



REPUBLIC OF BULGARIA

COUNCIL OF MINISTERS

DECREE No

of 2009

amending and supplementing Decree No 121 of the Council of Ministers of 2007 on determining the procedure on grant awarding under the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union and under the PHARE Programme of the European Union (promulgated, SG No 45 of 2007; amend. and suppl. in Nos 38, 61, 81 and 95 of 2008 and No 7 of 2009)

THE COUNCIL OF MINISTERS

DECREED:

§ 1. The following amendments shall be made in Article 1:

1. Paragraph 1 shall be amended as follows:

“(1) This Decree shall determine the procedure on grant awarding under the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union, hereinafter referred to as “Operational Programmes”, and under the PHARE Programme of the European Union.”

2. In paragraph 2 the words “in respect to” shall be replaced by “in the case of”.

§ 2. In Article 2, p. 1 и 3 the words “co-financed by the Structural Funds and the Cohesion Funds of the European Union” shall be deleted.

§ 3. Articles 3 и 4 shall be amended as follows:

“Article 3. A grant shall be provided on the basis of Contract concluded between the Contracting Authority and the beneficiary, or on the basis of an order issued by the Head of the Contracting/Managing Authority in the cases, where the beneficiary and the Contracting/Managing Authority are in the same administration.

Article 4. The grant shall be awarded by the Contracting Authority in accordance with the objectives and priorities and under the terms, defined in the respective Operational Programme or in the Financial Agreement under the PHARE Programme of the European Union.”

§ 4. In Article 5(2) the word “the structure” shall be replaced by „the administration”.

§ 5. In Article 6 the following amendments and supplements shall be made:

1. Paragraph 2 shall be amended as follows:

“(2) The procedure under paragraph 1, point 1 shall be performed pursuant to Articles 11 - 33, and the procedure under paragraph 1, point 2 shall be performed pursuant to Article 34.”

2. Paragraph 3 shall be inserted:

“(3) Where so provided in the respective grant award procedure, applicants may submit project proposal on their own or jointly with a partner or an associated partner.”

§ 6. Articles 7 - 10 shall be amended as follows:

Article 7. (1) Eligible to award of grant shall be an applicant who, at the moment of grant application, do not fall within any of the categories determined in Article 93(1), Article 94 and Article 96(2)(a) of Council Regulation (EC, Euratom) No 1605/2002, applicable to the general budget of the European Communities.

(2) The requirements under paragraph 1 shall respectively apply in regard to the persons authorized to represent the applicant or partner and listed in the Commercial Register or the Register of non-profit legal entities or have been determined as such in their act of establishment, when these circumstances are not subject to registration.

(3) The requirements under paragraphs 1 and 2 shall not apply to budgetary enterprises.

(4) In cases of implementing the projects selection procedure, the Contracting Authority may specify and supplement the eligibility criteria for applicants in the application guidelines and indicate the respective documents proving the fulfilment of those requirements.

(5) The requirements under paragraphs 1 and 4 shall also apply in regard to the partners of the grant applicant.

(6) The circumstances under paragraphs 1 and 2 shall be proven both by the applicants and their partners:

1. at the application – by declarations;

2. at the conclusion of the contract or issuance of the order under Article 3 – by official documents issued by the respective competent authorities for the circumstances in regard to which such documents are issued; and by declarations in regard to all other circumstances, while complying with the requirements of Article 2(1) of the Law on e-

Governance.

(7) The circumstances under paragraph 4 shall be evidenced by copies of the documents, certified by the applicant.

Article 8. (1) In cases of grant awarding from the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union, the Contracting Authority shall submit to the Ministry of Finance an Indicative Annual Work Programme of the upcoming procedures under Article 6(1) as part of the procedure for compiling the mid-term budget forecast and the draft Law on State budget for the following year.

(2) In regard to each grant, which the contracting authority is planning to award, the indicative annual work programme shall contain as a minimum:

1. programme under which the grant will be awarded;
2. goals and priorities of the specific grant or priority axes, operations and activities of the respective Operational Programme, under which the aid will be awarded;
3. grant award procedures;
4. eligible beneficiaries;
5. maximum co-financing percentage;
6. month or period of the year when is planned the publication of the selection procedure notice or when is planned the implementation of the direct award procedure;
7. indicators used to measure the implementation of Indicative Annual Work Programme;
8. information whether the specific scheme for awarding a grant or part of the funding granted constitute State aid within the meaning of Article 87 of the EC Treaty or aid *de minimis* within the meaning of Commission Regulation (EC) No 1998/2006;
9. maximum amount of grant financing for the specific procedure;
10. minimum and maximum amount of the grant for every project, if such amounts are specified.

(3) The indicative annual work programme shall be drawn up by the Contracting Authority based on model approved by the Minister of Finance.

Article 9. (1) The Managing Authority shall publish on its website and on the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria, established by Decree No 6/2007 of the Council of Ministers (SG, No 10 of 2007), an Indicative Annual Work Programme on the forthcoming procedures under Article 6 not later than 31 January of the budget year concerned.

(2) The Indicative Annual Work Programme shall be also published on the website of the Intermediate Body, in the cases where a Contracting Authority is the Intermediate Body.

(3) The Indicative Annual Work Programme and the indicators of its implementation, in view of the specifics of the programme shall be developed by the Managing Authority, endorsed by the Minister responsible for the Ministry, where the Managing Authority is located, and by the Deputy Prime Minister responsible for coordination, control and communication of the activities

related to the management of the EU resources, and shall be approved by the Monitoring Committee of the relevant Operational Programme.

(4) Any amendment in the Indicative Annual Work Programme shall be published within 7 working days.

Article 10. (1) Every Managing Authority and Intermediate Body of Operational Programme shall elaborate an Annual Work plan covering all its activities required for the implementation of the Indicative Annual Work Programme.

