



Statement by the Managing Authority (MA)
regarding common inquiries by beneficiaries relating to the IPA CBC Programs
Bulgaria-Serbia, Bulgaria-FYROM, and Bulgaria-Turkey

16th September 2011

1. Applying the rules of origin of goods concerning some supplies for which it is difficult to purchase goods that originate from the Community (for example: computers, printers etc.).

The position of the MA concerning the rules of origin of goods has been already presented to the beneficiaries through the FAQ column (updated on the 07.09.2011).

The requirements related to rules of origin of goods acquired within a contract co-financed under the Instrument for pre-accession (IPA) are set out in Art. 19, p. 5 of Regulation (EC) № 1085/2006 of the Council of the European Union. The provision stipulates as follows “All supplies and materials purchased under a contract financed under this Regulation must originate from the Community or a country eligible according to paragraphs 1 or 2”. At the same time provision of Art. 116, p. 2 of Regulation (EC) № 2342/2002 implementing Regulation (EC) № 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities provides for the scope related to renting equipment and type of relevant contract: “Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products.”

The opinion of the MA is that proof of origin shall be submitted for purchase of products or equipment. In case of rented equipment and/or vehicles the rules of origin shall not be applicable, but only for the cases where the contract is without option for subsequent purchase of respective products.

Additionally, MA has the right to derogate the rules of origin, according to the Commission Decision from the 25.05.2011. At the moment the MA is adopting procedure for implementation of the derogation rule.

2. Conditions for making insignificant changes in the technical specification for the supply procedures, which is part of the contract.

In case of insignificant modifications of the technical specification made before starting of procurement procedure, they are considered as contract modification and the relevant procedure for the modification of the subsidy contract shall be followed according to the „Modifications concerning the project’s content” section of the Project Implementation



Manual (PIM). In case such modification arise after the sub-contracting is concluded, the requirements of special and general conditions of the contract concluded under PRAG and instructions specified in PRAG shall be taken into account.

3. Application of the rule for eligible percentage of expenditures incurred in adjacent areas under the Bulgaria-Serbia IPA Cross-border Programme, i.e. how would expenditures be verified when they are incurred in Sofia city (or for organizations registered in Sofia city).

The expenditures incurred in adjacent areas (i.e. Sofia city) under the Bulgaria-Serbia IPA Cross-border Programme will be verified under the common rules for eligible expenditures while the regulation for their maximum amount at the project level will be monitored - 20% (point 2.2.3 from the Application guidelines). In cases when during the budget preparation a mistake has occurred and in the line Adjacent area no amounts are forecasted, this mistake should be corrected by signing an additional agreement to the subsidy contract.

4. Verification of expenditure on an activity, which is not completed.

The verification of expenditure on an activity which is partially completed (when the schedule of activities is met) during the particular reporting period is possible when all necessary documents are presented.

5. Reporting of expenditure on food/catering in cases when the number of people that have signed the attendance sheet does not match the number of people scheduled to be served by the catering (or have actually attended the lunch).

For each particular case the controller performing the first level of control has to decide on the amount of the eligible expenditure based on the documents presented for the particular event.

6. Defining the type of procurement procedure for elaboration/printing of promotional materials (for example: procurement of 1000 leaflets/brochures/business cards - is it a service or supply?).

When defining the type of the procurement procedure, regarding the elaboration of promotional materials, percentage of the costs for design of and printing costs of the promotional materials shall be considered. If the preliminary research of price-formation



indicates that the cost of design is higher than the printing costs, the type of procedure is service. Otherwise, when the printing costs of the materials are higher than the costs for design, the type of procedure should be a supply.

7. The rule for applying of deadlines for the submission of tender's offer according to Practical guide to contract procedures for EU external actions / PRAG/ (15 days for single tender and 30 days for competitive negotiated procedure).

A: Deadlines set /laid down/ in the Practical guide shall be followed strictly. In case, all invited tenderers have submitted offers before deadline has expired and the procedure has not been announced (with a Procurement notice), Contracting authority – CA (beneficiary under Subsidy contract) is allowed to move further and to start evaluation of the offers submitted.

In case the tender procedure is announced (with a Procurement notice), regardless the number of tenderers invited directly, CA shall wait until the deadline expires before starting the evaluation of the offers. In all cases, the beneficiaries of the Subsidy contract shall abide the transparency and equality rules when carrying out the procurement procedures.

