

REPORT

Analysis of the causes and circumstances creating preconditions for acts of corruption in the execution of the Operational Program "Innovation and Competitiveness" 2014-2020 and a proposal for implementation of measures for prevention of the identified corruption risks.

The Center for prevention and countering corruption and organized crime (CPCCOC) is part of the realization of the "Integrated strategy for preventing and countering corruption and organized crime", adopted by the Council of Ministers of the Republic of Bulgaria. The Center analyzes, plans, and develops measures and integrated solutions for prevention of the possibility of creating corruption practices and counteraction of corruption in general and of the organized crime in the area where the two criminal phenomena overlap each other, in view of the specific activities of the various governmental bodies and their administrations.

The analysis of the corruption practices and opportunities related to Operational Program "Innovation and Competitiveness" 2014-2020 (OPIC), is assigned after studying a number of risk areas for acts of corruption and assessment of the gained experience and expert potential of the Center. The multilayered nature and scope of the analyses, as well as the possibilities for using a part of the results for prevention in other programs of the EU, are major challenges for the project.

The project concept is based on universally applicable methodological and systematic approach for development and implementation of strategies and efficient measures against corruption and its causes. Proposals for measures against the possible corruption practices aimed at their elimination or significant reduction of the risks of their occurrence are also developed.

The report describes a comprehensive solution model for prevention of corruption in the area of operational programs, taking into account the experience gained in the previous programming period, as well as the analyses on similar topics – for example corruption opportunities in the area of public procurement.

For the purposes of the project in CPCCOC is collected and analyzed information on the existing regulations – regulations and directives of the EU, national legal framework laws and regulations, the relations within organizational and technical aspects are examined, analysis of specific cases is conducted and there is interaction with other competent authorities concerned with OP „Innovation and Competitiveness“ for the programming period "2014-2020". The subject of analysis are the current Regulations of EU, a Decree for determining contractors by beneficiaries of grants from the European funds, a Decree for determining the procedure for proving grants, Procedure manual of the Managing Authority and other relevant regulations, the strategies of AFCOS – MI (Ministry

of interior) and OLAF for combating frauds with European funds, existing intradepartmental regulations, as well as other data relevant to the topic of the project.

For implementation of the recommended measures and ensuring the expected results is necessary to be made a decision on a high governmental and strategic level, in accordance with the goals and priorities of the country. Some recommendations coincide or are similar to the ones given by CPCOC in the project "Solution model in the area of public procurement", as well as to proposals to the laws that were given to us for coordination, in accordance with the Rules of procedure of CM.

The activity of the operational programs in Bulgaria takes place in a diverse and complex environment: a plethora of legal regulations at European and national level; large number of European and national competent authorities and bodies with a intertwined network of responsibilities, ways of interaction and coordination; differences in the organizational maturity of the beneficiaries and contractors; multidirectional goals and capabilities of the NGOs; the level of development of e-governance and other factors.

The full study on the aforementioned dependencies is a wide-ranging and complex task, and the results of the current project are one of the necessary steps for resolving it.

In the course of establishing the facts and circumstances contributing to possible acts of corruption and associated criminal activity several key areas of analysis emerged, conditionally graded into 4 levels:

- causes of a legal nature, arising from the diverse and multilayered nature of the network or regulations and directives of the EU and national Decrees and interdepartmental regulations that are related to them;
- procedural and organizational performance level of the Managing Authority – personnel, organizational and technical provision, Procedure manual of the OP, Systems for management and control and other internal rules;
- specific procedures and schemes;
- separate projects and relations occurring in them: MA – beneficent – contractors – subcontractors and consultants.

A large part of pro-corruption factors appear on the second, third and fourth level, given the wide legal and organizational framework left for regulation and development of national level. For the restriction of these factors is necessary an agreed change of systematic nature on a fundamental level - changes in laws and Decrees.

Problems, depending on the status or the development of other strategic national projects (for example the development of e-government and e-governance), are outside the scope of the project and are only indirectly referred to as a possibility for development and upgrade of the preventive measures and solutions.

Purpose, scope and tasks of the project

The purpose of the project is to identify the existing causes and circumstances (weak points) which create preconditions for occurrence of corruption in the activity of the execution of the OP "Development of the competitiveness of the Bulgarian economy" 2007-2013 (OPC) and to remove (or reduce) these direct or indirect factors which favor them for the new Operational Program "Innovation and Competitiveness" and respectively for the new programming period 2014-2020.

- Analysis of the organization of work of the MA in terms of the effectiveness of the control mechanisms and prevention of fraud and corruption.
- Outlining of effective measures and solution models for prevention of the opportunities for corruption practices.

- Analysis of the expected impact (direct and indirect) of the implementation of the possible measures and solutions.

The goals of the project are harmonized with the goals of the program and with the goals of the "Integrated strategy for preventing and countering corruption and organized crime".

Overview of Operational Program "Development of the Competitiveness of Bulgarian Economy" 2007-2013 and the Operational Program "Innovation and Competitiveness" 2014-2020

With Decree № 110/ 2010 a Council for development was created, as a body of CM for coordination of the programming and realization of measures for economic and social development of the Republic of Bulgaria. The mission of the Council is the realization of the "National Development Program: Bulgaria 2020", as a framework long-term document which defines the vision and the common goals of the development policies for all sectors, including their territorial dimensions.

The fifth report on cohesion sets a programming framework for the next programming period. A **Common Strategic Framework** is adopted by the EC, in which the general and specific goals of the strategy "Europe 2020" are translated into investment priorities. The framework comprises of the Cohesion fund, ERDF, ESF, EAFRD and EDF. The **development and investment partnership contract** defines the investment priorities, the allocation of national resources and the resources of the EU. **The Operational programs** are the main managing instrument with clear and measurable goals which should contribute for the achievement of the national objectives set out in the framework of the strategy "Europe 2020". The approach and the mechanism to development of strategic and programming documents of the Republic of Bulgaria for management of the funds from the Common Strategic Framework of the European Union for the programming period 2014-2020 are determined with Decree № 5/2012.

