

Financial Management and Control in the Public Sector Act

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Text in Bulgarian: Закон за финансовото управление и контрол в публичния сектор

Chapter One GENERAL PROVISIONS

Article 1. This Act shall regulate the scope and execution of financial management and control, as well as the principles of and requirements to the financial management and control systems in public sector organisations.

Article 2. (1) The provisions of this Act shall be applied in the public sector organisations.

(2) In the meaning of this Act, public sector organisations shall refer to:

1. organisations spending funds from the state budget;
2. organisations spending extra-budgetary funds;
3. organisations spending funds from municipal budgets and funds;
4. organisations spending independent and/or autonomous budgets, including the National Social Security Institute and the National Health Insurance Fund;
5. organisations spending funds guaranteed by the Republic of Bulgaria;
6. organisations spending funds from European Union funds and programmes;
7. commercial companies referred to in Article 61 of the Commerce Act and state-owned enterprises in the meaning of Article 62, paragraph 3 of the Commerce Act ;
8. other organisations spending public funds by the virtue of statute.

Article 3. (1) The heads of the organisations referred to in Article 2 shall be responsible for the execution of financial management and control in all structures, programmes, activities and processes managed by them in compliance with the principles of legality, sound financial management and transparency.

(2) The managers at all levels in the organisations referred to in Article 2 shall be responsible to and shall report to the higher level manager for their activities with regard to the financial management and control in the structures and units they manage.

Article 4. (1) The heads of the organisations referred to in Article 2 shall be responsible for defining the goals of the organisations, identifying the risks related to their achievement and setting up adequate and efficient financial management and control systems in compliance with the requirements of this Act.

(2) The heads of structures and units, performing the functions of paying, managing or interim bodies under European Union funds shall be responsible for providing adequate and efficient financial management and control systems in compliance with the requirements of this Act and the applicable acts of the European Union.

Article 5. (1) The financial management and control in the public sector is an integral process within the activities of the organisations referred to in Article 2 and carried out by their management and staff.

(2) Financial management and control shall be carried out through financial management and control systems including policies and procedures established by the management of the organisations referred to in Article 2 for the purposes of providing reasonable assurance that the goals of the organisation have been achieved through:

1. compliance with legislation and internal acts and contracts;
2. reliability and comprehensiveness of financial and operating information;
3. economy, efficiency and effectiveness of activities;
4. safeguarding of assets and information.

Chapter Two

MANAGERIAL ACCOUNTABILITY

Article 6. (1) The heads of the organisations referred to in Article 2 shall be responsible for the achievement of the goals of the organisations by managing the public funds in a legal, economic, efficient and effective manner.

(2) When programmes and projects are managed in which more than one public sector organisation and/or structure is involved, the relevant heads shall agree in writing on the scope of the managerial accountability of each of them.

Article 7. (1) The heads of the organisations referred to in Article 2 shall be responsible for:

1. the definition of the objectives and goals of the organisations they manage, the development and implementation of strategic plans, action plans and programmes for the attainment of the objectives and goals set;
2. the identification, assessment and management of risks jeopardising the attainment of the organisations' objectives and goals;
3. the planning, management and reporting of public resources with a view to the attainment of the organisations' objectives and goals;
4. the observance of the principles of sound financial management and transparency of public resources, as well as for their management and spending in compliance with legislation;
5. the efficient management of the personnel and the maintenance of the level of its competences;
6. the stewardship and protection of the assets and data against loss, theft, unauthorised access and abuse;
7. the establishment of an appropriate organisational structure for the effective fulfilment of duties;
8. the segregation of responsibilities in the process of decision making, control and implementation;
9. ensuring of complete, true, accurate and timely accounting of all operations;
10. the ensuring of the internal audit function under the existing laws;
11. the monitoring and updating of the financial management and control systems and the undertaking of measures to improve them following recommendations of the internal audit and other inspections;
12. the documentation of all operations and actions and the ensuring of traceability of processes in the organisations;
13. the introduction of anti-corruption procedures;
14. the accountability and reporting of the condition of financial management and control systems;

15. the introduction of internal financial management and control rules by force of an administrative act or a system of acts;

16. the creation of conditions for lawful and expedient management and adequate and ethical conduct of the personnel in organisations.

(2) The heads of the organisations referred to in Article 2 shall implement the guidelines on the implementation of managerial accountability, issued by the Minister of Finance in connection with paragraph 1, as well as the guidelines given by their higher level manager.

Article 8. (1) (Amended, SG No. 54/2010) The heads of the organisations referred to in Article 2, paragraph 2, sub-paragraphs 1 - 6 - first-level spenders of budget appropriations, with the exception of the Supreme Judicial Council and the National Audit Office, shall provide the Minister of Finance annually by 31 March with information on the operation, adequacy, efficiency and effectiveness of the financial management and control systems in the organisations, including information on the lower level spenders of budget appropriations thereto for the preceding year.

(2) The format, contents, procedure and deadlines for the presentation of the information referred to in paragraph 1 shall be determined with a regulation approved by the Council of Ministers.