8. The usage of a currency account and the payment of social securities, salaries and invoices.

The MA does not require that the lead beneficiaries perform all payments from the project's account in Euro (they can perform payments from a different account, denominated in Leva for example). What the MA requires is that there is traceability of the performed operations and that the reporting of the analytical accounting is organized for the purposes of the project.

9. Applicability of electronic invoices (e.g. invoices issued by companies, whose software does not allow the number of the contract for the CBC Program to be included in the invoice).

The beneficiary has to provide the controlling bodies with information that the particular expenditure is incurred under project № 2007CB16IPO006-2009-x-xx.

For example:

- (1) The invoice is glued to a white sheet of paper and it is written that the expenditure is incurred under project № Afterwards, the controller places his own stamp.



- (2) A protocol can be prepared to accompany the invoice, which states the number, date and amount from the invoice while pointing out the event for which the expenditure is relevant.

7th of September 2011

1. Appointment of duties to the members of the project staff- the members of the project staff perform periodically repetitive actions related to the organization, coordination, management and reporting of the activities and results related to the project during the project period. For all Bulgarian beneficiaries this suggests that the appointment of duties to the members of the project staff will be done through the use of labour contracts. The type of employment needs to be outlined in the project's budget and should reflect on the monthly salary. Example 1: Project manager - per month- 12 months- 400 EUR- 4 800 EUR. Such a budget suggests a labour contract for 12 months at full time (8 hours a day), with 400 EUR monthly salary. Example 2: Project manager (part time employment of ½ month)- per month- 12 months- 200 EUR- 2 400 EUR. Such a budget suggests a labour contract for 12 months at part time employment (4 hours per day), with 200 EUR monthly salary.

Options for hiring team members for projects, implemented by Bulgarian beneficiaries:

First version

Labor contract/second Labor contract or addendum to the labor contract in accordance with the Labor Code. Remuneration will be reported on a monthly basis by submitting the following documents:

- Contract or an addendum to the labor contract;
- Job description;
- Report on the work adopted by the employer;
- Extract from the payroll for wages paid;
- Payment orders for remuneration paid out;

Payment orders for taxes and insurance paid to the attached list of persons employed on the project.

IMPORTANT!



When beneficiaries, respectively partners, apply one of the above options and does not provide full employment, respectively the appointment of the employee concerned wouldn't be full time, they must explicitly mention in the contract, what will be the employment of the employee and they have to clarify the exact number of hours as a whole and daily hours in which the employee will perform its obligations under the definitions in the contract period. In the labor contract/second labor contract or addendum to the labor contract the employer must specify the hourly employment of the team member.

Second version

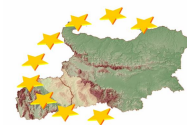
Civil servants

In addition the MA considers it possible that the job description of a civil servant from the particular public institution can include the duties related to the conduct of the project. For persons employed under civil servants contract, an Order by the Head of the Administration must be issued to determine the project team. The expenditure on the team members' remuneration are reported proportionally to the work performed during the project implementation through a report for the hours worked on the project (time sheet). The amount of the remuneration related to the project is calculated by using the hourly rate based on the up-to-date remuneration of the employee. The employee's job description must regulate the performance of the duties related to the project. Remuneration will be reported on a monthly basis by submitting the following documents:

- act issued for the appointment of civil servants under the Law for the Civil Servant amendments;
- job description, with regulated functions for the management of project activities or order for assigning responsibilities for implementation of the project, laying out specific commitments and accountability of the work;
- report for the hours worked on the project (time sheet) payroll paid;
- payment orders for paid out salaries;
- payment orders made for taxes and social contributions separate from the project goals with attached list of persons employed under the project;

IMPORTANT!

Due to the character of the activities performed by the project staff members, the MA considers it unacceptable to transfer amounts from Budget Line 1 "Administrative costs" to Budget Line 5 "External Expertise".



IMPORTANT!

In cases where an individual is appointed to perform services under budget line 5 – “External expertise”, the form for contract according to Obligations and Contracts Act (OCA) is used.

2. Eligibility of expenditure on paid compensation for temporary disability, annual leave of absence and compensation for unused leave of absence for project staff members by the Bulgarian beneficiaries – The MA considers the following expenditure eligible: 2.1

Paid annual leave of absence:

- when a project staff member is employed at full time with a primary labour contract, which is the person's only work contract and its duration is within the duration of the project, the full amount for the paid annual leave of absence is eligible expenditure;
- when a project staff member is employed at part time (Timesheets), the eligible expenditure will be amount of the paid annual leave of absence which is proportionate to the hours worked on the project. A statement by the organization is required pertaining to the method used for the calculation of the amount for paid annual leave of absence reporting within the project period;
- when a project staff member reports his work as per a secondary work contract, eligible expenditure is the amount of the paid leave of absence pertaining to the secondary work contract.