A list of all applicable regulations is given in Appendix 1.

The EU regulations govern only the general legal and organizational frameworks, with which we believe that the Bulgarian regulations are consistent and harmonized - as a general structure and meaning. Meanwhile the national legal frameworks further develop and detail the procedures laid down in the European norms. National regulations should govern and provide sufficient and adequate proportionate measures covering sufficiently all risks of fraud and corruption.

As a result of the procedures and mechanisms for control and prevention of fraud and corruption, planned and approved by ordinances and Decrees, MA of OP "Competitiveness and Innovation" 2014-2020 should further develop and implement these measures in their Management and control systems /MCS/, Procedure manual of the operational program and related internal rules.

For the programming period 2007-2013 OPDCBE is one of the seven operational programs for which Bulgaria receives funding from the Structural Funds of the European Union. The total amount of public funds is **1.162 billion euros**, whereas the program is funded by the European Fund for "Regional Development" (ERDF) and the state budget of the Republic of Bulgaria. The program is contracted with additional 20 million euros and to 31.05.2014 its total agreed amount is 1,182 789 billion euros. The amount of funds actually paid under it is 763 196 million euros representing 67% of the total amount of the program. In the 2007-2013 programming period OPDCBE is divided into five priority axes. The activities under each priority axis are concentrated in groups of operations - a total of

12 groups. Each group may have a few specific operations – this is the lowest level of preliminarily division of funds and it has specific requirements for eligible beneficiaries, projects and their costs. For the period over a total of 40 procedures have been realized (some were conducted on separate sessions), whereas their distribution in the 7 year period is uneven. After application, assessment and approval, performance contracts are concluded for specific projects which are the main instrument for achieving the program objectives. 9 029 projects have applied for the period, and for 2 858 projects have been allocated funds (part of them are under priority axis 5 "Technical aid")

For the period 2014-2020 Operational Program "Competitiveness and Innovation" is divided into four priority axes. The total budget of the program amounts to **1,413,904,454 euros**, of which 1 201 818 784 euros support from the ERDF, representing the enacted rate of 85% co-financing (art. 20, para.3, letter b) from Regulation N° 1303/2013, and 212 085 670 euros, representing the national co-financing of the program (15% of the total budget of the program).

Organization of OP "Competitiveness"

A managing authority (MA) which also has 7 regional sectors is established for provisioning of the program. For some time an intermediate body have was established, but eventually its activity was concentrated within the MA. We consider the change for favorable and in the analysis is reviewed only the work of the MA, furthermore that most of the contracts have been concluded by it. The organization of work is under the principle of a linear organization, having Directorate General European Funds for Competitiveness - Managing Authority of Operational Program, functionally divided into 6 departments. The dynamics of changes in legal and organizational aspect is too high and the Procedure Manual has undergone a number of changes – amendments and supplements (over 10 versions). The version of **December 2012** has been used for the purposes of the analysis.

The interests and the potential acts of corruption and fraud are found in almost all stages of the procedures – setting guidelines for application, submission of project proposals and evaluation, selection of contractors by the approved beneficiaries, preliminary, current and subsequent control of project implementation. In order to identify the causes and circumstances which can encourage such practices, analyzes were conducted at all stages: legal and regulatory framework; organizational structure and management and control systems /MCS/, Procedure manual of OPDCBE; application guidelines; public information on specific projects, levels of awareness and transparency of the processes.

Supervisory and law enforcement authorities have noted a relatively low percentage of corrupt practices, fraud and irregularities compared to the total number of projects under the operational program. As a result of the conducted analyzes were found many weak points /causes and circumstances/, a big part of which have remained so far in the latent risk area of corruption.

The main subjects of analysis are:

- at level regulations – subject of main analysis are primarily Decree N°55/2007 on the conditions and contract award procedure conducted by beneficiaries of agreed grant from the Structural Funds of the European Union and from the PHARE Program of the European Union, replaced by Decree N° 69/2013; Decree N°121/2007 on lying down the provisions for awarding of grants under the operational programs co-financed by the Structural Funds and the Cohesion Fund of the European Union, and under the PHARE Program of the European Union (undergone many subsequent amendments and supplements). Their analogous Decrees for the new programming period were also

analyzed – respectively, Decree N°118/2014 „on the conditions and contract award procedure conducted by beneficiaries of grants“, Decree N°107/2014 „on laying down the provisions for awarding of grants“ and other Decrees relevant to the subject of report.

- at level organization of MA – Procedure manual of OPDCBE 2007-2013 and MCS /their last versions have been analyzed/. The presence of a development trend and process improvement is noteworthy.

- at level of individual application guidelines on specific procedures for provision of grants

- at level of published information on specific projects - particular attention is paid to the criteria for selection of beneficiaries and respectively for selection of contractor, as well as to the information related to the degree of transparency of the implementation of the projects.

Identified causes and circumstances which are conducive to corruption cases and acts:

As a result of the conducted legal, process and organizational analyzes could be made a justified inference for presence of numerous causes and circumstances, potentially facilitating corruption and other criminal activities. The identified causes and circumstances /weak points/ are mainly related to the presence of the following general corruption factors:

- collisions and gaps in the legal regulation;
- missing, insufficient or inconsistent mechanism and control procedures of the implementation;
- lack of definitions and/or vague concepts which leave room for manifestation of subjective appraisal and evaluation;
- insufficient or absent possibilities for an objective and comprehensive control and verification of declarations;
- opportunities for acts of nepotism and lobbyism;
- opportunities for concentration and abuse of power;
- opportunities for influence peddling;
- opportunities to taking and enforcing sole or collective subjective decisions;
- presence of bureaucratic and administrative burdens;
- lack of sufficient administrative, material and technical resources, and information resources;
- insufficient level of publicity and transparency;
- underdeveloped system for verification of the integrity of the MA staff and the external evaluators;
- opportunities for setting up a discriminatory and restrictive criteria in the selection of contractors and projects
- opportunities for acts violating the principles of equality and fair competition;
- other direct and indirect pro-corruption factors and opportunities;
- insufficient means for check of the market value of the offers, etc.;
- insufficient information-analytical provision for risk assessment;
- insufficient functionality and interconnection of the software systems.