Article 9. (1) The heads of the organisations referred to in Article 2, paragraph 2 can delegate their responsibilities under this Act to other officials from the organisation managed by them. In such cases they must determine the specific rights and responsibilities of these officials.

(2) The delegating under paragraph 1 does not relieve the head of the organisation from his/her responsibility for discharging the delegated rights.

Chapter Three

FINANCIAL MANAGEMENT AND CONTROL COMPONENTS

Article 10. (1) Managers of organisations under Article 2 perform financial management and control through the following interrelated components:

1. control environment;
2. risk management;
3. control activities;
4. information and communication;
5. monitoring.

(2) The managers at all levels in the organisations referred to in Article 2 shall ensure the setting up, development and operation of financial management and control components in line with the specific nature of the organisation.

(3) The Minister of Finance shall issue methodological guidelines on the financial management and control components referred to in paragraph 1.

Article 11. (1) The heads of the organisations referred to in Article 2 shall be responsible for the establishing, the condition and the improvement of the control environment.

(2) The control environment shall include:

1. the personal integrity and professional ethics of the management and the personnel of the organisation;
2. the managerial philosophy and style of work;

3. the organisational structure, ensuring segregation of duties, hierarchy and clear rules, rights, responsibilities and lines of reporting;

4. the Human Resources Management policies and practices

5. the competences of the personnel.

Article 12. (1) The heads of the organisations referred to in Article 2 shall be responsible for the risk management.

(2) Risk management includes identification, assessment of and control over possible events or situations which could have a negative impact on the attainment of the organisation's goals and aims at providing a reasonable assurance that the goals will be attained.

(3) For the purposes of implementing the activities referred to in paragraphs 1 and 2 the heads of organisations shall approve a strategy, which shall be updated every three years or whenever material changes in the risk environment occur. The control activities aiming at risk mitigation shall be analysed at least once a year.

(4) The heads of the organisations referred to in Article 2 shall organise, document and report to the competent authorities the measures undertaken for prevention of the risk of fraud and irregularities, affecting the financial interests of the European Communities.

Article 13. (1) The heads of the organisations referred to in Article 2 shall introduce control activities, including written policies and procedures, established for the purposes of providing reasonable assurance that the risks are reduced to the acceptable limits, determined in the process of risk management.

(2) Control activities shall be adequate and the cost of their implementation shall not exceed the expected benefits.

(3) The heads shall establish and implement control activities, including as a minimum:

1. procedures for permission and approval;

2. segregation of duties in a way not allowing one member of staff to be simultaneously responsible for approval, execution, accounting and control;

3. dual signature system, which does not allow a financial commitment or a payment to be made without the signatures of the head of the organisation under Article 2 and the member of staff responsible for the accounting entries;

4. rights of access to assets and information;

5. ex-ante control for legality, which can be exercised by specially appointed financial controllers or other persons, determined by the head of the organisation;

6. procedures for complete, true, accurate and timely accounting of all operations;

7. reporting and check of activities - evaluation of the efficiency and effectiveness of the operations;

8. monitoring procedures;

9. Human Resources Management rules;

10. rules for documenting all transactions and activities, related to the operation of the organisation.

11. (new, SG No. 42/2009) rules for observing standards of personal honesty and professional ethics.

(4) The terms and procedures for exercising ex-ante control shall be approved by the heads of the organisations referred to in Article 2 in line with the guidelines of the Minister of Finance.

Article 14. The heads of the organisations referred to in Article 2 shall establish and operate information and communication systems ensuring:

1. identifying, collection and dissemination in an appropriate format and within appropriate deadlines of reliable and truthful information which allows each official to assume a certain responsibility;
2. efficient horizontal and vertical communication to all levels in the hierarchy of the organisation;
3. development of an appropriate information system for the management of the organisation with the purpose of disseminating clear and accurate guidelines and orders concerning their role and responsibilities in connection with the financial management and control;
4. implementing a system for documenting and circulation of documents containing rules for preparing, formatting, movement, use and archiving of documents;
5. documenting of all operations, processes and transactions in order to ensure an adequate audit trail for follow up and monitoring;
6. setting up of an efficient and timely reporting system, including: levels and deadlines for reporting; types of reports to be submitted to the management; forms of reporting in case of detection of errors, irregularities, misuse, fraud or misappropriation.

Article 15 (1) The heads of the organisations referred to in Article 2 shall set up a system for monitoring of the financial management and control for the purposes of assessing its adequate operation and ensure its timely updating whenever conditions change.

(2) The system referred to in paragraph 1 shall include current supervision, self-assessment and internal audit.

Chapter Four

COORDINATION AND HARMONISATION OF THE FINANCIAL MANAGEMENT AND CONTROL

Article 16. (1) The Minister of Finance shall be responsible for the coordination and harmonisation of financial management and control in the organisations referred to in Article 2.

(2) In the performance of his/her functions under this Act, the Minister of Finance shall be supported by a Financial Management and Control Central Harmonisation Unit directly reporting to him/her.

