits were not systematically done during the project's lifetime. (Example: Project 07-23-280 [REDACTED] visit was made after end of project). Their lack of timeliness could not be justified and it was considered by the audit team to be due to a lack of adequate planning of human resources within the Managing Authority.

Moreover, it was noted that on the spot verifications of the physical and financial verifications were not done simultaneously. Therefore the effectiveness of those checks is questionable having in mind that the relation expenditure- activities is not respected.

For example for one project (Project 07-23-280 [REDACTED]) the audit team found in the presence sheet signature of the teacher both as a teacher and as participant and also the survey form was filled in by him in his quality of participant. This error should have been detected during art 13 verification and appropriately corrected.

As a result, the audit team cannot but conclude that the verifications applied by the Managing Authority are of a formal nature rather than of a way which provides assurance concerning the effectiveness of the systems and the eligibility of expenditure.

Risks: Ineffectiveness of the verifications carried out by Managing Authority and lack of capacity for detecting errors may lead to the declaration of ineligible expenditure and to the interruption of payment claims from the Commission

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#### Recommendation:

The MA is requested to revise the checklists for management verifications and to further elaborate checklists for on-the-spot visits with a view to increase the effectiveness of on-the-spot verifications. In this respect, staff should also be trained in order to analyse and verify the expenditure declarations in a more critical and less formal, manner. A complete analysis of the project's activities and costs at selection level and at management verification level should strengthen the assessment of the efficiency and effectiveness of the project activities and the legality and regularity of expenditure claimed. Reconciliations should allow justifying the rates used and opportunity of costs declared. Furthermore, the MA is requested to implement procedures by which an external assessor is allowed to verify that the conditions of Article 13 of Regulation 1828/2006 are complied with.

MA should proceed to a workload analysis to determine human resources needs in order to conduct regularly and timely the on the spot visits. It should be ensured that the on-the- spot verification cover both the financial and physical (monitoring) aspects of the projects and that an adequate audit trail exists on the verifications carried out, the records verified, the date and results of the verification and the measures taken in case irregularities are detected..

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Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Urgent
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#### Comments from the responsible body (auditee):

MA accepts the recommendation.

As from 24/03/2011, MA has a new structure and a new department "Control and irregularities" was created. This department is in charge of ex ante control of grant procedures. In the updated version n° 9 of Manual OP AC, the checklists for verification of interim/final reports and for on the spot visits are updated. These checklists include additional checks of the link between planned and implemented activities, costs and results. The existence of a separated accountancy is also systematically checked. MA has drafted an annual plan for on the spot visits based on a risk assessment methodology. Since 2011, the on the spot visits are done simultaneously by financial and monitoring experts. MA has established annual training plan for monitoring and on the spot visits.

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#### Analysis of the reply by the Commission:

Based on the strengthening actions taken in response to the issues raised in Finding 4, the Commission could assess the recommendation is fully addressed. This recommendation will be closed upon a follow up.

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Colour code: orange: Yellow

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Finding n°5:	KR 4 - Adequate audit trail
	Objective: Assess whether there is an adequate audit trail
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

Description of the finding: Systemic issue : All projects

Beneficiaries are systematically using civil contracts for staff recruited for the ESF projects. These contracts are concluded for the duration of the projects and are based on the outcome of the activities - there is a fixed salary. Working hours are not always mentioned, nor are timetables and hourly rates. Under normal (outside ESF) practice, civil contracts complement full-time labour contracts, thus people declare with timesheets project work outside normal working hours. Having in mind that, in the cases observed, civil contracts only mention salaries, it becomes impossible to evaluate the value for money for the activities and costs charged. This in turn also leads to a situation whereby the MA cannot assess whether the expenditure is real, whether services have been delivered as planned and whether there is no overlap between the assignments under the ESF project and normal working responsibilities of the staff.

During on-the-spot visits, evidence of time spent on ESF projects was not always available; summaries of activities showed a general picture but no details. (Project 08-23-47 [REDACTED]). The level of details of supporting papers for the time spent on ESF projects varies significantly between projects making it difficult to assess the veracity of the activities and costs declared.

Having in mind the fact set out above, the audit trail was unclear and difficulties were found reconciling the direct staff costs claimed for ESF funded projects. Since the costs have to be real and incurred in order to be reimbursed, it could not be demonstrated whether they are indeed real bearing in mind that there were no timesheets nor was there other evidence to demonstrate the activities carried out under these contracts. For one project (Project 07-23-280 [REDACTED]) the audit team found in the presence sheet signature of the teacher both as a teacher and as participant and also the survey form was filled in by him in his quality of participant. This situation demonstrates how this practice undermines the reality of the activities performed.

Risks: Inadequate audit trail and difficulties with reconciling expenditure hinder the examination of the expenditure and activities and may compromise their regularity and legality.

Recommendation:

The MA is recommended to limit the use of civil contracts. If it is not possible, the MA is requested to use a more detailed, informative, and more equitable form of contracts for project staff. It should be possible to reconcile all staff costs claimed and see the clear link with the project activities throughout the project's duration. Salary cost declared should reflect actual time worked and should not be determined arbitrarily and without any evidence of activities performed.

Deadline for implementation of	Importance of the recommendation:
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Comments from the responsible body (auditee):

MA accepts the recommendation.

In the Guidance for candidates January 2011, it is explicitly said that the wages based on hourly rate. On the 5.09.2010 and 31.01. 2011, the Head of MA has approved "Guidance of establishing wages for projects under OPAC". In this guidance, there is a fixed maximum amount for management costs. (6-10 lv/h).

In the "Guidance for candidates" from January 2011, it is said that the salary costs will be reported on hourly basis. When MA checks those costs there will be comparisons made on the reports on work done and results achieved, absence of double reporting of activities under other contracts etc.

There is a draft prepared for change of the PMS 231 from 2007 stipulating the detailed eligibility rules for OP AC where the following texts are proposed:

"Management costs are accounted proportionally to the worked time for the project with a report on worked time.

