



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL AND URBAN POLICY  
Audit  
The Director

Brussels,  
REGIO C2/REGIO D(2013) 240633

**Subject: Competitiveness Operational Programme (CCI 2007BG161PO003)**  
**Final conclusions on mission n°2011/BG/REGIO/J2/996/1 of 17 – 21 October 2011**

**Complementary EPM 'To obtain assurance on the functioning of the management and control systems through the audit of Operational Programmes / areas and horizontal themes (2010-2012)'**

**Ref.: Member State letter 92-00-377 of 28 September 2012 (Ares(2012)1139126)**

Your Excellency

I am writing to inform you that Directorate-General of Regional Policy has analysed your reply in relation to the audit carried out on the Competitiveness Operational Programme (CCI 2007BG161PO003).

Following the analysis of the information provided in the Member State's letter above-mentioned, you will find in **annex I** our conclusions in this regard.

As no irregular expenditure has been detected by my services, I am pleased to inform you that no financial corrections are to be applied by the Commission as a result of the audit. There are financial corrections resulting from the systems audit performed by the audit authority which address discrepancies identified by this report (finding 1) and these have been accepted by the managing authority. The audit is therefore closed.


I would like to remind you that under Article 90(1) of Council Regulation (EC) N° 1083/2006, the competent bodies and authorities are required to keep available all relevant documents for a period of three years following the closure of an operational programme as defined in Article 89(3) of the Regulation or three years following the year

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in which partial closure takes place, in case of documents regarding expenditure and audits on operations referred to in 90(2) of the Regulation.


Yours faithfully



  
Lena Andersson Pench

Enclosures: Annex I - Commission's conclusions

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## ANNEX I – COMMISSION’S CONCLUSIONS

Findings 2, 3, 4, 5, 6, 7, 9 and 10 were closed in our letter of 26 June 2012 (ref. Ares(2012)769134). Below are our conclusions in relation to the remaining findings.

### ***Finding n°1: Discrepancies in the audit trail related to selection of projects***

For one of the five projects audited (██████), the average score from the two checklists used for the economic and technical assessment (90.603) did not agree with the score recorded in the evaluation report and used for ranking of the projects and grant decisions (88.532).

A discrepancy between the score from the checklists and the score used for the funding decision casts doubts on the integrity of the selection procedure.

### ***Action n°1 (Responsible bodies: Managing authority & Intermediate body; Deadline: 60 days; Priority: High)***

1.1 The intermediate body (BSMEPA) should amend its procedures to prevent the possibility of replacing parts of the project selection documentation with new documentation after the file has been completed.

1.2 The managing authority should verify the documentation in its archive related to the call in question (call n° 2.1.5) to check whether there are any other instances of discrepancies between the supporting documentation and the results of the assessment reported in the evaluation report.

1.3 The managing authority and the intermediate body should analyse whether the procedures related to selection of projects used for other calls could have led to similar discrepancies. If so, sub-action 1.2 should also be performed for the other calls that may be affected by similar problems.

### ***First reply of the Member State***

The Member State reply states that despite the technical error in the recording of the result from the technical and financial evaluation, the applicant was ranked first in the reserve list of project proposals.

#### ***Point 1.1:***

Each page of the tables evaluating project proposals at individual stages of the evaluation process bears the personal signature of the person who had carried out the evaluation.

In addition, to provide further assurance, the results from the evaluation of future project proposals as well as the tables filled in by evaluators to evaluate the projects will be scanned and uploaded in UMIS.

The procedures manual also sets out the terms and conditions for archiving documents for grant award procedures. After the finalisation of the project selection procedure, the evaluation committee’s chairperson submits the entire documentation for archiving and storage to the employee in charge of the intermediate body’s archives. The archiving of the documentation and its submission for storage are substantiated by filling in dedicated checklists.

When filling in the checklists, the official in charge (the secretary of the respective evaluation committee) verifies the existence of all documents relating to the evaluation of the project proposal, including the evaluation tables filled in at the respective stages of evaluation and their number. The information collected during this verification is recorded in the checklist for the archiving of the project proposal, which is to be signed by the secretary and the chairperson of the evaluation committee and is to be submitted for storage to the official in charge of the archives.