(2) The Annual Work Plan and its amendments shall be endorsed by the Deputy Prime Minister responsible for coordination of planning, programming, management, monitoring and control of the EU resources, and shall be approved by the relevant Sector Minister.

(3) The Deputy Prime Minister under paragraph 2, together with the relevant Sector Minister, shall by 31 January of the subsequent year deliver opinion on the implementation of the Annual Work Plans of the Managing Authorities and Intermediate Bodies.”

§ 7. Articles 11 - 15 shall be amended as follows

“Article 11. The projects selection procedure shall be implemented in accordance with the principles of:

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

Article 12. (1) The projects selection procedures may be:

1. open procedure;
2. procedure with pre-selection;

(2) An open procedure shall be a procedure, where:

1. each applicant shall submit a project proposal using an application form, drawn up in accordance with the application guidelines, in response to a published notice;
2. an evaluation of the received project proposals shall be performed;
3. the project proposals which will receive grant shall be approved.
4. a decision shall be issued by the Head of the Contracting Authority for award of grant;
5. a grant contract shall be concluded.

(3) Procedure with pre-selection shall be a procedure, where:

1. each applicant shall submit a pre-selection form, drawn up in accordance with the application guidelines, in response to a published notice;
2. based on criteria for evaluation of the pre-selection form, defined in advance in the application guidelines, an evaluation of the form shall be performed;

3. the applicants, having submitted pre-selection form, shall be approved and an invitation to submit project proposal will be send to them;
4. the approved applicants shall receive an invitation to submit project proposal through an application form drawn up in accordance with the application guidelines;
5. an evaluation of the received project proposals shall be performed, and as a result, the project proposals, which will receive grant, shall be approved.
6. a decision shall be issued by the Head of the Contracting Authority for award of grant;
7. a grant contract shall be concluded.

(4) From the point of view of the project selection manner the open procedure and the procedure with pre-selection may be:

1. a competitive selection procedure;
2. a procedure for selection of projects covering certain quality requirements;

(5) The competitive selection procedure shall be a procedure, where: the project proposals are evaluated and ranked in descending order depending on the their evaluation and all or part of the projects are approved for funding in order of ranking until reaching the total amount of funds under the respective procedure, determined and announced in advance.

(6) The projects selection procedure covering certain quality requirements shall be a procedure, where the project proposals are evaluated and approved for funding are those of the project proposals whose evaluation is equal to or higher than the minimum acceptable evaluation, pre-announced for the respective procedure.

(7) From the point of view of application deadlines the open procedure and the procedure with pre-selection may be:

1. procedure with a specified application deadline;
2. procedure without a specified application deadline;

(8) The procedure with a specified application deadline shall be a procedure, where one or several application deadlines have been announced in advance. The project proposals, received after the application deadlines, are not taken into consideration and in the cases where several deadlines have been announced in advance those project proposals may be forwarded for review after the expiry of the next deadline.

(9) The procedure without a specified application deadline shall be a procedure, where the project proposals shall be submitted, evaluated and approved for funding without time limits.

(10) In cases of announcement of a procedure with a single deadline for application, the minimal term for collection of project proposals shall be 60 days. When announcing a procedure with several application deadlines, the minimal term for collection of project proposals for the first deadline shall be 60 days.

(11) If the notice of opening the procedure with a single application deadline or with several application deadlines contains a date for starting the subsequent scheme of award of

grant for financing the same activity, the minimal term under paragraph 10 shall be 30 days.

Article 13. (1) The notice of opening a projects selection procedure shall be published on the website of the Contracting Authority, in the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria and at least in one national daily newspaper.

(2) After the announcement of the projects selection procedure the Contracting Authority may organize an explanatory campaign, intended for potential beneficiaries.

Article 14. (1) The Contracting Authority shall prepare application guidelines, containing at least:

1. objectives of the specific grant;
2. amount of the grant and percentage of co-financing;
3. applicants expenditure eligible for financing;
4. instructions for the applicants on the manner of applying, deadlines and the address for submission of the project proposals;
5. minimum and maximum period of the project implementation, where applicable;
6. pre-selection form and evaluation criteria, where applicable;
7. application form including filling instructions and list of annexes thereto;
8. budget model with instructions on its filling in;
9. models of other necessary annexes for participation in the procedure;
10. stages and method of evaluation of the project proposals;
11. evaluation criteria for the project proposals and their relative weight, where applicable;
12. draft of the grant contract;
13. eligibility criteria and compatibility of support with the rules in the field of State aid in regard to the specific grant, where applicable;
14. list of accompanying documents proving the established requirements for the economic and financial situation of the applicants, qualification etc., by discretion of the Contracting Authority, necessary for the evaluation of the project proposal.

(2) Compliance with the requirements for the economic and financial situation of the applicant shall be proven by an annual financial Statement and/or other documents, indicated in the application guidelines.

(3) The requirements under paragraph 2 shall not apply to budgetary enterprises.

(4) When determining the list of accompanying documents under paragraph 1, point 16, the provision of Article 2(1) of Law on e-Governance shall be respected.

(5) The application guidelines shall be published on the website of the Contracting Authority and in the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria, simultaneously with the publication of the notice of opening the projects selection procedure.

(6) The deadline for reception of the project proposals should be indicated in the notice

and in the application guidelines in the cases of implementation of procedure with a specified application deadline;

(7) Following their publication, the application guidelines may be amended:

1. if necessary as a result of changes occurred in the national or in the European regulations;
2. in case of increase of the financial resource under the respective procedure;
3. in case of extension of the deadline for receiving project proposals under the respective procedure.

(8) If the financial resource under the respective procedure would be increased, only the part which indicates the overall financial resource for the procedure may be amended in the application guidelines, but the percentage of the co-financing can not be changed nor the amount of the grant for each project, if specified.