Cost for additional salaries for employees who do some kind of project outside from their normal activities, are accounted for with report on worked time.

Given the horizontal nature of the finding MA OP AC initiated a discussion on taking a decision at national level for limiting the use of civil contracts.

Analysis of the reply by the Commission:

The EC agrees with the measures taken by the MA. We have the following additional comments:

We would like MA to confirm that the salaries for projects are according to same rates as salaries for non project activities (if additional contract). Overtime and work during weekends should be very limited as it is not ESF goal to make people work overtime ( see sentence p.2 of Guidance on salaries)

Having in mind the importance of the finding, and the fact that the remedial measures are not fully implemented yet, the recommendation will remain open and will be followed up.

Colour code: orange: Yellow

Finding n°6:	KR 5 - Audit trail
	Objective: Assess whether there is an adequate audit trail
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

Description of the finding: Systemic finding All projects

The primary form of payment is cash based, even for large amounts. There were cash orders but in some cases it was not possible to have assurance that the payment was actually done.

It was noticed that payments in cash were authorised for considerable amounts – (for example invoice 0000000430 from 24.03.2008 - 6525 lv for web site service, invoice 0000000629 from 29.08.2008 for 1200 lv rent, invoice 0000000692 from 19.10.2008 -7280 lv for accommodation – project 07-23-280 [REDACTED] These examples are not exhaustive.

In addition, the audit team came across some projects for which the separate project accountancy was not available. This fact and also the fact that payments were done in cash does not allow for an adequate audit trail. (Example of unavailable accountancy-project 07-23-280 [REDACTED] project 08-23-47 [REDACTED] project 08-12-14 [REDACTED]).

Risks: Inadequate audit trail and difficulties with reconciling expenditure hinder the examination of the expenditure and activities and may compromise their regularity and legality. Cash payments are also inherently hazardous and are an indicator of misuse of funding.

Recommendation:

The MA is recommended to create rules determining and limiting the use of cash transfers in order to justify payments for ESF-incurred costs (except for small and everyday expenses: bus, coffee, etc). Project accountancy should be systematically available and ready for verification and audit.

Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Prompt
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Comments from the responsible body (auditee):

MA accepts the recommendation.

MA informs that there was a "Law on limiting cash payments" issued on 22.02.2011 in which the threshold is fixed at 15 000lv. The Head of the MA issued on 14.10.2010 "Guidance for payments within projects OP AC" in which payments above 5000lv should be done via bank transfers.

MA also informs that point 2.5 of the "General conditions of grant agreement" (version 8 of Manual OP AC) obliges the Beneficiary to submit evidence from the accounting software together with other supporting papers annexed to financial

reports. Checks of accountancy are also introduced in the on the spot visit checklists.

Analysis of the reply by the Commission:

The EC welcomes the changes introduced and considers the recommendation fully addressed. We acknowledge the confirmation from the MA that the definitive threshold for bank payments under OP AC projects is 5 000lv.

Colour code: Green

Finding n°7:	KR 7 - Preventive and corrective actions in cases of errors detected by system audits
	Objective: Assess whether there are adequate procedures for follow up on findings from system audits.
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

Description of the finding: Systemic finding All projects

The system audit from the Audit Authority for the OP AC took place in 2009 (report from 13.11.2009) and it had revealed some systemic problems regarding KR7.

Firstly the Audit Authority had made recommendations regarding the lack of follow up procedures for system audit findings and recommendation. (Example: -nominate an officer responsible for recommendations database, and following up on each of them. (Audit report 13.11.2009/Rec 23-25p.37)

The auditors have observed that these recommendations were not followed up adequately. While reviewing the Manual of Procedures (version 8) of the MA the auditors concluded that there are still not enough detailed procedures in place to ensure follow up of recommendations in case of systemic errors

Risks: Inadequate and timely follow up of recommendations where systemic errors are detected.

Recommendation:

The MA is recommended to establish a procedure for preventive and detective actions when systemic errors are discovered. The MA is required to implement without delay the AA recommendations from the system audit.

Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Prompt
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Comments from the responsible body (auditee):

MA accepts the recommendation. In the version 9 of the Manual OPAC, there is a new procedure developed for follow up of findings from audits. There is also a requirement for maintaining a database from the audits with recommendations and

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undertaken actions. There is a special position created – employee responsible for archiving the reports, maintaining the database and following up of recommendations.

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Analysis of the reply by the Commission:

EC welcomes the changes introduced and considers the recommendation fully addressed.

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Colour code: Green

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Finding n°8:	Key requirement 10: Adequate arrangements for the certification of expenditure to be reliable and soundly based
	Objective: To assess whether there are adequate arrangements for the certification of expenditure to be reliable and soundly based
Responsible body: CA	Volume of funding affected by the finding:  Not applicable
Description of the finding:	
<p>The audit team reviewed the activities carried out by the Certifying Authority. From the analysis of some certification reports, it could be concluded that checks are performed at the arrival of each report from the Managing Authority but those checks are general and formal of nature. Reconciliations and in-depth checks are done only when an on-the-spot visit is made by the Certifying Authority. This happens according to the on-the-spot annual plan (established on a risk based principle) and according to ad-hoc planned visits. In the auditors' view the number and frequency of the visits (which means reconciliations) aren't sufficient and this fact represents a risk for the adequacy of the certification process. (For the audited period only 4 visits made).</p> <p>The auditors noted that the Certifying Authority relies on the work performed by the Managing Authority. Having in mind that there are also shortcomings with the work of the Managing Authority, there are flaws throughout the assurance building process.</p>	
Risks: Insufficient grounds for certification – the expenses declared to the Commission may not be accurate and free of errors	
Recommendation:	
<p>The Certifying Authority is recommended to increase, taking into consideration cost/benefit factors, the number of certification checks for the ESF, with a view to substantially raise the frequency, scope and assurance received from the certification activities.</p> <p>Reconciliations should be made each time there is a new verification report (in the framework of desk verifications). There should be more certification activities in order to avoid cash flow problems at beneficiary level.</p> <p>Secondly, it is strongly recommended that the Certification Authority increases the sample of on-the-spot visits to ESF beneficiaries in order to increase the level of assurance that expenditure complies not only with the conditions of regularity and legality, but also with the principles of sound financial management.</p>	
Deadline for implementation of recommendation: 28 February 2011	Nature of the recommendation: Urgent
Comments from the responsible body (auditee):	

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The CA accepts the recommendation.