When working as per primary labour contract and as per a secondary labour contract (as per article 110 and article 111 of the Labor Code) the amount of paid annual leave of absence as per the secondary labour contract is not added to that of the primary labour contract- they are separate entities for each contract. If the employee has requested a leave of absence as per one of his labour contracts he is not automatically considered as having taken a leave of absence as per his second labour contract, but rather he has to keep working as required by it and received the stated salary. In relation to this it is suggested that the paid leave of absence as per both contracts is used at the same time. If not, the person could have taken a leave of absence as per his primary labour contract but has to work as per his secondary (part time) labour contract or vice versa. The salary for the time spent in paid leave of absence is also determined separately as per the remunerations stated in each labour contract. The amount of the paid annual leave of absence is determined proportionately to the time spent working as per the particular labour contract (article 23, paragraph 2 of the Regulation on working time, breaks and holidays).



2.2 Remuneration for temporary disability:

- expenditure by the employer for the first 3 days in the cases of full time employment (8 hours) up to the legally set percentage (currently 70%);
- expenditure by the employer for the first 3 days in the cases of a secondary labour contract according to article 110 and article 111 of the Labour Code, up to the legally set percentage (currently 70%) based on the remuneration as per the secondary work contract.

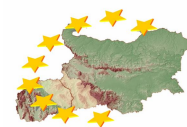
2.3 Compensation for unused paid annual leave of absence- eligible expenditure will be the compensation for unused leave of absence accumulated as per a labour contract (primary or secondary) for the time of the project. The right of the project staff to a paid annual leave of absence as per their primary or secondary labour contracts also grants them the right to compensation for unused paid annual leave of absence according to article 224 of the Labor Code, but only if their contract is terminated.

Important: The above mentioned expenditures will be considered eligible when they are supported by documents that can prove them and show the link between them and the particular project.

3. Daily allowances, expenditures on transportation and accommodation of participants (target group, direct beneficiaries, etc.) in events organized by Bulgarian beneficiaries - the MA considers as appropriate the following combinations for spending and reporting these funds, envisaged in the budget of a particular project:

3.1 Daily allowances for the participants in the organized events: with a common order all participants, external to the organization (target group, direct beneficiaries, etc.) are sent on a business trip. The daily allowances are paid out to each participant based on the internal rules of the organization or based on an executive decision for the particular occasion. For the purposes of reporting in addition to the business trip order the necessary documents to prove the expenditure are required as well;

- the funds needed for the daily allowances are included into a general procedure for externally contracting the organization and conduct of the particular event. In the technical specification it must be clearly stated that the participants (target group, direct beneficiaries, etc.) are to receive lunch and/or dinner, which must also be clearly shown in the documents used to by the contractor to report the work performed;
- 3.2 Expenditure on transportation:



- the beneficiary's organization plans, pays out and reports the expenditure on transportation related to the conduct of the event or
 - the funds needed for transportation are included into a general procedure for hiring transportation within the budget sub-line "Transportation" or these are included into the general procedure for externally contracting the organization and conduct of the event. In the technical specification it must be clearly stated that the participants (target group, direct beneficiaries, etc.) are to be transported, which must also be clearly shown in the documents used to by the contractor to report the work performed.
- 3.3 Accommodation:

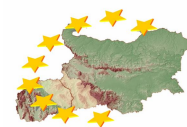
- the beneficiary's organization plans, pays out and reports the expenditure on accommodation related to the conduct of the event or
- the funds needed for accommodation are included into a general procedure for externally contracting the organization and conduct of the event. In the technical specification it must be clearly stated that the participants (target group, direct beneficiaries, etc.) are to be accommodated, which must also be clearly shown in the documents used to by the contractor to report the work performed.

Important: the MA considers it unacceptable giving out additional sums or awards to potential participants in the organized events. The latter must be attractive enough to draw potential participants without the need of further incentives.