CPCOC deems that in the new decrees of the CM for the programming period 2014-2020 which regulate the rules for the implementation of the Operational program „Innovation and Competitiveness“ 2014-2020, were made positive steps towards

overcoming some of the opportunities for acts of corruption. The following amendments are positive from preventive point of view:

- to be published the minutes of the meetings of the Monitoring Committees - art. 4 of Decree № 79 of 10 April 2014;
- To be added new functionalities in the electronic platform UMIS (Unified management information system) 2020 for audit and exchange of information with the Certifying authority (CA), audit and supervisory bodies;
- To be provided broader opportunities for spreading of the electronic submission of project proposals;
- To be approved only project proposals met the requirements for technical assessment at level minimum 60% of the maximum possible through the new norm of art. 10, para. 1, item 3 of Decree № 107/2014 on lying down the provisions for awarding of grants for the period 2014-2020. Consequently to this requirement, with high probability can be predicted significant increase of the percentage of efficiently contracted and completed projects.

A positive measure for the assessment of risk of fraud for the 2014-2020 programming period is the developed by the European Commission "Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures" guide. In the previous period was not developed and respectively required analogous detailed methodology with similar characteristics.

Possible measures for overcoming of the identified opportunities and risks for pro-corruption acts and fraudulent practices in connection with implementation of OP "Competitiveness and Innovation" 2014–2020:

The EU regulations govern only the general legal and organizational frameworks, with which we believe that the Bulgarian regulations are consistent and harmonized - as a general structure and meaning. Meanwhile the national Decrees of EU members are called upon to the further develop and detail the procedures laid down in the European norms, regulating sufficient and adequate proportionate measures covering sufficiently all risks of fraud and corruption /recommendation of EC, according to the guidelines of the Commission regarding the application of art. 125, para. 4 of Regulation № 883/2013 governing the work of the European Anti-Fraud Office (OLAF)/.

Potential risks for corruption and fraudulent practices, in consequence of the identified corruption factors could be decreased significantly by implementing a complex of measures of legal, organizational and technical nature. Through the provision of additional preventive measures the opportunities for corruption practices would be significantly limited, as a result of increased possibility of their identification, detection and prosecution. The measures in the most general terms can and should be directed towards:

- correcting or reducing the causes and circumstances for corruption arising from deficiencies of legislative nature;
- improvement of the organization and the procedures, introduction of unified and standardized approach;
- measures oriented to personnel, information-analytical and technical provision of the Managing Authority;
- measures aimed at increasing the levels of publicity and transparency.

CPCCOC proposes the following sections of measures for prevention of the opportunities for corruption and/or frauds in implementation of the Operational program „Innovation and Competitiveness“ 2014-2020:

I - Overcoming of risks posed by gaps and collisions in legal regulations in insufficiently detailed procedures in Decrees and Bulgarian regulations:

1. Introduction of procedures for random assignment of the designated assessors for assessment of the submitted project proposals – measure for overcoming the possibility of subjectivity within the Managing Authority of the program. Given the flaws in this procedure we propose to be introduced lot or another form of random allocation for assessment of the submitted proposals among all assessors who have qualifications and expertise to evaluate proposals on a specific procedure for the provision of grants. Independent observers outside the composition of the MA, to certify the selection (for example, two independent of each other representatives of the competent authorities and organizations: CCU – CM, AEUFEA - Ministry of Finance, various NGOs – carrying out research and monitoring of the themes of corruption and transparency, journalists, employees of PFIA, AFCOS-MI and others). The measure is possible through supplements to Decree № 107/2014 and their subsequent implementation in the future Procedure manual of OPIC.

2. Amendments and supplements to the provision of art. 21 Decree № 107/2014 aimed at the supposition where if there is a difference between the two scores the chairman of the evaluation committee assigns the evaluation to a third person - a member of the evaluation committee. Therefore it is advisable instead of the regulated 20% from the maximum possible score, the chairman of the committee to assign the evaluation to another assessor when there is a difference of more than 5% from the maximum possible score. It should be discussed the possibility the chairman to assign the evaluation not to one, but to a new pair of assessors, and the final score to be arithmetical mean of the two received average scores of the four assessors.

3. To be imposed obligation for providing information to the applicants for the specific reasons for the received technical and financial assessment of all indicators and sub-items of the evaluation chart. The provision of information from the separate checklists for assessment and the reasons is a measure towards increasing the degree of objectivity, transparency and opportunities for justified appeal of the results received from the evaluation process. That measure will facilitate the administrative and judicial practice regarding appeals of the results of evaluations. The measure is possible through supplement of Decree № 107/2014 and in the Procedure manual of OPIC.

4. Regulation of a procedure and designation of a competent authority for appealing by applicant beneficiaries the results of the technical and financial evaluation of the evaluation committees. The measure is necessary as a result of gaps in the provision of art. 20, para. 6 of Decree № 107/2014 - „An objection may be lodged only against the proposal of the evaluation committee for rejection of the respective project proposal on the stage of evaluation of the administrative compliance and eligibility” and the analogous provision of Article 24, para. 7 of the Decree № 121/2007. In the hypothesis of these rules is not permitted the possibility for appeal of the results of the technical and financial assessment of the project proposals by the interested parties. The aforementioned rules are contradictory to the rules of art. 120 of the Constitution of the Republic of Bulgaria and art. 22, item 1 of the APC. The Constitutional right of appeal cannot be derogated by secondary legislation. /Decision № 415 of the Administrative Court - Sofia of 01.02.2011/. The measure is realizable by amending and supplementing Decree № 107/2014.