The CA recalls the procedure for certification version dd 30.04.2010. The manual was updated in October 2010. (Version 5). There is Ordinance from the Minister of Finance issued for optimisation and improvement of the certification process. As regards the administrative checks, the controls are made more detailed. MA is now also requested to submit an analytical report with the error rates from verifications, preventive measures, etc. The procedure for the on the spot visits is also improved. In the framework of one year, there are at least 3 on the spot checks at the beneficiary level. For 2011, there were 3 planned checks on 27-28.04.2011. In addition to that, every year, there is a training plan for experts to improve their skills. The trainings foreseen in 2011 have started in February 2011.

#### **Additional contradictory documentation**

On the basis of the supporting evidence presented at the contradictory meeting on the 14/07/2011, we were able to follow up on the improvements of the checklists compared to the checklists which we reviewed during the audit.

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Analysis of the reply by the Commission:

The EC welcomes the changes introduced in the certification process.

There was additional supporting evidence presented at the contradictory meeting on the 14/07/2011. Given the importance of that finding, the recommendation will remain open and will be followed up accordingly.

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Colour code: Yellow

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## 5.2. Findings concerning specific matters

The other compliance findings are as follows:

Finding n°: 9	Key requirement 3: Adequate information and strategy to provide guidance to beneficiaries
	Objective: Assess whether adequate information is provided to beneficiaries
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

Description of the finding: Systemic issue

During the on-the-spot visits the audit team noticed that there was insufficient understanding of what period of eligibility of expenditure is. While on the contract there were dates binding the project implementation, expenditure for projects was eligible for a period preceding the date of the contract.

For some projects (example project 07-23-326 [REDACTED] and project 08-23-47 [REDACTED]) expenditure for consultant services for project preparations were accepted in the Indirect cost chapter of the financial reports whilst for others (example project 07-23- 280 [REDACTED]) such expenditure was refused. (As stated during the interview with the beneficiary). This leads to believe that there is no equal treatment for the expenditure linked to preparation between the projects and moreover it is not clear from which date onwards this expenditure is accepted. (It is not mentioned either in the legal act binding legality of expenditures under Structural Funds in PMS 231, art 6.1 and the legal act binding legality for expenditures under Operational Programme Administrative Capacity PMS 62).

There is a need for a clear and uniform indication of the project period - start date and end date which will also mean start and end date of project's expenditure eligibility. Some contracts mention only the duration in months, others mention end date, others the start-date as the date of the first advance payment. Therefore, the eligibility period is fixed on a case by case basis, leads to confusion and does not reflect the time of the project start.

Risks: Ineligible ESF costs may occur– expenses paid outside of the eligibility period may not be detected and corrected before the declaration to the Commission. There may be unequal treatment of beneficiaries.

Recommendation: The MA is to:

- establish clear rules and to ensure that all final beneficiaries indicate the start and end date in each application and in each expenditure claim.
- establish clear rules to ensure beneficiaries have common understanding about the period of eligibility of project expenditure. If there is retroactive expenditure deemed

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eligible (as it is per PMS 231, art.6.1) then the period of its eligibility should be also defined.

- define the conditions under which costs for preparation of projects are eligible.

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Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Prompt
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Comments from the responsible body (auditee):

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The MA accepts the recommendation.

According to Version 8 of the Manual OPAC, there is an obligation to mention in the project contract the start date and the end date of the projects. The period for implementation of the activities and reimbursement of expenditure incurred is fixed at the number of months starting from the date of signature of the contract. The eligible expenditure under OP AC should be incurred after the date of the contract and before the end date of validity of the contract.

According the "Guidance for candidates" from November 2009, the costs for preparation of projects are not eligible.

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Analysis of the reply by the Commission:

The EC welcomes the changes introduced and considers the recommendation fully addressed.

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Colour code: green

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Finding n°: 10	Key requirement 3: Adequate information and strategy to provide guidance to beneficiaries.	
	Publicity and information to the general public.	
	Objective: Assess whether adequate information is provided to beneficiaries	
Responsible body: MA		Volume of funding affected by the finding:
		Non-quantifiable

Description of the finding: Systemic issue

- In the "Guidelines for Applicants" or in the contract the MA did not mention that the candidates had appeal rights.

- Project files were not adequately organised. It would be useful if the Managing Authority defines a "file-type" which has to contain the supporting information per project and also verify that all supporting files and documentation are kept available for verifications and audits. (Examples - [REDACTED] in relation to tender documentation which appeared to be insufficiently organised).

- The Managing Authority should be more proactive and helpful with beneficiaries assisting them in a timely manner in case of questions. (Example- lack of position regarding public procurement question in project K08-22-2 [REDACTED] lack of assistance in projects 07-23-326 [REDACTED]).

Risks: Lack of transparency and audit trail related to project expenditure.

Recommendation:

The MA is requested to

- inform potential candidates of their right to appeal within a certain period.
- establish clear rules and instruction as to the content of project dossiers.
- provide timely answer to each question from beneficiaries.

Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Prompt
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Comments from the responsible body (auditee):

According to PMS 121/31.05.2007, art 24 there is a possibility foreseen for candidates to appeal during the evaluation process after the administrative and the eligibility evaluation. The list of rejected candidates is published on the website of OPAC. MA. The appealing procedure is described in the Guidance for candidates. Those changes are reflected in the Manual OPAC version 8.

In the "Guidance for beneficiaries", there is a standard structure of a project file and

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requirements for project archiving. During the on the spot management verifications, the archiving and filing of the project at Beneficiary offices is checked. The guidance is available on the website of OPAC.