(9) In the cases under paragraph 7 any amendments in the application guidelines shall be published in the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria and on the website of the Contracting Authority.

(10) In cases where, as part of projects selection procedure, shall be provided support measures having the nature of State aid within the meaning of Article 87 of the Treaty establishing the European Community or of aid *de minimis*, according to the provisions of Commission Regulation (EC) No 1998/2006, the Contracting Authority shall indicate in the application guidelines the type of the aid, explicitly referring to the act of the European Commission in accordance with which the aid will be provided.

(11) In the cases under paragraph 10 the application guidelines should certainly contain detailed rules and conditions, ensuring full conformity with the provisions, applicable in the field of State aid, in view of the exercise on the part of the State aid administrator of control over the legal conformity of the aid provided within the meaning of Law on State Aid.

Article 15. (1) Application forms shall be submitted in accordance with the conditions, indicated in the application guidelines.

(2) All application forms with the exception of those, applicable to projects within the meaning of Article 39 of Council Regulation (EC) No1083/2006, shall contain a model for submission of the project proposal, which must certainly include:

1. general and specific objectives of the project;
2. justification of the conformity of the project with the programme objectives and priorities;
3. indicative plan-schedule of the project activities;
4. description of the expected outcomes, expected effect and justification of sustainability of the project results;
5. the project budget;

6. declaration for the existence of other funding under the project, having the nature of State aid/aid *de minimis* irrespective of the source or type of aid;
7. declaration for the existence of other funding under the project or of the activities under the project from the State budget, the Community budget or another financial source.

(3) The form shall indicate the legal status of the applicant, the availability of the required administrative, financial and technical capacity for implementation of the project and the circumstances under Article 7(1) and (4) shall be declared.

(4) The applicants shall submit in the form of annexes to the application form all documents, expressly required by the application guidelines. The applicants shall submit originals of the documents, indicated in the application guidelines or certified copies thereof. Notarized copies shall be attached only if expressly so required by the application guidelines.

(5) Where the amount of the grant would exceed 600 000 BGN, the Contracting Authority require that together with the application form shall be submitted an audit Statement concerning performed independent audit, performed by a registered auditor for the preceding year. This requirement shall be also indicated in the application guidelines.

(6) The requirement under paragraph 5 shall not apply to enterprises, funded from the public budget.

(7) In regard to enterprises, funded from the public budget, the type of documents under paragraph 4 shall be determined by the Contracting Authority in the application guidelines.”

§ 8. Articles 16 - 32 shall be amended as follows

“Article 16. (1) Prior to the submission of the project proposals applicants may request clarifications concerning the grant award procedure according to conditions, determined in the application guidelines, containing a deadline for submitting questions and a deadline in which the Contracting Authority would provide answers to the questions submitted.

(2) The Contracting Authority shall indicate in the application guidelines a correspondence address, fax number, e-mail address and/or website, where applicants may send their inquiries. The Contracting Authority shall publish “Questions and Answers” on its website within deadlines, indicated in the application guidelines.

(3) Answers containing opinions on the conformity of a specific project or applicant with the application conditions can not be provided.

Article 17. (1) The Head of the Managing Authority shall approve by an order a list of natural persons – external evaluators, who are eligible to be involved in the Commissions under Article 18(1).

(2) In the list under paragraph 1 may be included individuals with higher education, with at least 3 years' experience in the relevant occupational field or experienced in the evaluation of projects under programmes or offers under the Law on Public Procurement. The list shall

contain the names and the professional domain where they have acquired their education degree, CVs and academic title or rank, if any.

(3) The common list of external evaluators shall be published on the website of the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria.

(4) The list under paragraph 3 shall be formed and updated following the conduction of competitions by the Contracting/Managing Authorities. The terms and conditions for conducting competitions and the additional requirements to the persons shall be determined by order of the Head of the Managing Authority.

(5) The lists under paragraphs 1 and 3 shall be operatively updated, if necessary, but at least once in 3 months.

Article 18. (1) In case of implementing a projects selection procedure the Head of the Contracting Authority shall appoint by an order an Evaluation Commission to prepare an activity report on the assessment and the results thereof and to propose to the Head of the Contracting Authority a list of projects for funding. When implementing a procedure with a specified application deadline, the order for the Evaluation Commission shall be issued within 10 working days following the expiry of the deadline for submission of project proposals.

(2) The order under paragraph 1 shall define:

1. a chairman and secretary (secretaries) in a non-voting capacity;
2. the necessary number of voting members, but not less than three.
3. alternate members who shall be not less than three.

(3) The chairman of the Commission shall be a staff member in the administration of the structure, where the Contracting Authority is located.

(4) The members and alternate members of the Commission may be staff members from the Contracting Authority, from the administration of the department, where the Contracting Authority is located, as well as individuals who are external to that administration.

(5) The Contracting Authority shall be obliged to include as members and alternate members of each Evaluation Commission at least 1/3 of external experts selected and/or external evaluators. The external evaluators shall be persons on the list under Article 17(3), except in the cases of procedures under the Law on Public Procurement.

(6) The number of members of the Evaluation Commission shall be determined on the base of the number of project proposals received, the total value of the procedure and the complexity of the project proposals submitted. The same is valid for the selection of the alternate members.

(7) The chairman of the Commission shall direct in terms of organization and methodology the work of the Evaluation Commission, coordinate the process of evaluation in

accordance with the procedures, provided in the Decree and ensure the impartiality and transparency of the process.

(8) The secretary shall assist the chairman in his functions, performing all administrative activities, related to the evaluation process and ensure technical support for the activity of the Commission.

Article 19. (1) The following may also participate in the procedure for evaluation of the project proposals:

1. assistant-evaluators;
2. observers.

(2) The persons under paragraph 1 shall not be members of the Evaluation Commission. They shall be designated by an order of the Head of the Contracting Authority, regulating in details the assigned activities in the evaluation procedure.