5. Extending the scope of Art. 3 of the Decree № 118/2014. The measure aims at application of the conditions and procedures, laid down in the decree, in all cases of grants, and not under the current procedure, only when the amount of the grant is greater than 50 % of the total amount of the approved project. Thereby avoiding the application of

different rules and procedures in the cases of financial aid received by beneficiaries with a different percent of grant, regardless of the amount of the aid and the defined value thresholds for conduction of the different procedures. By that amendment in cases where the amount of the grant is less than or equal to 50 percent the total amount of the approved project, will be increased the possibility for ensuring compliance with the principles of good economic management, determining the realism of the expenditure and ensuring the effectiveness, efficiency and economy in spending of the funds by OPIC 2014-2020, as well as compliance with the principles of publicity and transparency, free and fair competition and equal treatment and non-discrimination in the spending of funds from the EU Structural Funds.

6. Reduction of value thresholds for conducting or not of procedures for selection of contractors in Decree № 118/2014. The lack of requirement for conduction of procedures for selection of contractor in case of amounts below the value thresholds of 60 000 lev for construction works / works / and under 20 000 lev for supplies and services, leaves a considerable part of the activities of project implementation without any real competitive procedure. Opportunities to manipulate the values about the market ones are present / given the lack of an updated list or catalog with prices of standardized activities and services/. Elimination of the possibility for proving expenditure and selection of contractors of projects, financed by the operational program without conducting selection procedures or even more significant reduction of the defined value thresholds could be discussed. Corresponding changes in Decree № 118/2014 are necessary.

7. Conducting public calls for selection of contractors electronically. The measure is aimed at restriction of the present corruption factors, allowing manipulation of tenders and/or unreasonable division of the subject of the procedures arising from collisions and gaps in the current legal regulations for selection of contractors from the beneficiaries. A similar approach is advisable under the Strategy for eProcurement EC № COM/2012/0179 - final from 2012 - introduced by a communication from the EC to the European Parliament and the Council; likewise in the new Directive 2014/24/ES of the European Parliament and of the Council of 26 February 2014 on public procurement and on repealing Directive 2004/18/EC.

At the moment on the market numerous software solutions for construction and implementation of Portals for e-competitions are developed and operating. It could be taken a decision the platform for electronic public calls to be located as part of the integrated information portal /www.eufunds.bg/ or on the page of the Managing authority.

Anticipated preventive effects of the implementation of such a platform are: elaboration of optimal price for the supply of goods and services; clearly established rules that cannot be circumvented; offers and results of the competitions cannot be manipulated; effectiveness of the control exercised by the Contracting Authority and the Managing Authority, overall reduction in administrative costs associated with conducting competitions and control over their conduct. The procedures of the public calls will not differ significantly from the rules existing currently, but will have qualitatively changed levels of transparency and possibilities for control. Applicants for contractors will also be facilitated: in the creation and filing of documents; when keeping deadlines, getting quick and relevant information on the results, etc. Thus will be reinforced competition and will be reduced significantly the opportunities for corruption and illegal practices in the selection of contractors. Moreover, the adoption of such a preventive measure will substantially increase the capacity and capabilities of the controlling authorities which will have full access to all information on currently conducting and already conducted competitions.

The measure is realizable through amendments and supplements to Decree № 118/2014, and, respectively, supplements to the future Procedure Manual of OPIC.

8. Regulation of procedure for appealing results on the part of candidate contractors of the procedures for selection of contractors by beneficiaries. Such a procedure will prevent the risks of unfair competition due to the allowed discriminatory and restrictive criteria for the candidates, and other offenses committed in the conduct of the procedures by the beneficiaries. The missing procedure can be overcome by drawing up of rules and imputation of powers to the CPC (Commission for protection of competition), under the current scope of the rules of art. 2, para. 1, item 1 of the LPC. An analogy can be made with the current procedures with options for appeals of the procedures under PPA before CPC. At discretion can also be created a new authority /for example a unit to the MA/ to solve causes related to contesting of the results of evaluation committees appointed by the beneficiaries to select a contractor. The measure is realizable through appropriate amendments and supplements to Decree № 118/2014.

9. Overcoming the double standard of the purview of Art. 22 of Decree № 118/2014, governing the conclusion of a contract with the selected contractors. A presence of a gap of the legal norm was found concerning the cases where the majority owners of Ltd. and AD, and the sole owners of the Ltd. are not managers and do not meet the requirements, but the managers appointed by them meet the specified requirements for conviction. In the article are listed in detail the circumstances under which a contract can be concluded with a specific candidate for a contractor. The offences listed under para. 1 have a high level of danger for the society and therefore it is imperative to be provided sufficient resources and means for observance of the purpose of the rule. In the case of para. (4) "When candidates are legal entities, the requirements of para. (1), item 1 shall apply only to persons who manage and / or represent the company." It is noteworthy that within the scope of the norm is excluded the situation where a limited liability company is a candidate contractor - the requirements under para. 1 of that article shall apply only to the manager or managers, and if they are not defined in a limited liability company - to the sole shareholder. It is advisable this gap of the norm of Decree №118/2014 to be amended and supplemented in the direction – in all cases the requirements under para. 1 of art. 22 to be applied for the managers of LTD as well as for their majority shareholders given the fact that the owners can exert influence and pressure on managers appointed by them, aimed at committing unlawful acts or omissions. The measure is realizable through supplements to art. 22 of Decree № 118/2014.

10. Supplementing the concept of "conflict of interest" in the current CIPAA (Conflict of Interest Prevention and Ascertainment Act), in order to achieve full compliance with European law, under the provisions of art. 57, para. 2 of Regulation № 966/2012g. of the EP. Thus will be discontinued the current double standard of the legal regulation of the concept and all potential cases of conflict of interest arising from national and political affiliation, or any other interest outside the scope of the rules of CIPAA will be fully covered. The hypotheses of the norm in the regulation are significantly broader than those of the Bulgarian Law – the provision of Art. 57, paragraph 2 of Regulation № 966/2012 of the EP states „a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient“. The Operational programs co-financed by the Structural and Cohesion Fund apply the General guidelines for avoiding conflicts of interest within the meaning of art. 52 of Regulation 1605 of 2002 and respecting the principle of impartiality and independence in the management of the Operational Programs. The specified norms have a

direct and immediate effect. At the same time the norm of current CIPAA is applied constrictively in relation to those of the Regulation and full compliance with the texts of those norms has not been achieved. The discrepancy between the Bulgarian and European law leads to a partial lack of procedures and mechanisms for establishing the lack of conflict of interest of the potential candidates in the full sense of art. 57 of Regulation (EU, EURATOM) №966/2012 of the EP and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No 1605/2002. The specified gap can be overcome through appropriate amendments and supplements to CIPAA and the Procedure Manual of OPIC.