Upon signature of the contract, there are trainings with Beneficiaries held in relation to implementation of projects. In the official letters to Beneficiaries, MA OP AC mentions the contacts of responsible experts from sector Monitoring and Financial management. There are regular meetings with beneficiaries to facilitate the implementation of projects.

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Analysis of the reply by the Commission:

The EC welcomes the changes introduced and considers the recommendation fully addressed.

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Colour code: yellow

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Finding n°: 11	Key requirement 3: Adequate information and strategy to provide guidance to beneficiaries.
	Objective: Assess whether adequate information is provided to beneficiaries
Responsible body: MA	Volume of funding affected by the finding: Non-quantifiable

#### Documentation of Evaluation process during public procurement

The work of the Evaluation Committees in public procurement tenders suffers from a lack of detail. The evaluation of the proposals is documented only with a "Protocol" and decisions are taken with consensus. There are no individual grids for evaluation. Only in case of disagreement a member of the Evaluation committee completes a separate assessment sheet. (there was no such case amongst the projects audited)

In cases like project K08-22-2 "████████████████████" or project K08-13-3 "████████████████████" the chosen award criteria was "best value for money"; the formulas for calculation of the best value coefficient were quite complex. Therefore it was very difficult to re-perform the evaluation and deduce the selection of the candidate. Moreover in the case of the abovementioned project this coefficient was not transparent since throughout the procedures it was slightly modified without notification.

Therefore it is not acceptable that evaluations, especially in case of best value criteria are not documented in the Protocol and only results of mathematical calculation are noted down which even appear to be untraceable.

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Risks: Lack of transparency and equal treatment throughout selection procedures. .

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## Recommendation

MA should apply mechanisms for timely and adequate control of the tender procedures launched by beneficiaries.

The evaluation and appraisal process should be better documented and detailed as to give evidence on the ground for selection and award of a contract.

When the award criteria is the best value for money, then the individual calculations of the coefficients should be made in written form with explanation as to the weights and points allocated to the candidate for each criteria in the coefficient.

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Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Specific
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### Comments from the responsible body (auditee):

In the National Procurement Act, there is no provision as to oblige members of the evaluation committees to have separate evaluation sheets. Nevertheless, according to the updated methodology, MA gives the following recommendations to beneficiaries which start tendering procedures:

- Every member of the Evaluation committee should fill in a separate evaluation sheet the assessment of the offers
- There should be separate protocols from each meeting (opening envelopes, selection, and award).

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### Analysis of the reply by the Commission:

The EC welcomes the changes introduced by the MA and considers the recommendation fully addressed.

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Colour code: Green

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### 5.3. Financial findings:

The financial findings are as follows:

Finding N° 12	Final beneficiary: [REDACTED]
	Project number: BG /8-23-47

	BGN
Total amount claimed	168,567.85
ESF funding	143,282.67
National cofinancing	25,285.18
Other	

	BGN	% certified amount
Audited	135,536.18	80.40%
Ineligible expenditure		100%*
Non-quantifiable erros	0.00	0.00%

\* - under condition that the reply of the Managing Authority is not satisfactory

#### Description of the finding

The project falls under the sub-priority 2.3. "Strengthening the civil society structures". The aim of this sub-priority is "improving knowledge and skills of civil society structures for local and national policy implementation and for effective partnership and dialogue with administration. As such the aim is to establish direct connection with key social groups and pubic interests".

Several shortcomings were detected :

The project above did not demonstrate that the application of the principles of sound financial management throughout the implementation of the approved actions was respected. The project aimed at strengthening the structure of the association of the sommeliers (in line with provision of priority 2.3) via different activities such as study visits abroad, organising trainings for sommeliers in Bulgaria etc. The Beneficiary being the only specialised sommelier association in Bulgaria had outsourced all its core activities to services providers and therefore the prices for all project activities appeared inflated. (*Example- service provider "Copy Consult" contract from 29.09.2008 (under PMS 55, art 11) for "Establishing a list of suitable NGOs working in the sommelier area which could demonstrate good practices with their contacts with the administration". The contract was for 18.000 lv for 3 months. The output of this work was very low (short report whose content could be easily found on Internet sources)). Besides, the Beneficiary was capable of doing this activity in-house since evidence was presented to the auditors that the [REDACTED] had carried out much bigger activities the year before.*

Besides the abovementioned weaknesses, the audit team found out also a civil contract with one of the members of the association for the provision of legal consultations prior to launching small procurement procedures according to PMS 55, art 11. The result of this consultation consisted of a list of the documents needed to be prepared in each case. However, the information in question was already available for free on Bulgarian legal websites. There were no specific legal competences needed to justify this service contract. Moreover there was no evidence of the effective working time and provided service. (Reference to contract from 11.11.2008, 240 lv for 15 days). No explanation as to the amount fixed for the service was provided either.

Finally, having in mind the low outputs delivered from this project, the auditors were

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not provided with elements allowing them to see the long term effect of the project since all the financing went for outsourcing and the effect of strengthening the structure of the association was not achieved.

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Risks: Lack of sound financial management and evidence as to support the incurred costs. Ineligible expenditure in relation to the project activities.

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#### Recommendation

The auditors question the eligibility of the activities and the supporting documentation of the expenditure and the overall contribution of the project towards the aim of the priority axe 2.3. Therefore the Managing Authority is requested to provide justifications as regards:

- the opportunity and the adequacy of selection of Beneficiary " [REDACTED] " in the framework of sub-priority 2.3 "Strengthening of the civil society structures"
- Reasons of approval of the project's proposal having in mind the degree of externalisation of the activities.
- Reasons to deem the project application as acceptable as administrative, financial and operational capacities to be sufficient in order to be awarded ESF funding.