(3) The staff appointed in the Financial Management and Control Central Harmonisation Unit shall meet the requirements for their respective positions and shall have at least two years of work experience in the field of internal control, internal or external audit.

Article 17. (1) The Minister of Finance shall be responsible for the development, dissemination and updating of methodological guidance in the field of financial management and control in the public sector in line with the applicable legislation of the European Union and the best practices.

(2) The methodological guidance and guidelines of the Minister of Finance issued in connection with the implementation of this Act shall be published in the information bulletin and in the electronic page of the Ministry of Finance.

(3) The Minister of Finance shall coordinate and support the professional training in the field of financial management and control and the managerial accountability in the organisations.

Article 18. (1) The Minister of Finance shall perform systematic monitoring of the implementation of this Act and the bye-laws issued in connection with it in the ministries and municipalities, with a view to updating and further development of the

methodology.

(2) The heads of the organisations referred to in paragraph 1 shall provide support in the course of this systematic monitoring.

Article 19. (Repealed, SG No. 54/2010).

Article 20. (1) The Minister of Finance shall prepare annual reports on the condition of the financial management and control in the public sector where the information referred to in Article 8 shall be summarised.

(2) By 31 May the Minister of Finance shall prepare and submit to the Council of Ministers a consolidated annual report on the internal control in the public sector. This report shall include the report referred to in paragraph 1 and the annual report on the condition of the internal audit. After the consolidated report is approved by the Council of Ministers, it is submitted to the National Assembly and the National Audit Office.

(3) By 31 May the Supreme Judicial Council shall submit to the National Assembly and the National Audit Office its annual report on financial management and control and internal audit.

(4) By 30 June the National Audit Office shall submit to the National Assembly its report on the condition of financial management and control and internal audit and its opinions on the reports referred to in paragraphs 1 and 2.

Chapter Five

(New, SG No. 54/2010)

ADMINISTRATIVE PENAL PROVISIONS

Article 21. (New, SG No. 54/2010) (1) The heads of the organisations referred to in Article 2, paragraph 2, sub-paragraphs 1 - 6 - first level spenders of budget appropriations, with the exception of the Supreme Judicial Council and the National Audit Office, who have failed to perform their obligation to provide the Minister of Finance with information on the status of the financial management and control systems within the term under Article 8, paragraph 1, shall be penalised by a fine ranging from 200 to 1000 levs.

(2) Statements establishing violations under paragraph 1 shall be drawn up by officials authorised by the Minister of Finance.

(3) The penal decrees shall be issued by the Minister of Finance or by official authorised by him/her.

(4) The ascertainment of violations, the issuing, appeal and execution of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

ADDITIONAL PROVISIONS

§ 1. For the purpose of this Act:

1. "Public funds" shall mean all funds which are collected, received, kept, allocated and spent by public sector organisations, including budgetary income, credits, expenditure and subsidies.

2. "Managerial accountability" shall mean the obligation of the heads of the organisations referred to in Article 2 to exercise all their activities observing the principles for sound financial management, legality and transparency, including to be accountable for their actions and the results thereof to the parties who have assigned to them managerial accountability.

3. "Sound financial management" shall mean the requirement that the public funds be spent and managed economically, efficiently and effectively.

4. "Reasonable assurance" shall mean a satisfactory level of assurance, which requires that the cost of internal control does not exceed the expected benefits from it.

5. (Amended, SG No. 54/2010) "Risk" shall mean an event occurring that would affect the achievement of the organisation's goals. Risk is measured in terms of its effect and likelihood.

6. "Fraud affecting the financial interests of the European Communities" shall mean each intentional action or inaction:

a) with regard to expenditures - related to 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 Communities or budgets managed by, or on behalf of, the European Communities; non-disclosure of information in violation of a specific obligation, with the same effect; misapplication of such funds for purposes other than those for which they have been originally granted;

b) with regard to revenues - related to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the wrongful reduction of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; non-disclosure of information in violation of a specific obligation, with the same effect; misappropriation of a legally obtained benefit with the same effect.

7. "Irregularity affecting the financial interests of the European Communities" shall mean each infringement of the Community law resulting from an action or inaction by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them either through decrease in or loss of income as a result of own resources which are collected directly on behalf of the European Communities, or through the incurring of an unjustified expense.

8. "Managers" shall mean the persons managing the organisations referred to in Article 2 who perform managerial functions and have managerial accountability.

TRANSITIONAL AND CLOSING PROVISIONS

§ 2. The Council of Ministers shall endorse the regulation referred to in Article 8, paragraph 2 within six months of entering into force of this Act.

§ 3. The Minister of Finance shall endorse the guidelines on the implementation of managerial accountability referred to in Article 7, paragraph 2, and the methodological guidelines on the financial management and control components referred to in Article 10, paragraph 3, as well as the guidelines referred to in Article 13, paragraph 4 within six months of entering into force of this Act.

§ 4. The Minister of Finance shall be responsible for the implementation of this Act.

This Act has been passed by the 40th National Assembly on 24 February 2006 and the official seal of the National Assembly is affixed on it.