(3) The activity of the assistant-evaluators shall be confined to the stages of evaluation of the project proposals specified in the order under paragraph 2.

(4) The observers shall monitor the implementation of the procedure in accordance with the provisions of this Decree. They shall attend the Commission meetings, but may not take part in the discussions or influence in any way the evaluation of project proposals. In case of violations of the procedure, the observer must inform in writing the Head of the Contracting Authority. Following the completion of the evaluation process, the observer shall draw up a report on his/her activity addressed to the Head of the Contracting Authority.

(5) In cases, where the Contracting Authority is an Intermediate Body, an observer from the Managing Authority may join the evaluation procedure.

(6) When conducting projects selection procedures for award of grant from the Structural Funds and the Cohesion Fund of the European Union, the Contracting Authority shall invite in writing the Central Coordinating Unit and the Directorate "Coordination and Control over the Activities of Management of Resources of the European Union" at the administration of the Council of Ministers to designate their representatives with observers status, which must reply in writing within 5 working days. Representatives of the Central Coordinating Unit and of the Directorate "Coordination and Control over the Activities of Management of Resources of the European Union" at the administration of the Council of Ministers can not attend as observers when those units had submitted project proposals under that specific grant award procedure.

(7) When implementing projects selection procedures related to evaluation of project proposals within the meaning of Article 39 of Council Regulation (EC) No 1083/2006, both the Central Coordinating Unit and the Directorate "Coordination and Control over the Activities of Management of Resources of the European Union" at the administration of the Council of Ministers shall obligatory appoint their representative, to participate as observer in the procedure of project proposals evaluation.

Article 20. (1) The submission of project proposals and the activity of evaluation may also be performed at the territorial units of the Contracting Authority.

(2) In the cases, where the amount of the maximum grant for the relevant procedure is more than 100 000 BGN, the evaluation under paragraph 1 shall be limited to the stages under Article 24(2), points 1 and 2.

Article 21. (1) The members of the Evaluation Commission as well as the assistant-evaluators must possess the qualification and professional competence required for providing justified opinion or evaluation on/of the project proposals.

(2) The chairman of the Evaluation Commission and the observers must possess the qualification and professional competence required for monitoring the lawful conduct of the evaluation process.

Article 22. (1) The chairman, the secretary and the members of the Commissions, as well as the observers and assistant-evaluators, shall be obliged to discharge their functions in good faith, objectively and impartially.

(2) The individuals under paragraph 1 shall not:

1. have a conflict of interests with any of the applicants in the grant award procedure within the meaning of Article 52(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002, applicable to the general budget of the European Communities;
2. are interested in the award of grant under the specific procedure, within the meaning of the Law on Prevention and Disclosure of Conflict of Interests;
3. be related persons, within the meaning of § 1, point 1 of the Supplementary Provisions of the Law on Prevention and Disclosure of Conflict of Interests, with a applicant under the procedure;
4. be persons in hierarchical subordination between them.
5. be members of the Monitoring Committee of the respective Operational Programme and of the Monitoring Committee of the National Strategic Reference Framework.

(3) The persons under paragraph 1 shall sign a declaration of absence of conflict of interests and confidentiality, including in regard to absence of circumstances under paragraph 2, immediately after learning the names of the applicants in the procedures.

(4) In case of occurrence of a circumstance under paragraph 2 during the evaluation procedure, the persons under paragraph 1 shall immediately inform in writing thereof the Head of the Contracting Authority.

(5) In case of conflict of interests:

1. the chairman, the secretary and the members of the Evaluation Commission shall be dismissed from the Commission;
2. the assistant-evaluators and the observers shall be eliminated entirely from the evaluation procedure;

(6) In the cases of relation or hierarchical subordination, from the procedure of evaluation shall be eliminated as many persons as necessary in order to comply with the respective requirements under paragraph 2, points 3 and 4.

(7) Each change in the persons under paragraph 1, irrespective of the grounds thereof, shall be made by an order of the Head of the Contracting Authority, which shall be attached to the evaluation report. Any change must be noted in the evaluation report as well. Any newly appointed persons shall sign a declaration under paragraph 3.

(8) When the order for designation of the Evaluation Commission includes alternate members, assistant-evaluators and/or observers, the full member, having declared existence of a circumstance under paragraph 2, shall be substituted by the alternate member. In such case the order for designation of the Commission shall not be modified and this fact shall be noted in the Commission report. The alternate's members replacing any of the full members shall sign a declaration under paragraph 3.

Article 23. (1) Upon reception of the project proposals the Contracting Authority shall register them and issue receipts for the proposals, delivered personally.

(2) All project proposals shall be registered, irrespective of whether received before or after the deadline for submission of the project proposals.

Article 24. (1) All project proposals submitted within the submission period shall be evaluated in accordance with the criteria described in the application guidelines. The criteria may not be changed during the implementation of the procedure. The evaluation shall be documented by filling out evaluation tables.

(2) The evaluation of the project proposals shall take place within 3 months of the issue of the order for designation of the Evaluation Commission and shall include:

1. evaluation of the administrative conformity;
2. evaluation of eligibility;
3. technical and financial evaluation.

(3) The stages in the evaluation of administrative conformity and eligibility may be performed by the Evaluation Commission or by assistant evaluators. In the cases, where the evaluation is performed by assistant evaluators, record shall be drafted and enclosed with the report of the Evaluation Commission.

(4) The technical and financial evaluation of the project proposals shall be performed by at least two members of the Commission/assistant evaluators, mutually independently. The evaluation shall be the arithmetic average of the evaluations given by the evaluators. In case the difference in their evaluations is at least 20 %, the Chairman of the Commission shall entrust a third person with the evaluation, who is member of the Evaluation Commission. The final evaluation shall be the arithmetic average of the evaluations given by all three persons.