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Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Urgent
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Comments from the responsible body (auditee):

#### 1. Eligibility of project

MA explains the reasons for eligibility of the project within the call 2.3. "Strengthening the structures of the civil society". This call aims particularly at NGOs such as [REDACTED]. This sub-priority focuses on training of NGO for dialogue with administration, partnership between different organisations, participation in policy processes and monitoring of the administration activity. It aims at strengthening the institutional and organisational capacity of the NGO and effective realisation of their activities. This will guarantee their reinforcement in the socio-economic life of the country. In the framework of this sub priority, two types of activities are financed, namely:

- organisational development (creating development strategies, ethic codex, analysis, updating manuals, internet sites, online book shelves) ;
- development of educational programmes (trainings techniques for negotiations, conflict resolving, policy making etc)

In this context, the project [REDACTED] aims at optimisation of the activities of the NGO structure and gaining in effectiveness with the work with the administration.

In this context, there are several activities approved as to meet the objectives of the project such as :

- developing strategic plan for development of [REDACTED]
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- 
- creation of a special unit to deal with the coordination between [REDACTED] and the administration
  - trainings on management, negotiations, effective communication
  - developing ethic codex of [REDACTED]
  - Creation of an internet page and an on line book shelf.

According to MA, there is compliance between the scope and objectives of the sub-priority 2.3 and objectives and activities of the project proposal. Therefore, there are no grounds to deem the beneficiary as ineligible.

According to PMS 55 from 12.03.2007 (applicable for beneficiaries of grants), for amounts between 15 000 and 30 000 VAT excluded, they are obliged to have not less than 3 offers. The Beneficiary is solely responsible to decide for which services will be used PMS 55. MA does not have any mechanism to limit the right of Beneficiaries to externalise services within their contracts. In the budget of the project proposal, the Beneficiary presents the implementation plan of the activities and under chapters 5.1-5.5 are listed the external services. It is not possible that all activities of the project are implemented by people employed by the Beneficiaries.

The profit and loss statement of [REDACTED] shows a profit amounting to 69 000 lv for 2007 and the CVs of the management team show their suitability and experience for the job. Moreover, the Beneficiary states that it has an own office and internet and that there are two cars. Therefore, at the application stage, there are enough grounds to deem the proposal suitable and the beneficiary equipped to implement the project.

## **2. Implementation of the contract**

Following verification of MA, there will be a 20% financial correction applied because of some weaknesses detected:

- non compliance with provisions of PMS 55 for the choice of the [REDACTED]
- lack of evidence of distribution of publicity materials
- lack of evidence of expert capacities of the lecturers
- Part of the presentations is compilations from different available materials from the internet.

### **Additional contradictory documentation-18/07/2011**

Following the meeting on the 14/07/2011, the Commission received letter Ares (2011)784085 (N° 37-01-193/19/07/2011), in which the MA has committed to apply financial correction 100% on the specified project due to absence of sound financial management and audit trail.

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Analysis of the reply by the Commission:

We reiterate the questions which we rose in the finding concerning the choice of the concrete beneficiary and its capacity to conduct the project as well as the design of the project activities and the opportunities of the funding. We understand the

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arguments put forward in favour of project's eligibility within sub- priority 2.3 and we accept them. Nevertheless, given the high level of externalisation and the statement that MA does not have mechanisms to control it, we don't agree with the arguments in favour of the capacities of [REDACTED] for the project. Moreover, as costs were claimed later for rent of office, office materials and travel costs for [REDACTED] members, we don't understand the arguments that the beneficiary had the capacity at selection phase-own office and office materials).

Concerning the implementation of the project, we agree with the findings of the MA. In addition to the issues stated, we would also like to underline the extremely low output of the activities, the lack of supporting documents and the lack of sustainability of the project. Given the general content of the trainings, we are also of the opinion that the objectives to strengthen the structure of [REDACTED] and increase its competencies were not met.

Finally, the following question remain open:

- the opportunity and the adequacy of selection of Beneficiary '[REDACTED]' in the framework of sub-priority 2.3 "Strengthening of the civil society structures"
- Reasons of approval of the project's proposal having in mind the degree of externalisation of the activities.

#### **Additional contradictory documentation-18/07/2011**

Following the meeting on the 14/07/2011, the Commission received letter Ares (2011)784085 (N° 37-01-193/19/07/2011), in which the MA has committed to apply financial correction 100% on the specified project due to absence of sound financial management and audit trail.

Upon completion of that correction the Commission will be in a position to close the issue.

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Colour code: yellow

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Finding n°: 13	Final beneficiary: [REDACTED]
	Project number: 08-12-14

	BGN
Total amount claimed	84,350.24
ESF funding	71,697.70
National cofinancing	12,652.54
Other	0.00

	BGN	% certified amount
Audited	36,000.00	42.68%
Ineligible expenditure		100%*
Non-quantifiable errors		

\*- under condition that the reply of the Managing Authority is not satisfactory

#### Description of the finding:

The project falls under the priority axe 1.2. "Transparency and Integrity of the State Administration". As per OP AC the aim of this sub-priority axe is "Implementing the principles of transparency and accountability in the administration and improving the control mechanisms on its activity".

Several shortcomings were detected :

The project above did not manage to demonstrate the application of the principles of sound financial management throughout the implementation of the approved actions; it is also difficult to link the content of the project with the goals of the priority axe 1.2.

The project aimed at implementing the principles of transparency and accountability in the administration and improving the control mechanisms on its activity via different activities such as organisation of public forums and seminars, through development of analytical report, a practice guide and a training module, as well as establishing a web site where to upload and publish all the activities under the project.

The Beneficiary had outsourced majority of its core activities to various experts and services providers and therefore the prices for all project activities appeared inflated.

#### Examples:

Service provider "[REDACTED]" contract from 01.11.2008, was paid 4.000 leva for printing of 400 brochures, which were two sided colour print A5 leaflet containing basic project information. Same contractor charged 3.200 leva for design and production of two publicity banners.

Service provider New I, contract from 11.11.2008, was paid a total of 28.800 leva for carrying out an analytical study of the legislation and writing an analytical report and a practice guide. The content of the study material was mostly a copy-paste of the legislation available on web pages. None of the deliverables under this contract for outsourcing demonstrated the analytical work of the contractor which is proportionate to the cost of the service.