4. Bank account, expenditure on administering the account, taxes for financial transactions and expenditure on project's audit:

4.1 The bank account needed for the purposes of the project, opened by the lead beneficiary has to be in Euro due to the fact that the MA transfers funds to the lead beneficiaries in Euro. The account used must provide the necessary traceability of the transactions and accumulated interest (on the amount of the advance payment). In addition, for all the expenditure on the project by all the partners there should be organized an analytical accounting for the purposes of reporting;

4.2 Expenditure on administering the bank account and charges for conducted financial transaction - the MA considers as eligible the expenditure by the lead beneficiary on the administering of the bank account (opening, servicing, etc. charges) opened for the purposes of the project. In addition, all expenditure reported by all partners on international financial transaction is considered as eligible. The expenditure on internal transactions as well as exchange rate losses (Euro-local currency) is not eligible expenditure for all the project



partners;

4.3 The MA will not require an external audit and thus any reported expenditure on audit will be considered as not eligible.

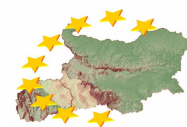
5. Position by the MA regarding the inclusion of expenditure on value added tax (VAT) in a budget of a signed subsidy contract – according to the presently active legal statutes and particularly Instruction by the Minister of Finance regarding the treatment of VAT ref. Num. 91-00-502/27.08.2007, it is the beneficiary's duty to determine value added tax as eligible or ineligible expenditure for the project and to account for it accordingly in the budget.

Due to the different interpretation of the legal statutes regarding the determination of VAT as recoverable or unrecoverable, Bulgarian partners have noted that expenditure on VAT when conducting the particular project will be recovered by the state, i.e. it is not eligible expenditure by the program. Being registered under the VAT legislation does not always grant the right to refund/recover paid VAT.

If a Bulgarian partner has noted in the application form that the state will recover his VAT, i.e. the eligible VAT for the project is 0.00 Euro and after the signing of the subsidy contract the state refuses to refund the VAT, meaning that it can be recovered from the project, it is possible to sign an additional agreement (Addendum) to the subsidy contract. The subject of the addendum can be the change in the budget in the form of altered eligible VAT for the project, which is achieved by reducing the amounts in the different budget lines where VAT is expected to be paid. The total amount of approved expenditure cannot be increased. In order to sign an addendum between the MA and the Bulgarian partner, the latter must present a detailed explanation including all necessary calculations and reasons leading to the need for an amendment as well as the budget tables, showing the changes. When implementing these changes, the percentage relation between the budget lines and the percentage relation between the individual budget lines and the budget in general must be taken into account as noted in the application guidelines.

Described above also applies when the Bulgarian partners have accounted for VAT in the individual budget lines rather than in the proper line for eligible VAT.

After checking the presented documents, the MA will decide on individual bases whether there are reasonable facts requiring the signing of an addendum to the subsidy contract.



6. Accounting of fuel expenditure for the vehicle's with no spending limit set out in Regulation No.3 of normalization of fuel and lubricants for cars and motorcycles.

For calculating the fuel consumption rate may be applied two methods:

1. To use fuel consumption rate specified in the technical passport of the vehicle. For this purpose it is necessary to attach a copy therefore, verified by the text "certified copy", signature and stamp of the organization.

In case of order for a business trip the information for the respective vehicle should be included - registration number, model, fuel consumption rate (according to the attached copy of the technical passport).

2. When a vehicle has no technical passport it is necessary to be appoint a commission to execute a test.

Reasons for execution the test: The vehicles do not have a consumption rate limit established in Regulation No.3/State Gazette No.93 of 1989 and the fuel consumption rate is determined every six months by order. Arrangements for executing the test:

1. Travel is not less than 100 km.
2. A speed limit for the road section and safety for current traffic conditions.
3. Before the measurement the vehicles are with full tank with fuel.
4. After driving down the defined kilometers, cash register receipt for fuel is submitted to the committee for each vehicle separately.

After executing the test the committee issued protocol with details indicating the measured performance of each tested vehicle and propose fuel consumption rate of 100 km for establishment.

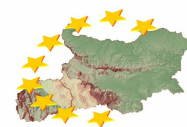
The fuel consumption rate of movement in Sofia city should be in accordance with Regulation № 3 of 25.09.1989, Article 18, p. 2, published in the State Gazette No.93/01.12.1989.

According to Article 4, paragraphs 2 of Regulation № 3/SG 93/01.12.1989/ next measurement should be execute after six months.

After preparation of protocol of committee and on the basis of Article 22, paragraphs 1 and 2 of Regulation No.3 of 25.09.1989 / SG. 93/01.12.1989 /, the head of the organization shall issue an order which sets the fuel consumption rate for vehicles which will benefit the project.