(5) During the evaluation of project proposals the Evaluation Commission can not request additional explanatory information or documents from the applicants except for the cases provided in the application guidelines.

(6) Applicants may withdraw in writing their project proposals from the evaluation process, in which case the Evaluation Commission shall not review the withdrawn proposal. The withdrawal of the proposal shall be noted in the Evaluation Commission report.

Article 25. (1) Upon completion of their work the Evaluation Commission shall prepare an evaluation report, to which the following documents should be attached:

1. copy of the order for appointment of the Evaluation Commission and for changes to its membership, if any;
2. declarations of impartiality and confidentiality;
3. attachment containing the explanatory information, made available to applicants prior to submission of the project proposals, as well as any correspondence, exchanged with applicants during the evaluation process;
4. evaluation tables from each stage of the procedure;
5. lists of attendance of the Evaluation Commission and of observers;
6. protocols of the different stages of the evaluation, signed by the persons, involved in the evaluation, according to the model approved by the Head of the Contracting Authority;
7. a list of the project proposals, offered for funding, including the amount of the grant, which the Commission proposes to award for each proposal as well as a list of alternative project proposals, which have successfully passed the evaluation, but the funding under the specific procedure has not been sufficient for them;
8. a list of project proposals for which it has been proposed to deny funding, which includes also a list of project proposals withdrawn by the applicants.

(2) In the cases of pre-selection the Evaluation Commission shall prepare a report in accordance with paragraph 1, and the list under point 7 shall include the applicants proposed to be invited to submit an application form.

(3) The report under paragraph 1 shall be signed by the chairperson, the secretary and all the members of the Evaluation Commission.

(4) The Evaluation Commission shall transmit the report and the accompanying documents to the Head of the Contracting Authority. The Head of the Contracting Authority shall sign a protocol, certifying their receipt.

(5) The report shall be made available where appropriate, also upon request, to the intra-organizational, national and European judicial, audit and control authorities, including to the Certifying Authority of the Structural Funds and the Cohesion Fund of the European Union, the Anti-Fraud Co-ordination Structure, the European Commission, as well to the European Anti-Fraud Office, with a copy to the Directorate for Co-ordination in the fight against infringements, affecting the financial interests of the European Communities at the administration of the Council of Ministers.

Article 26. (1) In the projects selection procedures, where the respective Operational Programme provides setting up of a Committee for coordination and prioritization of projects or where by discretion of the Head of the Managing Authority such a committee is appointed by an order, the Head of the Managing Authority shall convene a session of this Committee according to a procedure and in composition, determined in the Operational Programme and/or in the order for its establishment.

(2) The members of the Committee should meet the requirements under Article 22(2).

(3) The Committee shall carry out territorial and sectoral coordination and prioritization of the projects, which would be financed under the respective Operational Programme.

(4) The Committee shall prepare and submit a report on the coordination and prioritization of projects to the Head of the Managing Authority, which shall include a list of the project proposals, approved for financing, including the amount of the grant to be awarded for each proposal, as well as a list of alternative project proposals, which have successfully passed the evaluation, prioritization and coordination, but the funding for which has not been sufficient.

(5) Applicants may at any time withdraw in writing their project proposals from territorial and sectoral coordination and prioritization of projects. In such cases the specific proposal shall not be reviewed by the Committee. The withdrawal of the project proposal shall be noted in the report under paragraph 4, which shall be submitted where appropriate or upon request of the authorities under Article 25(5).

(6) In cases where involvement of a Committee for coordination and prioritization of projects is provided and the Head of the Managing Authority is different from the Head of the Contracting Authority within the meaning of the Decree, the evaluation report under Article 25(1) shall be made available to the Head of the Managing Authority as well.

Article 27. (1) Within 10 working days after the receipt of the report of the Evaluation Commission, the Head of the Contracting Authority shall take a motivated decision to:

1. approve the evaluation report and award a grant for the projects proposed;
2. return the evaluation report for reconsideration, indicating its grounds;
3. reject the evaluation report and terminate the procedure, indicating its grounds.

(2) In case of pre-selection procedure, within 15 working days of the receipt of the report of the Evaluation Commission, the Head of the Contracting Authority shall take a motivated decision to:

1. approve the report and allow the approved applicants to submit an application form;
2. return the report for reconsideration, indicating its grounds;
3. reject the report and terminate the procedure, indicating its grounds.

(3) In cases where involvement of a Committee for coordination and prioritization of projects is provided, on the basis of the reports under Article 25(1) and Article 26(4), the Head of the Managing Authority within 30 working days, shall take a motivated decision to:

1. approve the reports and award a grant for the projects proposed;
2. return the report under Article 25(1) and/or under Article 26(4) for reconsideration, indicating its grounds;
3. reject the reports and terminate the procedure;
4. accept an opinion for approval of the projects within the meaning of Article 39 of Council Regulation (EC) No 1083/2006 for transmission to the European Commission, upon approval of the reports by the Head of the Managing Authority.

Article 28. (1) The decision for award of grant under Article 27(1), p. 1 and (3), p. 1 shall contain:

1. a list of the project proposals approved for funding, including the amount of the grant to be awarded for each proposal;
2. a list of alternative project proposals, which have successfully passed the evaluation, as well as the coordination and prioritization, if any, but the funding for which has not been sufficient.
3. a list of the project proposals rejected and the grounds for its rejection.

(2) The decision to close the pre-selection procedure shall contain:

1. a list of the approved applicants, who will be invited to submit application form and the evaluation for each project proposal;
2. a list of the rejected applicants and the grounds for their rejection.

Article 29. (1) The decision for award of grant shall enter into force on the moment of its issuance.

(2) Within 15 working days of issuance of the decision under paragraph 1 the Contracting Authority shall notify in writing the approved applicants.