Risks: Lack of sound financial management and evidence as to support the incurred costs.



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## Recommendation

The contracts mentioned above for the total amount of 36 000 need to be adequately corrected. Moreover, Therefore the Managing Authority is requested to provide justifications as regards:

- the opportunity and the adequacy of selection of Beneficiary [REDACTED] [REDACTED] in the framework of sub-priority 2.3 "Strengthening of the civil society structures"

- Reasons of approval of the project's proposal having in mind the degree of externalisation of the activities.

- Reasons to deem the project application as acceptable as administrative, financial and operational capacities to be sufficient in order to be awarded ESF funding

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Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Urgent
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Comments from the responsible body (auditee):

### 1 Eligibility of the project

The Beneficiary was selected within call 1.2 sub- priority "Transparent and lawful state administration". Target groups for 1.2 sub priority are the Council of Ministers, the central and local administration, the ombudsman and the local state intermediaries and the NGOs. In the framework the 1.2 the MA launched the call "Civil society – more ideas for transparency and accessibility of state administration" in which the eligible candidates are NGOs and eligible partners are other structures of civil society, central or regional administration structures. The Beneficiary – [REDACTED] [REDACTED] and the partner [REDACTED] [REDACTED] are both eligible.

The indicative types of actions foreseen in the sub- priority 1.2 are :

- Measures for transparency and accountability of administration and prevention of corruption.
- Control over the activity of the administration

MA initiated procedure for selection of projects under sub-priority 1.2 with the idea to give opportunity to the non governmental sector to make its analysis and suggest recommendations to the administration such as increasing transparency of the administration structures, increasing the access to clear and punctual information for administration activity, better administrative control, civil monitoring and prevention of corruption.

The project from [REDACTED] has the aim to enrich the existing practices for transparency and access to administration services, to develop new methodology for transparent work of the local administration and to create network of the structures of civil society for transparent interaction with the administration.

The aims of the project comply with the aims of the sub-priority 1.2.

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The outcome of the project is the partnership between the structures of the civil society at local level and the local administration, increasing of the citizens' role in the monitoring and the prevention of corruption. The project activities (analysis of new methods of transparent access to administration, the developed internet site) are completely eligible to the aims of the project (partnership and transparency). The biggest effect of that is the information to citizens for decisions of local administration, especially those having impact in their daily lives.

With regards to the abovementioned, MA of OPAC deems that the project is completely eligible for financing within the scope and objectives of sub- priorities 1.2.

According to PMS 55 from 12.03.2007 applicable for beneficiaries of 100% grant co financing, for amounts between 15 000 and 30 000 VAT excluded, they could not proceed to public procurement but are obliged to have not less than 3 offers ( technical and financial offer). The Beneficiary is solely responsible to decide for which services it considers using PMS 55. MA does not have any mechanism as to limit the right of Beneficiaries to externalise services within their contracts. The candidate Foundation International city associates had submitted profit and loss statement with 101 000 income and stated that the organisation works with business group and has equipped office.

This gives grounds of the MA to deem the candidate suitable and having technical financial and operational capacity to implement the project.

## **2. Implementation of the project**

Analysis has shown that not all clauses of the project contract were respected, but this without undermining the whole implementation. The whole approved amount is 152 247, 14 lv and MA had verified 114 799, 67 lv. MA had detected also some weaknesses on the materials provided, deviation of the quantity indicators, the activity " Analysis of the possibilities of transparent and accessibility to administration" is partially implemented.

MA will apply a 15% financial correction on the project contracted amount.

### **Additional contradictory documentation-18/07/2011**

Following the meeting on the 14/07/2011, the Commission received letter Ares (2011)784085 (N° 37-01-193/19/07/2011), in which the MA has committed to apply financial correction 100% on the specified project due to absence of sound financial management and audit trail.

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Analysis of the reply by the Commission:

We reiterate the questions we raised in the finding on the choice of the concrete beneficiary as well as the design of the project activities and the opportunities of the funding. We accept the arguments put forward in favour of the eligibility of the project to the aims of 1.2 sub priority. Nevertheless, the following questions remain open:

- Reasons of approval of the project's proposal having in mind the degree of externalisation of the activities.
- Reasons to consider the project application as acceptable as administrative, financial

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and operational capacities to be sufficient in order to be awarded ESF funding

Following the meeting on the 14/07/2011, the Commission received letter Ares (2011)784085 on the 18/07/2011 in which the MA has committed itself to apply a financial correction of 100% due to the absence of sound financial management and audit trail.

Upon completion of that correction, we will be in a position to close the issue.

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Colour code: yellow

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Finding n°: 14	Final beneficiary: [REDACTED]
	Project number: K07-22-1

	BGN
Total amount claimed	7,725,413.91
ESF funding	6,566,601.82
National cofinancing	1,158,812.09
Other	0.00

	BGN	% certified amount
Audited	794,196.67	10.28%
Ineligible expenditure	38,956.65	4,9%
Non-quantifiable errors	0.00	

#### Description of the finding:

One of the project activities consisted of organising trainings and seminars for civil servants in London and Helsinki. These seminars and trainings consisted of training in English and training in negotiation skills for work with EU institutions. The costs for those included the per diems, travel expenses and hotel accommodation for the participants.

The audit team observed that each group of participants was accompanied by two project managers. Their presence to those trainings was not justified and there was no evidence of the activities incurred to support the expenditures for their trips to UK and Finland. Therefore the audit teams consider the expenditures for 2 coordinators group London and 2 coordinators group Helsinki (per diems + travel costs + hotel invoice) not eligible.

The total amount of the ineligible costs is 38 956.65 lv.

Risks: Lack of sound financial management and evidence as to support the incurred costs. Ineligible expenditure incurred.

#### Recommendation

MA accepts the recommendation.

Appropriate financial corrections should be made to the amount of 38 956.65 lv.