7. Participation of member of organization and member of the team (at the same time) under the project as lector and trainer on scheduled activities within the project

Members of the project team perform recurrent activities related to organization, coordination,



management and reporting the results and progress under the respective project during the project implementation and for this period they are employed under the labour relationships. Supplementary it is allowed in **exceptional cases**, a member of the team to sign a service contract as natural person in order to perform training as a lector for scheduled activities within the project. In this specific case it will be required to elaborate detailed justification for the reasons leading to these circumstances which shall be attached to the signed contract. Consequently, the service contract shall not engage the service contractor with specified working timeframe but in the specific case the dates for lector training sessions will be specifically scheduled. This means that member of the team under the project shall perform a number of tasks for specific days within different labour relationships and civil contract which leads to practical incompatibility to be carried out, i.e. according to provisions of the Labour Code the maximum working hours allowed per day is 12. In this situation it will be required within the period for which member of the team under the project performs obligations in accordance with supplementary signed service contract (as a natural person but not as a member of the team) to suspend his/her obligations under other labour relationships with the same organization, respectively not to have related labour remuneration.

8. Applicable rules of origin for goods in case of hired equipment

The requirements related to rules of origin of goods acquired within a contract co-financed under the Instrument for pre-accession (IPA) are set out in Art. 19, p. 5 of Regulation (EC) № 1085/2006 of the Council of the European Union. The provision stipulates as follows “*All supplies and materials purchased under a contract financed under this Regulation must originate from the Community or a country eligible according to paragraphs 1 or 2*”. At the same time provision of Art. 116, p. 2 of Regulation (EC) № 2342/2002 implementing Regulation (EC) № 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities provides for the scope related to hire equipment and type of relevant contract: “Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products.”

The opinion of the MA is that proof of origin shall be submitted for purchase of products or equipment. In case of hired equipment and/or vehicles the rules of origin shall not be applicable, but only for the cases where the contract is without option for subsequent purchase of respective products.



9. Use of “Contingency” budget line by IPA CBC Programmes beneficiaries

The amounts from the budget line “Contingency” can be used only with written approval by the Managing Authority

These amounts can be used for additional activities/additional quantities, resulted by unfavorable or emergency situations which could not be foreseen at the stage of the investment planning.

Examples for spending total or partial amounts of “Contingency” budget line are listed below:

1. If in the process of construction works it is necessary to add quantities or execute activities exceeding the approved works design, BL “Contingency” appears a conditional reserve fund, a result of pre-assessment of an experienced, qualified contractor for the loss he would suffer constructing an approved investment project under unfavorable or emergency situations, which could not be foreseen at the stage of contracting. Such extreme circumstances are by all means connected with situations beyond subject will of the contracting sides. For example: natural disasters, price changes, excise or tax changes and circumstances which could not be foreseen in the process of investment planning and preparation of the contractor’s tender offer;
2. In case of additional costs in the process of project implementation related to legislation changes – excise, taxes and other public claims which refer to equipment, service or construction values;
3. Under force majeure circumstances;
4. Other situations which could not be foreseen in the process of investment planning and preparation of the contractor’s tender offer;

When additional expenses have to be made in the process of project implementation, LP has to send to MA Explanatory note with detailed description and analysis of the circumstances leading to such necessity, with attached comparative/substitute table describing the activities and prices contracted with the sub-tenderer together with the exact amount (unit price, quantity, total amount) of the contingency. In case of works contract, the substitute table must be signed by each side involved in the process – designer, supervisor, contractor, implemented the construction works, beneficiary representative appointed with an order or



municipal administration, in case when the beneficiary is with status different from municipal administration. It is obligatory the documents to be attached by statement of the author's supervision (designer/s of the respective part), coordinated supervisor of the construction works. The above listed documents will be subject of review and consideration for signing an Addendum to the Subsidy Contract.

In case of approval by MA, the contracting entity must sign an Addendum with the construction works contractor. The annexes to the Addendum should be at least: Explanatory note, substitute table, statement of the author's supervision, order book for construction works, and all technical documentation of the project with underlined changes and variations, and any other indicated by the contracting side.

At the same time, it should be noted that in case of amendment of the approved works design, it becomes a subject to approval under provisions of the respective national legislation.

Due to the variety of the activities and the possibilities of unforeseen situations of different character in the process of project implementation, MA will take into consideration each request for reallocation of the amounts from BL "Contingency" independently and will inform the beneficiary in written with the decision concerning the respective request.