(3) In case of pre-selection procedure within 15 working days of the decision for admission of the approved applicants, the Contracting Authority shall send written invitation to the approved applicants to submit application form.

(4) The Contracting Authority shall notify in writing the unsuccessful applicants within 15 working days of the decision to award a grant, respectively for rejection of the applicants in the pre-selection procedure, indicating the grounds for their rejection.

(5) In the cases of projects within the meaning of Article 39 of Council Regulation (EC) No 1083/2006 the Contracting Authority shall send a copy of the decision under Article 27(1), p. 1 for award of grant, or the opinion under Article 27(3), p. 4 and transmit to the Central Coordinating Unit a copy of the documents concerning the approved projects presented in accordance with the requirements of the Commission Regulation (EC) No 1828/2006.

(6) Following coordination with the Deputy Prime Minister under the provisions of Article 2, point 14 of Decree No 104/2008 of the Council of Ministers of on organization and

coordination of management of resources from the funds of the European Union (SG, No 47 of 2008) the Central Coordinating Unit shall send to the European Commission the documents for the approved projects within the meaning of Article 39 of Regulation No 1083/2006.

Article 30. Prior to making a decision on the report of the Evaluation Commission, the Contracting Authority shall conduct a check of absence of double funding of projects.

Article 31. (1) The Head of the Contracting Authority/Managing Authority shall make a motivated decision concerning the refusal of awarding a grant, if prior to the time of the conclusion of a contract/issuance of an order, the applicant:

1. is unable to present the official documents under Article 7(6) point 2;
2. denies concluding a contract;
3. if the existence of double financing of a project or activities under it has been established;
4. if exceeding the threshold for admissible State aid/State aid *de minimis* has been established.

(2) The decision to refuse conclusion of a contract/issue an order for award of grant under paragraph 1 shall enter into effect on the moment of its issuance.

(3) In the cases under paragraph 1 no contract shall be signed/no order for award of grant shall be issued.

Article 32. (1) The Head of the Contracting Authority, on own initiative or upon motivated proposal of the Chairman or of an observer, shall terminate by decision the procedures under Article 6(1) in cases, where:

1. no project proposals were received;
2. financing under the respective programme has been suspended or financing will be suspended prior to termination of the evaluation process;
3. violations of the principles under Article 11 were committed in the opening and implementation of the procedure.
4. all project proposals submitted have been withdrawn by the applicants.

(2) Within the framework of the procedure without a specified deadline for application the stage of collection of project proposals may be suspended by a motivated decision of the Head of the Contracting Authority, in case that the value of the project proposals submitted would exceed the financial resource under the announced scheme. The Head of the Contracting Authority shall take a decision for prolonging the stage of collection of project proposals, in case that after the conduct of evaluation of the project proposals, financial resource would remain under the announced procedure.

(3) In conducting a procedure without a specified deadline for application, in case of changes in the national or European legislation, the stage of collection of project proposals may be suspended, in regard to the synchronization of the application guidelines with the respective legislative changes, which shall covered by the Contracting Authority within 10 working days.

(4) The procedure without a specified deadline for application shall be terminated by motivated decision of the Head of the Contracting Authority and in case that the total value of the approved for funding project proposals and/or of the received project proposals, which evaluation is still in progress, exceed the financial resource, envisaged for the implementation of the specific procedure.

(5) In case of termination of the procedures under Article 6(1):

1. the termination decision shall be announced under the procedure of Article 13(1), and
2. the applicants, having submitted project proposals, shall be notified in writing of the termination by the Head of the Contracting Authority, and they shall not be entitled to compensation.

(6) The procedures under Article 6(1) shall be deemed terminated as of the moment of issuance of the termination decision or from the moment, indicated expressly therein, if such moment would be indicated.

§ 9. Articles 33 – 39 shall be inserted:

“Article 33. The documentation for the projects selection procedures shall include obligatory:

1. original of the notice for collection of project proposals;
2. officially approved application guidelines;
3. the orders for appointment of the Evaluation Commissions by the Contracting Authority;
4. the originals of all submitted project proposals, irrespective of whether approved or not;
5. the declarations and documents under Article 7(6), points 1 and 2;
6. report of the Evaluation Commission and the protocols from the separate stages of evaluation;
7. declarations under Article 22(3);
8. report of the committee for coordination and prioritization of projects;
9. the entire correspondence with the applicants, exchanged during the procedure;
10. all decisions, orders and other documents, taken and issued by the Head of the Contracting Authority, related to the specific procedures and projects;
11. the concluded contracts for award of grant and the annexes thereto;
12. other documents by opinion of the Contracting Authority.

Article 34. (1) The direct award procedure of aid shall be a procedure, where a project proposal may be submitted only by a applicant, who is expressly designated as a specific beneficiary of aid under the respective Operational Programme, in accordance with § 1, point 9 of the Supplementary Provisions.

(2) The direct award procedure of aid shall be performed in the following stages:

1. preparation and approval by the Contracting Authority of requirements for the project

proposal and making them available to the applicant together with an invitation for submitting a project proposal;

2. submission of a project proposal by the applicant in accordance with the requirements under point 1;

3. evaluation of the received project proposal;

4. decision by the Head of the Contracting Authority for awarding of grant in case of conformity of the project proposal with the approved requirements;

5. conclusion of contract or issuance of order for award of grant in accordance with Article 3.

(3) The Head of the Contracting Authority shall determine by internal rules the order for conducting the procedure under paragraph 1.

(4) In the event of determination of irregularities by the side of the Contracting Authority in the course of evaluation of the project proposal, the latter may be returned with motivation to the beneficiary, in regard of bringing it into the required form.

(5) When evaluating a project proposal within the meaning of Article 39 of the Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and for repeal of Regulation (EC) No 1260/1999 (OJ, Special Edition 2007, chapter 14, volume 2) the Head of the Contracting Authority shall certainly include as observers one representative of the Central Coordinating Unit and the Directorate “Coordination and Control over the Activities of Management of Resources of the European Union” within the administration of the Council of Ministers.