Other procedures set out in the manual regulate the subsequent access to the archived documentation, requiring a request in advance and indication of the documentation used (document type, date of access, name and signature of the person using the documentation, return date, etc.) in the records kept for this purpose. The procedures thus detailed guarantee traceability of the archived project dossiers.

#### *Points 1.2 and 1.3:*

At the time of the audit, to guarantee the consistency between the documentation relating to evaluation of project proposals carried out under procedure BG161PO003-2.1.05 'Upgrade of technologies in large enterprises' and the outcome of the evaluation itself, the Internal Control over Project Implementation Department of the intermediate body verified the documents of all project proposals under the procedure to detect the consistency between the substantiating documents and the outcome of the evaluation indicated in the evaluation committee's report. In view of the need to ensure consistency under the remaining project selection procedures as well, the managing authority will carry out such inspection on a sampling basis as regards these procedures. The outcome of the inspection will be subject to analysis and reporting.

Regardless of the above inspection of the intermediate body, the managing authority will carry out its own inspection of documentation available under procedure BG161PO003-2.1.05 'Upgrade of technologies in large enterprises' to ensure independence of the inspections in accordance with the instructions given by the Commission. The inspection will focus on the consistency between the items of stage 'Technical and financial evaluation' indicated in the evaluation tables and their recording in the evaluation report.

The managing authority will carry out such an inspection on a sampling basis with regard to the remaining grant award procedures regardless of the intermediate body's inspection.

#### ***Commission position***

*Point 1.1:* The Bulgarian authorities amended their procedures and they will upload the checklists prepared by the evaluators during the technical and economic assessment into a computerized system, thus ensuring adequate audit trail. They are also reinforcing the control functions within the management structure.

*Point 1.2:* The intermediate body carried out verifications of the selection procedures to check whether there are further inconsistencies for the selection procedure for call 2.1.05.

*Point 1.3:* The intermediate body and the managing authority are also carrying out further investigations in this regard for other selection procedures of the programme.

The actions of the Member State authorities adequately address points 1.1 and 1.2 of the finding.

Nevertheless, actions requested under point 1.3 are still on-going. The Member State authorities should report to the Commission the results of their verifications and analyses under this point.

### ***Second reply of the Member State***

The managing authority performed an analysis of all procedures under priority axis 2 to identify and check the procedures where such discrepancies or similar issues could exist.

Since the established discrepancy was not due to specific features of particular procedures and could occur in any project selection procedure, the managing authority decided to apply a uniform approach towards all procedures under the priority axis 2.

The managing authority carried out a full 100% check on three procedures, one in each area of intervention. Two of them - procedure BG161PO003-2.1.07 'Upgrade of technologies in large enterprises' and procedure BG161PO003-2.3.01 'Investments in green industry' support large enterprises, like the procedure where the discrepancy was established (procedure No 2.1.05), while the third procedure BG161PO003-2.2.01 'Support for the creation and development of business incubators' is the only procedure performed in the second area of intervention, 'Promotion of business support infrastructure'. In addition, given the number of project proposals evaluated, the MA also checked a 5% sample of procedure BG161PO003-2.1.12 'Achieving compliance with internationally recognised standards and introducing management systems in enterprises'.

The verification included comparative assessments between scores recorded in the evaluation tables, scores recorded in the evaluation report and scores reflected in the grant decision. The verification covered all the project proposals which reached the technical assessment stage, whether approved for funding, on the reserve list or rejected.

The verification did not establish discrepancies between the scores assigned by the evaluators and recorded in the evaluation tables, on the one hand, and the scores recorded in the evaluation reports and decisions on the four verified procedures, on the other hand.

### ***Commission position***

There were no other discrepancies identified by the checks performed by the managing authority.

The audit authority has nevertheless reported in the Annual Control Report 2012 for the Competitiveness OP that it had identified additional discrepancies between the scores attributed by the evaluators and the scores used for selection of the projects in relation to the call BG161PO003-2.1.05 (i.e. the call where the discrepancy has been first identified by the Commission auditors in this finding).

The audit authority proposed a 2% flat-rate correction for all the expenditure declared under the call BG161PO003-2.1.05 in the amount of BGN 754 406 (EUR 385 728) in relation to the expenditure already declared and to apply a 2% flat-rate correction also on all the expenditure declared in relation to this call in the future.