Deadline for implementation of recommendation: 28 February 2011	Importance of the recommendation: Urgent
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#### Comments from the responsible body (auditee):

MA accepts the finding and the proposed financial correction will be implemented.

#### Analysis of the reply by the Commission:

The recommendation will be closed. On the basis of the implementation of the corrective action, we could close the issue.

Colour code: green

Finding n°: 15	Final beneficiary: [REDACTED]
Project number: K07-22-1	

  

	BGN
Total amount claimed	7,725,413.91
ESF funding	6,566,601.82
National cofinancing	1,158,812.09
Other	0.00

  

	BGN	% certified amount
Audited	794,196.67	10.28%
Ineligible expenditure		
Non-quantifiable erros	10%*	

\*- 10% of historical and future expenditure incurred under contract MSAAR N°31.1/17.04/2008

General remark as regards public procurement procedure:

The audit team found numerous weaknesses related to the application of Bulgarian public procurement law. (ZOP in force 01.10.2004). This was mainly due to the fact that for the audited projects, tenders were launched in 2008 before the entering into force of the European directive for public procurement. EC/18/2004 on the 01.01.2009. This fact led to applying too restrictive criteria or /and rejection of candidates on the basis of formal grounds. (Which were still allowed before 01.01.2009) Therefore limiting the competitions was a factor for inflated prices due to acceleration of the works required.

In the project "[REDACTED]" the auditors reviewed the tender for "Organising and conducting specialised training in English for work with the EU institutions" and in the subsequent contract with "[REDACTED]" (contract MSAAR 31.1/17.04.2008). The audit team found that besides the fact there were only two candidates who submitted offers, one of them "[REDACTED]" was rejected based on the formality compliance check because "[REDACTED]" have not submitted the originals of one manual required. It has to be pointed out that in the Technical specifications it is not explicitly said that the candidate should submit all originals of manuals.

Furthermore in relation to this contract, it has to be noted that its subject was in the end different from the subject in the tender announcement (quoted above). The announced "Training in English for work with the EU institutions" was in fact standard English course and from 120 hours training only 9-12 hours were dedicated to EU English or/and English for EU related work.

Moreover in the offer of the winning bidder "[REDACTED]" there was no EU English training plan and materials whilst in the offer of "[REDACTED]" there was a manual for specific EU English training.

Another shortcoming is that the winner "[REDACTED]" - had not timely provided declarations according to art 74 of ZOP. (Law on Public Procurement in Bulgaria- declarations which are essential at selections stage). Those were presented at the

contract signature and not at the offer submission. (Letter N° 02-1-287 from 28.03.2008) Therefore, "██████████" should have been disqualified at earlier stage due to lack of compliance with selection criteria.

Risks: Lack of transparency and equal treatment throughout selection procedures.

#### Recommendation

MA should review the tender procedure and contract with "██████████" and introduce remedial measures. This would presume a financial correction, possibly on a flat rate basis in accordance with the provisions of the "Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Funds for non-compliance with the rules for public procurement- COCOP 07/0037/02-EN". The presumed correction is 10% of the value of the contract on the basis of unlawful selection and contract award criteria laid down in the tender procedure as well as wrong definition of the subject matter of the contract.

The abovementioned correction is to be applied to the amount of the historical and future expenditure incurred under the contract N°31.1/17.04.2008.

Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Prompt
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#### Comments from the responsible body (auditee):

The tender is "Organising and conducting specialised training in English for work with the EU institutions" and should be seen in its content (as per technical specifications) as a project aimed to increase the competencies of official servants as to increase their language skills and this is according to the European language classification scheme. In the tender documentation, it is explicitly mentioned that the required levels will be A1, A2, B1 and B2 etc according to the common classification scheme. In point 3.1 it is said that the trainings will be conducted with training programme provided by the candidate for each level. In the programme, there should be included hours for specialised terminology in relation to the institutions of the EU. In point 5, it is said that the selected candidate should organise trainings each groups 15 people for levels A1 and A2 and B1 and B2. The trainings cover two levels and each trainee has to pass two levels of education. The objective is that 15 000 people pass intensive courses 240 hours for one year (two levels).

Given those arguments, MA is of the opinion that the subject of the tender should be general English and not narrow specialised English for working with the EU institutions. The statement that there should be a correction applied (because the concluded contract was with different subject from the one of the tender), MA thinks that this is no longer valid given the arguments above.

In relation to the elimination of the Alliance "██████████" and "██████████" from the tender, MA explains that according to p.6.2 from the guidance to candidates from tender documentation, each candidate will be eliminated if he does not meet the conditions mentioned. Having in mind that the Alliance did not meet them, it was not allowed continuing in the procedure.

In relation to the finding that there were no declarations on art 47 ½ of National procurement act, MA gives the following information:

At the time of the tender, there was applicable National Procurement Act from 29 06

2008. Concerning the declarations absence of circumstances under art 47 of National Procurement act, MA requested declarations art 47 from [REDACTED] which were provided and attached to the reply to the audit report. [REDACTED] is a group of 5 legal entities and for each of them, according to the law, such declarations are provided. At the submission of offers, candidates should present declarations on art 47 but in this case, it should be noted that the tender did not request such declarations at stage submission of offers. Nevertheless, in the documentations of the wining bidder, all declarations were found, Therefore, with regards to that finding, we suggest that there are no grounds for financial correction for non compliance with art 69 and 47 of National procurement act.

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#### Analysis of the reply by the Commission:

The Commission accepts the comments regarding the absence of declarations on art. 47 at stage of submission of offers according to National Procurement Act.

Regarding the subject of the tender, the EC acknowledges the arguments put forward from MA. Nevertheless, we are of the opinion that the title "Specialised English training for work with EU institutions" does not reflect adequately the content of the training and could be misleading. In the comments, MA states that the subject of the training should be seen as general English rather than specific one. Hence, this is just an interpretation based on the content of the tender specifications, because the title and the short description of the tender announcement was exactly specific English. Bearing also in mind that applicants need to pay for a copy of the tender specifications, the audit team considers that there was a negative impact on the competition, i.e. there was potential restriction of competition. Having in mind the comments provided by MA and the discussions held at the meeting on 14/07/2011, the Commission maintains the position that there was a misleading definition of the subject matter of the contract and the need to implement an adequate correction for it.