(6) For the cases, in which in the course of the direct award procedure of aid an Evaluation Commission is set up, the provisions of Articles 17 – 32 shall apply.

Article 35. (1) The provisions of Article 34 shall apply in regard to awarding of grant within the framework of technical assistance, as the setting up of an Evaluation Commission shall not be mandatory.

(2) The Decree shall not be applicable to spending of funds within the framework of technical assistance in connection with the implementation of Decree No 197 of the Council of Ministers of 2008 on material incentives for officials, performing functions in connection with absorption of funds under the Structural Funds and the pre-accession programmes of the European Union (promulgated, SG No 71 of 2008; No 86 of 2008).

Article 36. (1) In cases, where a beneficiary and a Contracting Authority are not part of the same administration, within 30 days following entry into force of the decision for award of grant the Contracting Authority shall draw up at least in duplicate and offer to the beneficiaries of projects, approved for financing, to sign the contracts for award of grant.

(2) In cases, where a beneficiary and a Contracting Authority are part of the same administration, within 15 working days following entry into force of the decision for award of

grant, the Contracting Authority shall draw up, and the Head of the Contracting/Managing Authority shall sign the orders for grant awarding.

(3) In the cases, where a certain measure would represent a State aid within the meaning of Article 87 of the EC Treaty or aid *de minimis* within the meaning of Commission Regulation (EC) No 1998/2006, the contract under paragraph 1 or the order under paragraph 2 shall certainly contain information concerning the type of the provided State aid, as well as the possible consequences or providing it, including the conditions for accumulation and the possibility of reimbursement of improperly provided aid under the procedure of Section V of the Regulation implementing the Law on State Aid, adopted by a Decree No 61 of the Council of Ministers of 2007 (promulgated, SG No 26 of 2007; amend. and suppl. No 97 of 2007 and No 10 of 2009).

(4) When concluding the contract/issuing the order, the applicant shall not submit documents already submitted as part of the project proposal, which are still valid by the date of conclusion of the contract.

Article 37. Within 15 working days of the date of conclusion of the contract/issuance of the order for award of grant, the Head of the Contracting Authority shall publish on its website and on the Single general information portal on management of the European Union Structural Funds and the Cohesion Fund in the Republic of Bulgaria information which includes:

1. beneficiaries names and seats;
2. location of projects implementation;
3. names of projects, for which grant was awarded;
4. the total budget and amount of the grant award for each project;
5. duration of projects implementation;
6. main activities and the indicators for project implementation.

Article 38. (1) Amendments of the grant contract/order shall be introduced by concluding an Annex to the contract by mutual consent of both parties or by amendment to the order for award of grant.

(2) In the selection procedure the Annex to the contract/the amendment to the order shall not violate the conditions of competition, existing at the moment of conclusion of the contract and the equal treatment of the beneficiaries.

(3) The Annex to the contract/the amendment of the order shall not result in increasing the total amount of the grant awarded under the project.

Article 39. (1) Each project, financed by funds from the Operational Programme, respectively under the PHARE Programme of the European Union, shall be subject to audit at all stages of the grant award procedure.

(2) Each beneficiary under a project, financed by funds from the Operational Programme, respectively under the PHARE Programme of the European Union, shall provide access upon

request to the assets and information under the respective projects to inspecting national control bodies and to control bodies of the European Commission and the European Anti-Fraud Office.

(3) The beneficiaries shall ensure reflection of the duty under paragraph 2 in their contracts with the contractors under the projects.

(4) The documentation for the entire procedure shall be accessible for audit checks by the competent national and European authorities and shall be stored by the Contracting Authority for a term of:

1. three years following the finalization of the Operational Programme in regard to the contracts for awarding of grant, co-financed from the Operational Programmes;
2. seven years after closure of the respective PHARE Programme.

(5) Irrespective of the terms under paragraph 4, in case of established irregularities the documentation shall be stored until completion of the respective follow-up inspections from the part of the competent national and European authorities.

§ 10. To the Supplementary Provisions, the following amendments and supplements shall be made:

Paragraph 1 shall be amended as follows:

“§ 1. Within the meaning of the Decree:

1. “Project proposal” shall be a proposal for awarding of grant for the implementation of a specific project, including an application form and other accompanying documents.

2. “Grant”, without conflict with Article 108 of Regulation (EC, Euratom) No 1605/2002, shall be funds, provided under the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union or from the PHARE Programme of the European Union, including the respective national co-financing, with the aim of implementation of an approved project intended for achievement of defined results.

3. “Grant applicants” shall denote all natural and legal persons and associations thereof, who apply for a grant by submitting project proposals.

4. “Partners of grant applicants” shall denote all natural and legal persons and associations thereof, who are participating jointly with the applicant in the preparation and/or technical and/or financial implementation of the project or in project activities, applied for in advance in the application form.

5. “Associated partners of grant applicants” shall denote all natural and legal persons and associations thereof, who are participating jointly with the applicant in the preparation and/or the technical implementation of the project or in project activities, applied for in advance in the application form.

6. “Grant beneficiaries” under the PHARE Programme shall be all natural and legal persons and their associations – recipients of grant for implementation of an approved project, financed by funds from the PHARE Programme of the European Union and “grant beneficiary” under the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union, shall be the persons, indicated in Article 2(4) of Regulation (EC) No 1083/2006.

7. “Contract for award of grant” shall be a contract concluded between the Head of a Contracting Authority and a beneficiary, for the purpose of awarding and spending of grant, in regard of implementation of an approved project.

8. “Units under Article 5(2)” shall be those under Article 4(1) and (2) of the Law on Administration and under Article 25(2), (3) and (4) of the Law on Higher Education, under Chapter Three of the Labour Code and under Article 10 of the Law on Administrative Territorial Planning of the Republic of Bulgaria.