The managing authority agreed to deduct the proposed financial corrections from the next payment claim (BGN 754 406 or EUR 385 728) in relation to the expenditure declared in years 2010 and 2011 and BGN 1 689 228 (EUR 863 702) in relation to the expenditure

declared in 2012. It also agreed to apply the 2% flat-rate correction in relation to the call in the future.

The work performed by the audit authority adequately addressed the finding. The managing authority is applying proposed financial corrections. The finding is closed.

***Finding n°8: Verification of the SME status of companies belonging to a group***

Verification of the SME status of the company is part of the verifications done prior to granting funding. The data provided by beneficiaries is only reconciled to supporting documentation in respect of the company applying for the grant but not for any other companies in the group.

***Action n°8 (Responsible body: Intermediate body; Deadline: 60 days; Priority: Medium)***

To ensure compliance with the applicable rules, the data about SME status should be reconciled to supporting documents not only for the company applying but also for other group companies which influence the SME status of the applicant. As a general rule, this should be carried-out before the co-financing is granted. Where this was not done, such verification of relevant supporting documents should be performed at least within the scope of the ex-post verifications. The managing authority should ensure with future expenditure declared related to new and on-going projects that this verification (checking of group status) is carried out.

***First reply of the Member State***

Article 8 of the annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, pages 36-41) sets out that any Community legislation or any Community programme in which the term "SME", "microenterprise", "small enterprise" or "medium-sized enterprise" occur should refer to the definition contained in the Recommendation. Recital 14 of the Preamble and Article 3(5) of the annex to the Recommendation set out that in order to ease the administrative burden for enterprises, and to simplify and speed up the administrative handling of cases for which SME status is required, it is appropriate to allow enterprises to use solemn declarations to certify certain of their characteristics. This includes also the status of an autonomous enterprise, partner enterprise or linked enterprise, as well as the data about staff and financial data of the enterprise.

The recommendation in question and the instructions given therein was transposed in the Small and Medium-Sized Enterprises Act, which sets out that the SME status has to be ascertained by a declaration and the declarant assumes the respective liability as laid down by law for the accuracy of the data.

The verification of the correspondence of the data about the companies applying under the Competitiveness OP to the required supporting documents submitted by them upon the submission of project proposals, was introduced as an additional condition to guarantee greater assurance about the compliance of applicants with the applicable rules.

In this case we believe that the requirement for supporting documents not only about applying companies but also about all their 'linked enterprises' and 'partner enterprises'

is not in line with the principles of the regulatory requirements and will hence increase a lot the administrative burden for the applicants. In a number of cases, the applying companies' 'linked enterprises' and/or 'partner enterprises' are foreign legal entities which have to meet different deadlines for drafting financial statements compared with those laid down in the Bulgarian national law. Furthermore, the accounting documents of foreign legal entities are drafted in a foreign language and to be presented they have to be translated, which imposes unjustified additional expenditure for the applicants. This will all lead to the multiple increase in the errors made by applicants and will considerably increase the share of applicants disqualified due to formalities such as inability to submit a document regarding a third independent party.

#### ***Commission position***

We accept the arguments of the Member State concerning the non-provision of proof of the SME status of the applicants (e.g. copies of financial statements and other documents covering other group companies) at grant application stage. Nevertheless:

- 1) The managing authority and/or the intermediate body should verify the SME status of the beneficiaries and thus the respect of the state aid rules as part of their management verifications. Such verifications can be performed on a sample basis, either on a risk-based or random approach.
- 2) The Bulgarian authorities could also consider highlighting in both the call for applicants and in the subsequent grant agreements that they retain the possibility of requesting the relevant supporting documents from the applicant proving its SME status (including financial statements of the group companies). This could act as a deterrent to applicants submitting non-compliant applications.

#### ***Second reply of the Member State***

When preparing future procedures for the award of grants, the managing authority will amend the Guide for Applicants and the grant contracts to be concluded by incorporating an option for documentary verification, should a suspicion arise, of the category of beneficiaries in terms of their SME status, including their partners and associated companies.

#### ***Commission position***

The recommendation has been accepted by the managing authority. The finding is **closed**.