Therefore, the reassessment of both issues of that finding- absence of declaration art 47 and the definition of the tender subject- the final conclusion of the Commission is that a correction should be applied for the second shortcoming only. According to the "Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Funds for non-compliance with the rules for public procurement- COCOF 07/0037/02-EN" the presumed financial correction to apply for that criteria is 5%.

In its letter Ares(2011) 784085 (N° 37-01-193/19/07/2011) the MA informs that there will be 5% flat rate correction imposed on the contract " Organising and conducting specialised training in English for work with EU institutions".

Therefore, on the basis of the implementation of this financial correction, we could close the issue.

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Colour code: yellow

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Finding n°: 16	Council of Ministers	
	Project number: K08-13.3	

  

	BGN
Total amount claimed	7,725,413.91
ESF funding	6,566,601.82
National cofinancing	1,158,812.09
Other	0.00

  

	BGN	% certified amount
Audited	794,196.67	10.28%
Ineligible expenditure		
Non-quantifiable errors	10%*	

\*- 10% of the amount of the historical and future expenditure incurred under the contract N°147/15.12.2008.

### Public Procurement

Several weaknesses in the application of the public procurement procedures (ZOP) were noticed:

Project "Council of Ministers K08-13.3": the winning bidder [REDACTED] and [REDACTED] " has not timely provided declarations according art 74, art ½ of ZOP. They are submitted at the contract signature. Therefore the winning bidder should have been disqualified for non compliance with conditions stipulated in the selection criteria.

Risks: Lack of transparency and equal treatment throughout selection procedures. .

### Recommendation

MA should apply mechanisms for timely adequate control to the procedures launched by beneficiaries.

MA should review the tender and introduce remedial measures as to the mentioned contract with [REDACTED]. This would presume a financial correction, possibly on a flat rate basis in accordance with the provision of the "Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Funds for non-compliance with the rule for public procurement- COCOF 07/0037/02-EN". The presumed correction is 10% of the value of the contract on the basis of unlawful selection and contract award criteria laid down in the tender procedure.

The abovementioned correction is to be applied to the amount of the historical and future expenditure incurred under the contract.N°147/15.12.2008.

Deadline for implementation of recommendation: 31 May 2011	Importance of the recommendation: Prompt
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Comments from the responsible body (auditee):

MA does not accept the finding.

The applicable law for this tender is National Procurement Act version 20 07 2007. The finding that not all declarations art 47 of NPA are submitted at the moment of the submission of the offers, MA would like to clarify that after double checking, all



necessary declarations were found in the tender dossier ( for all members of the [REDACTED] and [REDACTED]'. Therefore MA thinks there might be error in the statement that not all declarations art 47 1,2 and 5 were in the file.

In relation to the submission of documents at the moment of signature of contract MA clarifies that according to the legal provisions of the art 34 Law for legal persons with no economic activity, the organs of an association are Board, Director and Internal auditor. In the art 8 f the Status of the association, it is mentioned that the Director is the person responsible for the submission of art 47 declarations. The provision of art 47 /4 for collective submission of declaration is only applicable for those organisations which have collective managing body which is not the case of the [REDACTED]'. At the moment of the signature of the contract, the obligation for the submission of a document stating legal liability is valid only for one person and not for all members of the Board. Therefore, the lack of submission of such declarations for other members is not an argument for a financial correction.

Analysis of the reply by the Commission:

We accept the comments of the MA and the arguments put forward in favour of the Institute for market economy. We understand the legal provisions and the explanations concerning the statutory of the association. Therefore we close the recommendations and consider that no financial corrections should be applied.

Colour code: green

## 6. SUBSEQUENT EVENTS

Following the end of the audit field work, the Bulgarian authorities sent an Action plan to the Commission (Annex 3 attached). This action plan describes the aim of strengthening the Management and Control Systems in order to remedy the deficiencies found.

The auditors have analysed the Action plan and several bilateral exchanges were held. There was a meeting with the MA and CA held on the 14<sup>th</sup> July in order to clarify the Managing authority comments and agree on further actions to be taken. As a result of that meeting, the Bulgarian authorities sent a letter (2011)784085 on the 18/07/2011 which contains further corrective actions agreed to be implemented.

Based on the mitigating actions taken by the Managing Authority and Certifying Authority and based on the action plan suggested by the Managing Authority (see chapter 6: Subsequent events), the Commission auditors **could in principle raise the level of assurance to:**

### **Category 2: Works, but some improvements are needed.<sup>9</sup>**

it.

<sup>9</sup> 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.

The MA accepted the majority of findings and dressed up immediate corrective actions. Some issues (details see in Section 4) could be closed with this final report. Nevertheless, the Commission is of the opinion that concerning the critically assessed KR 2, 3 and 4 for MA the actions should be further developed; timely implemented and followed up before the closure of recommendations.

It should be noted that this action plan is in the phase of implementation by the national authorities, no audit work to test its effectiveness could yet be performed.

The re assessment of the level of assurance is subject to the correct and timely implementation of the action plan by the national authorities and its effectiveness will be subject to a revision by the Commission after the end of its implementation.

The audit team considers that the financial corrections listed under Findings 12-15 inclusive, the flat rate corrections and analysis following Findings 3 must be made before the report can be closed and the level of assurance increased.

## ANNEX 1

**Urgent remedial action is required:** 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 be implemented one month at the latest after receipt of the final report in the Member State's language.

**Prompt remedial action is required:** 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. The recommendation should be implemented three months at the latest after receipt of the final report in the Member State's language.

**Specific remedial action is required:** 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. The recommendation should be implemented three months at the latest after receipt of the final report in the Member State's language.