9. “Specific grant beneficiary” shall be an organization, institution, administrative or other similar structure, individually indicated in the Operational Programme as a sole subject entitled to prepare a project proposal and to receive grant for a certain activity, or which was designated by a law or by-laws as a legal successor to such a structure, responsible for the implementation of the specific activity and is an eligible beneficiary under an Operational Programme. For the purposes of the Operational Programme Environment specific beneficiaries under Priority Axis 1 shall be also the basin directorates for management of waters within the meaning of the Law on Waters and under Priority Axis 3 – and the National park directorates, the Regional Inspectorates of Environment and Water, the National Nature Protection Directorate of the Ministry of Environment and Water and the National park directorates. For the purposes of Operational Programme Environment specific beneficiaries of the establishment and development of regional systems for household waste management shall be associations of municipalities, with regard of waste management and/or the municipalities in the regions, determined in accordance with the National Programme of Management of Waste-Related Activities.

10. “Evaluation criteria for the project proposals” shall be criteria, prepared and approved by the Managing Authority, in conformity with the criteria for selection of projects at operations level, approved by the Monitoring Committee of the respective Operational Programme, set up by Decree No 182/2006 of the Council of Ministers on setting up Monitoring Committees of the National Strategic Reference Framework and the Operational Programmes, co-financed from the Structural Funds and the Cohesion Fund of the European Union, in accordance with which the evaluation and selection of projects are performed, eligible for co-financing from the Structural Funds and the Cohesion Fund of the European Union, or criteria, approved by the Head of the PHARE Programme, in accordance with which the evaluation and selection of projects are performed, eligible for co-financing from the PHARE Programme of the European Union.

11. “External evaluator” shall be a person not holding a position within the State administration.

12. "External expert" shall be a person from the State administration not holding a position in the unit performing functions of Contracting Authority.

13. "Evaluation of the administrative conformity" shall be a stage of the evaluation of the project proposal, at which a check is performed in regard to the formal presentation of the project proposal.

14. "Eligibility evaluation" shall be a stage of evaluation of the project proposal, at which evaluation is conducted by applying eligibility criteria for applicants and the project activities.

15. "Head of the Contracting Authority" shall be the Head of the administration, part of the structure of which is the Contracting Authority or an official, authorized by him.

16. "Technical and financial evaluation" shall be an evaluation on merit of the project proposals, carried out in accordance with the criteria for evaluation of projects.

17. "Central Coordinating Unit" shall be an administrative unit in the Ministry of Finance, established by Decision No 965 of the Council of Ministers of 2005 on designation of the Managing Authorities of the Operational Programmes and the intermediate bodies for management of the funds from the European Union Structural Funds in the Republic of Bulgaria.

18. "Budgetary enterprises" shall be those within the meaning of § 1, point 1 of the Law on Accountancy.

2. § 3 shall be inserted:

"§ 3. The provision of Article 34(6) shall not apply to Operational Programme "Transport"."

TRANSITIONAL AND FINAL PROVISIONS

§ 11. The procedures, announced prior to the entry into force of the Decree shall be completed under the existing procedure.

§ 12. To the Ordinance for conducting competitions for civil servants, adopted by Decree No 8 of the Council of Ministers of 2004 (promulgated, SG No 6 of 2004; amend. and suppl., SG No 83 of 2005, No 46 of 2006, No 84 of 2007 and No 92 of 2008), the following amendments and supplements shall be made:

1. In Article 6, a new paragraph 3 shall be inserted:

"(3) When a competition for a position in a Managing Authority or Intermediate Body under the Operational Programmes is announced, the relevant appointing authority shall inform about it the Deputy Prime Minister responsible for coordination of planning, programming, managing, monitoring and control of the European Union resources. The Deputy Prime Minister

may within 7 days suggest to the appointing authority his/her representative, as member of the Competition Board.”

2. The former paragraph 3 becomes paragraph 4.

§ 13. In Article 3 of Decree No 104 of the Council of Ministers of 2008 on the organisation and coordination in managing resources from the European Union Funds (promulgated, SG No 47 of 2008; amend. and suppl., No 67, 79 and 108 of 2008 and No 3 of 2009), a new paragraph 3 shall be inserted:

“(3) Management of European Union Funds Directorate at the Ministry of Finance shall directly support the Deputy Prime Minister under Article 1 and shall be guided by his/her instructions in its activity.”

§ 14. The implementation of this Decree shall be entrusted to the Minister of Finance, the Minister of Economy and Energy, the Minister of Regional Development and Public Works, the Minister of Labour and Social Policy, the Minister of Transport, the Minister of Environment and Water, the Minister of State Administration and Administrative Reform and the Minister of Education and Science.

§ 15. Within 3 months following the entry into force of this Decree, the Minister of Finance, the Minister of Economy and Energy, the Minister of Regional Development and Public Works, the Minister of Labour and Social Policy, the Minister of Transport, the Minister of Environment and Water, and the Minister of State Administration and Administrative Reform shall approve detailed internal rules concerning the operation of the Evaluation Commission under the relevant Operational Programme, and detailed internal rules concerning the operation of the Committee for Coordination and Prioritization of Projects in the cases, where the establishment of such committee has been provided. The internal rules shall be published on the websites of the relevant Operational Programme and of the Single General Information Portal on Management of the Structural Funds and the Cohesion Fund of the European Union in the Republic of Bulgaria.

§ 16. This Decree shall enter into force as of the date of its promulgation in “State Gazette”.

PRIME MINISTER:

**FOR THE SECRETARY GENERAL OF
THE COUNCIL OF MINISTERS:**

ADVISERS:

DIRECTORS OF DIRECTORATES:

STYLE-EDITOR: