



EUROPEAN
COMMISSION

Brussels, 20.3.2014
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ANNEXES 1 to 2

ANNEX

to the

COMMISSION DECISION

**conferring management powers relating to Component I - Transition Assistance and
Institution Building of the Instrument for Pre-Accession Assistance (IPA) on Serbia**

ANNEX I

List of *ex ante* controls as defined in Article 1(3)

- (1) Approval of contract notices for procurement, calls for proposals for grants and any corrigenda thereof
- (2) Approval of tender dossiers and guidelines for applicants on grants
- (3) Approval of the composition of Evaluation Committees
- (4) Approval of evaluation reports and award decisions
- (5) Approval of contract dossiers and contract addenda

ANNEX II

Anti-fraud measures and rules for the recovery of funds by the Commission in case of irregularities or fraud

1. ANTI-FRAUD AND ANTI-CORRUPTION MEASURES

1.1. by the Beneficiary Countries¹

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or European Union controls.

Irregularity shall mean any infringement of the Financing Agreements, resulting contracts or European Union legislation², resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the European Union, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

- (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect,
- (iii) the misapplication of such funds for purposes other than those for which they are originally granted.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1828/2006³.

In particular, all suspected and actual cases of fraud and irregularity as well as all measures related thereto taken by the national authorities must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud and irregularity to report on, the beneficiary country shall inform the Commission of this fact within two months following the end of each quarter.

The beneficiary country shall take any appropriate measure to prevent and counter any active or passive corruption practice at any stage of the project selection, procurement procedure or grant award procedure or during the implementation of corresponding contracts/grants.

¹ in accordance with the rules set down in Art. 54 of the Council Regulation (EC, Euratom) No 1605/2002

² defined as the entirety of EU rules applicable between the Parties of the Financing Agreement (for example the Europe Agreements, the Framework Agreement, the Memorandum of Understanding on the Establishment of the National Fund etc.).

³ OJ L 371; 27.12.2006; p. 1-163.

Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Union's financial interests.

Passive corruption is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Union's financial interests.

The authorities of the beneficiary country, including the personnel with responsibility for the implementation of the programme, undertake to take whatever precautions are necessary to avoid any risk of conflict of interests and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

The beneficiary country shall establish an anti-fraud local contact point, per programme, to facilitate passing information to the Commission (European Anti-Fraud Office - OLAF) and assist its staff in carrying out on-the-spot checks and controls or any other investigative activity related to the protection of EU funds. The list of contact points will be communicated to the Commission (OLAF).

The beneficiary country's authorities managing EU funds shall inform their staff of the possibility to anonymously communicate any serious suspicious of fraud, corruption or any other illegal activity directly to the European Anti-fraud Office (OLAF). The Commission shall be informed about the implementation of this preventive measure.

1.2. by the Commission

All Financing Agreements as well as the resulting contracts are subject to audits by the Court of Auditors, supervision and financial control by the Commission (including the European Anti-fraud Office, Internal Audit Service - IAS), including on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96⁴ and measures such as the prior approvals referred to in Article 1.

The controls and audits described above are applicable to all contractors and subcontractors who have received EU funds.

⁴ OJL292 of 15.11.1996, p. 2-5

The accounts and operations of the National Fund (NF), and, where applicable, the Central Finance and Contracting Unit (CFCU) and all relevant Implementing Agencies (IA) may be checked at the Commission's discretion by the relevant Commission services or an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union's Court of Auditors as referred to in the "General Conditions relating to the Financing Agreement" attached to the Framework Agreement.

2. RECOVERY OF FUNDS BY THE COMMISSION IN CASE OF IRREGULARITIES OR FRAUD

Any proven irregularity or fraud discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

If the implementation of a measure appears not to justify either a part or the whole of the assistance allocated, the Commission is to conduct an appropriate examination of the case, in particular requesting the beneficiary country to submit its comments within a specified period of time and to correct any irregularity.

Following the examination referred to in the previous paragraph, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the Financing Agreement and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought. Any reduction or cancellation of the assistance is to give rise to recovery of the sums paid.

Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission is to conduct a suitable examination of the case and request the beneficiary country to submit its comments within a specified period. After the examination, if the beneficiary country has undertaken no corrective measures, the Commission may:

- (a) reduce or cancel any advance;
- (b) cancel all or part of the assistance granted to the measure
- (c) withdraw the conferral of management.

The Commission is to determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management, control systems and reporting.

Any funds not spent by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO just after the end of the disbursement period of the Financing Memorandum showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

Notwithstanding the recovery of unused and ineligible funds after expiry of the Financing Agreement, a complementary recovery order may be issued after the final audit of the

reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Agreement has been carried out, taking into account the independent opinion of the final audit.

The National Authorising Officer shall ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of notification. If the NAO does not repay the amount due to the EU, the beneficiary country shall refund this amount to the Commission. Interest on account of late payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the EU Budget.