II. Measures for overcoming weak points in the Procedure Manual for the next programming period, as a result of analyzes of the Procedure Manual of OPDCBE 2007-2013:

1. Extension of the periods for verification and filling out of the checklists from department „Legislation, internal control and deficiencies“– LICD (check of the people with whom could be concluded a contract for services, related to the implementation of the monitoring and control of the execution of approved projects under OPC) for presence/absence of conflict of interest and connection, from the current 3 work day to minimum 10 work days. Through the amendment of this period will be increased the time for complete and comprehensive inspection of the absence or presence of conflicts of interest and connection. The measure is in addition to the proposed measure for upgrade and expansion of possibilities for cross-checking declarations of absence of conflict of interest and connection. It is advisable to be increased all periods for verification of the declarations of absence/presence of a conflict of interest and connection, submitted by different external parties /experts, external assessors, observers, beneficiaries, contractors and other/, involved with the activities of the operational program. The measure is possible through amendments to chapter 12 of the Procedure manual of OPDCBE – Conflict of interest and respectively the future analogous chapter of the Manual of OPIC.

2. Expansion of the hypotheses for verification of absence/presence of conflict of interest and connection of the external experts employed to perform services of monitoring, control and development of statements. The norm of section 12.3, chapter 12 is constricting compared to the purview of art. 2 CIPAA governing the terms "conflict of interest" and "private interest.". The norm of section 12.3 is also constricting in the sense of § 1. of the Supplementary provisions of CIPAA - "related persons" are spouses or people who are in cohabitation, liners relatives, collateral relatives up to fourth degree inclusive, and relatives by marriage – up to second degree inclusive, as well as natural and legal persons with whom the person holding a public service in economic or political dependencies which give rise to justifiable doubts as to his impartiality and objectivity. "

According to the norm of the Procedure manual a verification of the external experts is performed only on circumstances surrounding a potential conflict of interests, arising from: „1. The person does not hold shares in the beneficiary whose project is scheduled to be subject of monitoring/verification; 2. The person is not a manager or member of a body for management or control in the beneficiary, whose project is intended to be subject of monitoring/verification; 3. There is a lack of data for the person for consultancy services in relation to the beneficiary whose project is expected to be subject to monitoring/verification." The lack of the aforementioned circumstances does not certify in any way that the person is not in a conflict of interests within the meaning of CIPAA,

because of other circumstances which cause private interest for that person. For example such could be - circumstances regarding the related parties of the hired expert, and the benefits from tangible or intangible nature acquired by them as a result of exercise of the powers or duties in the service of that person occupying a post. In addition, the lack of a requirement of the aforementioned circumstances does not aid the implementation of the objectives of art. 57, para. 2 of Regulation (EU, EURATOM) №966/2012 of the EP and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No 1605/2002, according to which „a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient“. In the provision of chapter 12 is laid down the check to be performed individually for every person in the respective available legal-informational systems, the Trade register, the CVs submitter by the persons (if applicable), **and additional information and documents, regarding the circumstances of a potential conflict of interest, are requested from the competent authorities only if it is necessary.** The measure is applicable by supplementing the hypotheses for verification listed in the rules of the Procedure manual of OPIC.

3. Regulation of a procedure for timely update and control of data in the register of employees who have left the Managing authority. The measure is applicable by supplementing the procedures in chapter 12, section 12.5 of the Procedural manual of the operational program.

4. Regulation of a more detailed rules and procedures in Chapter 14 „Administration of documentation and archiving“. To be regulated detailed rules, specific responsibilities and obligations for the movement of documents and files, conditions and periods for storage of documentation related to the execution of the Operational program. Vague definitions like the concepts “proper storage”, “proper distribution of documents in binders in a manner specified by the relevant head of department” pointed out in the Manual of OPC will be avoided through an additional drawing up of the rules. Also will be limited the possibilities for subjective judgment and the right moment for archiving the documentation, caused by the vague hypotheses of the norms - for example: „The archiving of OPC documents can be performed after completion of a project/all projects of announced procedure of granting/of all projects in an operation“, „The archiving is performed at a time, specified by the Head of the MA. He issues an Order defining the experts of the departments responsible for the preparation and submission of the documentation in the archive“. The aforementioned provisions create preconditions for insufficient level of organization and also for potential violations and manipulations related to the document administration system and archiving in the MA.

III. Measures for overcoming the causes and circumstances for corruption acts identified in the Application Guidelines for granting procedures under OPDCBE and, accordingly, OPIC 2014-2020:

1. Possible measures for overcoming the pro-corruption factors through elaboration of more measurable and objective criteria for the evaluation of project proposals and detailization of the methodologies. Regulation of the rules for attributing of “from - to” points for each section of the evaluation table, justifying a more detailed and objective awarding of each point. The measure is possible through unification between the development of the assessment criteria and the documents package of the Application Guidelines.

2. Increase of the short periods for provision of additional clarification on the part of the candidate-beneficiaries, listed in the Application guidelines (Section 4, "Procedure for project selection" items 4.1. Evaluation and ranking of project proposals, 4.1.2. Technical and financial evaluation, 4.1.2.1. Financial evaluation). Instead of the current period of three calendar days from the date of receipt of a written request, we propose the period to be increased to a minimum of 7 days. The possibility, of setting unreasonably short period for submission of the requested clarifications, which further impedes the candidates for grants and creates a corruption risk, will be overcome through the aforementioned measure

2. Discontinuation of the practice in the Application guidelines to be required at least two extracts of catalogs of manufacturers/suppliers and/or researches on the internet, contrary to the principle that in the project proposals should be specified only minimal technical and functional characteristics of the equipment intended to be bought, without specifying brands, models and other specific technical specifications which direct towards particular manufacturers, brands and models, thereby overcoming the conflict with the requirement to define only minimum technical and functional characteristics of the equipment intended to be bought and not directing towards specific brands and manufacturers.

3. Creation of a joint e-register which unites data on the financing of all funds and programs at European and national level. The purpose of the measure is increasing the possibilities for more effective verification for presence/absence of double financing which to exclude possible deficiencies and acts of subjectivity in these checks. A step in that direction is a positive decision for participation in the system of the European Commission for identification and monitoring of risk projects - "Tool ARACHNE", which is advisable, but optional. User training and provision of manuals for the employees is undertaken by the EC. Voluntariness and reciprocity of the participation is a principle. Possible accession of all MA would facilitate the verification of double financing, as well as of incorrect applicants and beneficiaries in all funds and programs. Furthermore, the creation of a joint e-register and the participation in the tool for monitoring of risk projects Arachne will overcome the weaknesses caused by insufficiently comprehensive verification mechanism.

4. The various lists maintained by individual governing bodies to be united, and to be created a joint e-register for real time checks of the cases of submission of false and/or misleading information by applicants for grants for all programs financed from the EU funds, as well as financed from other governmental funds and programs. The measure aims to unite all lists of cases of submission of false or misleading information from candidate beneficiaries, which are currently maintained by the MA of all operational programs and other programs financed from the EU funds.

5. The MA must specify approved methods for assessment of the credibility of the activities and sustainability of projects to all Application Guidelines for granting procedures of the operational program. Thus the possibility of acts of subjective assessment will be reduced significantly. Currently it is common practice a broad interpretation to be allowed, despite the formulation of certain conditions, the presence of which is awarded with a given number of points. Currently the indicators on these criteria are often too general and immeasurable, allowing for qualitatively different and conflicting decisions.

6. Mandatory inclusion of a methodology for appraisal of the indicators related to "realism of the action plan of the project" in the forms to Application Guidelines for each scheme. The purpose of the measures is to be overcome the possibility of subjective interpretation and attribution of points, related to indicators without a clear definition and

method of assessment of the type "relatively realistic time range of performance of the activities", "short or too long time range in relation to one or more activities" etc.

7. For each procedure for provision of grants under OP should be taken into account the risk of default of the procedure. For that purpose it is necessary to be identified and assessed the individual risks and consequently to be planned and proposed measures to overcome them in each project of the beneficiaries of any procedure for grants. This requirement should be included in the Application guidelines for the respective procedure, and accordingly, the necessary section for filling in the application forms should be included. Last but not least, the requirement should also be laid down in the criteria and methodology for evaluation of project proposals of the procedure.

8. MA must specify maximally clear instructions in the Application Guidelines for granting procedures. The measure aims to limit the possibility to be specified requirements in the sections „Eligibility of projects/activities“, allowing for broad interpretation and subjectivism of the type of „the main project activities are implemented on the territory of Republic of Bulgaria“. Restricted activities carried out abroad are allowed“, and the results of the execution of the project are used on the territory of the Republic of Bulgaria“, definitions of the type "necessary capacity" and others. The specified weaknesses can be overcome by mandatory indication and definition of limit values, percentages or parameters for calculation of permitted limited activities abroad, compared to the total of the project.

IV. Organizational measures the level of integrity of employees and level of organization - Implementation of standards and unification of procedures and approaches:

1. Development of obligatory tests of loyalty, integrity and corrupt attitudes of the MA staff. Currently the MA staff is not subject to initial and periodic checks on level of integrity /decency/. The tests should be specially designed according to the specificities and needs of the organization. The relevant amendments and supplements to Civil Servants Act and the Ordinance for conduct of the competitions for civil servants, approved by Decree № 8 of 16.01.2004, are necessary for implementation of the measure.

2. Conduction of mandatory electronic competitions for employment and career advancement in management positions, which to be announced on the official website of MA. The choice of different versions of the tests to be on a random basis and in electronic form, ensuring the objectivity of the ongoing competition procedures. Similar practice has been administered in Bulgaria in the conduct of several centralized competitions for appointment junior experts in public administration. Furthermore should be developed specific job descriptions, depending on the specific requirements for positions in the relevant departments of the MA of OP "Competitiveness and Innovation". This measure restricts the choice of employees as a result of subjective assessment, thereby limiting opportunities for lobbying, nepotism, dependencies, corruption practices and their facilitated expression in dependent and closely associated staff. The measure is realizable through amendments and supplements to Civil Servants Act and the Ordinance for conduct of the competitions for civil servants approved by Decree №8 of 16.01.2004, with numerous amendments and supplements, the last being into force since 1.07.2012.

3. An addition to the requirements and extension of the possibilities for cross checks of declarations of absence of conflict of interest and connection (filled out by employees, assessors, experts and candidate beneficiaries of the program). In the practice established so far in MA a sufficiently complete and comprehensive mechanism for verification and control of the circumstances in the declarations for presence/absence of

conflict of interests, related to the marital and employment status of the persons, is not provisioned. Given the increased amount of work it will be necessary: increasing of the staff, qualification and the technical provision of the employees, working on irregularities and internal control; ensuring facilitated or direct access to the information from the records of DG "CRAS" - MRD, NSSI and other adequate means for verification of the circumstances demonstrating compliance with the principles of independence and impartiality.

4. Increasing control and transparency in the management of funds in the Financial instruments under Priority Axis 3 "Financial resources for enterprise development" - initiative JEREMIE, by allocating responsibility for management of the funds under analogous axis for the new programming period of the Bulgarian Development Bank /BDB/. The goal is establishment of common rules for access, provision of more affordable interest rates of potential applicants and increased control over the rules and resource consumption on part of the state auditing and certification bodies. Currently the banks have a high operational independence and are without real and adequate supervision of the appropriateness of the expenditure of these funds, whereas they are not liable for unreasonable refusal to provide financing - various possibilities for influence peddling, extortion and obtaining undue advantage - i.e. bribery in the private sector - art. 225c of CC. The specified opportunities for corruption have a high latency and reduced opportunities for disclosure and respectively penalty. The measure is possible by revision of the OPIC 2014-2020, and coordination with the EC.

V. Measures for increasing publicity and transparency:

1. Creation of a public register of projects funded under Priority Axis 3 "Financial resources for enterprise development" - JEREMIE initiative and, respectively, under investment priority 2.1. "Access to financing in support of entrepreneurship" in the new programming period of OPIC 2014-2020. The purpose of this measure is to be overcome in practice the lack of transparency on the manner of spending the funds under this priority axis. The register should include data corresponding to the data from the list of beneficiaries under Regulation (EC) № 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund. As a minimum the register should include data about the name of the beneficiary, the subject matter, value and for the final implementation of the projects financed and managed by banking institutions under the initiative JEREMIE /the proposal does not contradict the provision of art. 62, para. 2 of the Law on Credit Institutions/ under the supervision of enterprise "Jeremy Bulgaria" created specifically for that purpose. The specified weak point can be overcome through the development of a separate module/register for information and publicity on the specific priority axis and determining of appropriate sanctions for failure to comply with requirements for timely and accurate submission of the information. The MA is obliged to publish and maintain a list of all beneficiaries of the operational program within 14 days from the date of conclusion of the grant contract, in accordance with art. 11, item 18 of the Internal Rules of Procedure of the evaluation committees of the program. The measure is possible through supplements to the Procedure Manual of OPIC.

2. On the public module of UMIS to be provisioned a possibility for publication of information on the implementation of the projects with an indication of specific values of the contracts, information about the executed contracts and the paid amounts, including

the lots /by analogy with the website of PPA/. Therefore it is advisable information from the protocol for classification of the participated applicants for contractors to be incorporated into the package of publicly available documents. The specified measures will increase the level of transparency and awareness of the civil society and will create opportunities for obtaining more signals for committed violations, irregularities, corruption acts and frauds. The measure is possible by supplementing the functionality of UMIS 2020.

3. Creation of a public register of consulting companies in European programs, containing data of their owners, managers, and employees under employment and civil relationships. The increased transparency and the opportunities for data validation will reduce the opportunities for consultancy services from persons participating in the evaluation committees. Currently the chairman and the secretary of the evaluation committee check the numerous circumstances, including whether the evaluators did perform consultancy work to natural and legal persons - candidates in the specific procedure. The measure is possible through amendments and supplements both at the level of a Decree and at the level of Procedure Manual for OPIC.

4. Creation of a common register of the assessors of project proposals under the EU operational programs /by analogy with the register of independent assessors - regulated in Article 3, Item 1 of IAA/. The list should include data on their expert profile. On this basis, the selection and orientation of evaluators towards open procedures, schemes and measures can be assisted. Through the expanded database the number of assessors competent to carry out assessments for each program will increase and also the possibilities of lobbying and influence peddling will be reduced. Measure is applicable through the establishment of a system, maintaining an updated list of assessors and external assessors. The system should support the selection of external assessors in all programs funded by the EU and to be maintained by the CCU at CM (Directorate IMSEUF). The same to support data for the expert profile of the assessors and to automate their allocation before the random assignment of assessors on specific procedures for grants of the various programs. The measure is possible through a new legal regulation at the level of Decree /or new supplements to Decree N° 107/2014/.

5. Increasing the period for public access to the calls from the current minimum of 7 days to a minimum of 14 days in order to increase the adversarial of the procedure through improved awareness and opportunity for offers from the potential candidate-contractors. The measure is possible through amendments to Decree N° 118/2014.

6. Regulation of more stringent and detailed rules to ensure fairness and transparency of the evaluation committees. In the internal rules which are currently in force is provided the evaluation committee to conduct its meetings behind closed doors, in confidence. The project proposals must be stored in a "safe place" and their export outside the building where the assessment is conducted is prohibited. Therefore the term "safe place" should be defined and the procedure for ensuring the confidentiality and objectivity of the evaluation process should be supplemented. It is advisable the rules to govern:

- carrying out the assessment in halls which are permanently equipped for assessment procedures for provision of grants under OP /the financing necessary for their equipment can be achieved by means of the axes for "Technical Assistance"/;
- specific arrangements for access to the halls;
- equipment of the halls with cameras to monitor the evaluation process;
- individual safety deposits for storage of evaluation records and reports of the evaluation committee and the independent observers of the procedure;
- safety deposits for storage of the evaluated project proposals.

In order to constrain the opportunities for corruption or influence during the course

of the evaluation it is appropriate the evaluation of the individual project proposals to be carried out by one assessor within a maximum of one working day and in the absence of personal means of communication with other assessors and persons outside the evaluation hall. It is advisable the control rights and obligations of the observers /quaestors/ to be widened. The measure is realizable through appropriate amendments and supplements to Decree N^o 107/2014 or in the future Manual for OPIC 2014-2020.

7. Supplementing the content and functionality of the website of the program and the Unified Information Portal - www.eufunds.bg /including incompleteness in the publication of calls for selection of contractors in the Bulgarian and the English version/.

It is advisable the search functions of the website for the published calls and concluded contracts to be developed and improved /analogy with the functionality of the PPA site is possible - search by description of the subject of the call, search by project number, search by priority axis, by keyword from the name of the program - a procedure and/or name of the beneficiary (contractor) and other functionalities/. The measure is applicable through development of additional functionalities of the Unified Information Portal and/or of the public module of UMIS, for publication of information on the final execution of the concluded contracts with contractors and the amounts paid for them (similar information and functionality is available in the Public Procurement Register maintained by the PPA). It is appropriate the information to be available at one place – a single point of access.

8. Regulation of administrative sanctions and increased monitoring for the timely and accurate posting of information on the selection of contractors for the public module UMIS and/or the Unified information portal. The measure will prevent infringements of the provisions of Decree 69/2013, and, accordingly, Decree N^o 118/2014, and will increase the degree of transparency and compliance with the principles of fair competition in the selection of contractors.

9. Regulation of mandatory internal to the MA methodology for selection of media – contractors for activities of: „acquisition, development, production and co-production of programs by radio and television broadcasters and provision of airtime“. Conduction of procedures for the implementation of these activities is excluded as an object of public procurement in PPA – art. 4, item 2. The item is in line with Art. 16b of Directive 2004/18/EC of the European Parliament and of the Council of 31.03.2004 on the coordination of procedures for the award of public contracts for works, supplies and services. The fact that the activity is not a subject of public procurement enables taking opaque and subjective decisions on the selection of media - performers of the activities imputed to promote OPDCBE and OPIC. It is appropriate the internal methodology to be published on the website of the MA, in order to achieve increased transparency and efficiency of the specified activities.

10. Publication of the results of the content analysis of media monitoring carried out by the MA on the website of the operational program. To the specified measure it is appropriate towards the methodology for the preparation of content analysis to be added a requirement for study and reflection of the theme of "corruption."

VI. Measures for enhancement of the informational provision and analytical capabilities:

1. Development of a module, aimed at potential candidate-beneficiaries, with the purpose of a current independent verification of the eligibility of the applicant and the planned activity in relation to the open and pending for opening operations and application procedures (similar mechanism is embedded into the electronic portals of banks servicing

the initiative JEREMIE). The indicative annual work programs (IAWP) published to the moment are insufficiently detailed and the candidates cannot predict their eligibility to the full, especially regarding the sector of economic activity within the National Classification of Economic Activities (NCEA). For the purposes of this measure is appropriate the MA to conduct regular studies on priority sectors and branches of the Bulgarian economy in order to update the National strategy for promotion of small and medium enterprises 2014-2020. The measure will increase the opportunities for planning and preparation of project proposals by potential beneficiaries and will reduce the opportunities for lobbying and manipulation of the Application Guidelines.

2. To implement and maintain a system (or to be supplemented the functionality of any of the existing systems), on which the assessment of the project proposals submitted by the candidate-beneficiaries to be carried out. The system to develop and maintain functions for allocation of projects and templates for assessment to the respective assessors, functions for the observers, for the audit authorities and others. Model documents (checklists) have been developed, which is an important step towards the future automation. Similar systems of the "Portfolio Management" type are available and it is possible to be implemented by means of axis "Technical Assistance" of OPIC or by a project on central level for all operational programs under the OP "Good Governance".

3. To be developed and implemented the system for reporting (management) the performance of the concluded contracts for projects and monitoring of their risks. Functional shortcomings are identified in the analyzed User Guide Part V - "E-services for beneficiaries" for UMIS (information important for the project – relation between tasks-contractor, relations between individual tasks and others is not being input electronically, which currently necessitates for references and checks to be searched hard-copy information). There should be an analytical module to the system, from which to be received current summarized information by specified criteria, for the purpose of checking and tracking development trends. IT systems of this kind are the software systems for risk assessment.

4. Development of a software system for identification and management of the common risks for individual schemes and for the program in its entirety. It should be linked with the system aforementioned in measure 3. The plan of risk management of the individual projects is interconnected with the general plan for risk management of the program. All projects for grant funding should be required to assess the risks, the planned countermeasures and to report on their actual impact. It is appropriate the functionality of UMIS 2020 to be further developed, as well as to a connection to be constructed with an analytical module of the type of the tool "Arachne" of EC.

5. To be implemented and maintained a system /or a module to UMIS/ for documentation of the carried out checks and the results from them. Model documents (checklists) have been developed, which is an important step towards the future automation. It is possible to finance such a measure under axis "Technical assistance" or under OP "Good governance".

6. To be developed the system for receiving and registration of signals for irregularities and documentation of the activities for their elimination. It is appropriate the system to be linked with the proposed analytical system(s) for risk assessment, without specifying information about the identity of the submitters of signals. The specified measure will increase the level of control over risk projects and beneficiaries and will reduce the overall risk of the operational program.

7. Increasing the volume of information about the selected contractors for certain projects and lots on the public module of UMIS 2020. It is appropriate to be given information about the value of the specific contracts and UIC of the contractors.

8. Construction of a technical connection (single assess point) between the published calls for selection of contractors for specific contracts for provision of grants to beneficiaries under OPDCBE on the website www.eufunds.bg and information on the respective projects of the same beneficiaries, published on the public module of UMIS. The measure aims to increase the functionality and transparency of the process for selection of contractors.

9. To be developed a system for collecting, summarizing and structuring the collected recommendations for program development, received on the site of MA of OPIC, including for perusing the needs of financing of the potential beneficiaries. After evaluation and analysis the same shall be submitted for discussion at the meetings of the Monitoring Committee of OPIC. Periodically to be published summaries and analyzes from which to be clear which recommendations and suggestions have been taken into account and which have been rejected. The analysis of this information will increase the flexibility, efficiency and the optimal reallocation of resources of the program.

Summarized conclusions and estimated impact of the implementation of the measures:

The decision on the implementation of the majority of the measures proposed in the report for amendments and supplements in Decrees, the Manual of OPIC, the Application guidelines and upgrade of the information-analytical systems, will prevent a major part of the pro-corruption weaknesses identified this far in the management of OPIC. A great restriction of the possible corruption practices and the amount of the potential damages, an increase in the integrity of the employees of MA, an increase in the opportunities for detection of irregularities and respectively, the number of the sanctions /sentences/ imposed for violations or criminal activities is expected.

The proposals for implementation of anti-corruption measures will not hinder and aggravate significantly the control in the course of the execution of the operational program in the new programming period. The proposed measures aim to reduce administrative burdens and to speed up the periods, transparency and objectivity of the conducted procedures. As a result, the opportunities for observing the principles of publicity, transparency, free and fair competition, equality and non-discrimination will substantially increase. Last but not least, the significant decrease of the identified corruption risks will increase the interest of the candidates for beneficiaries, respectively – the degree of effectiveness of the program and the level of the public trust towards the institutions in the Republic of Bulgaria.

The number of irregularities and the attempts at corruption and frauds are expected to have significantly decreased in the future as a consequence of the implementation of the complex of measures at the different levels. Thus will be minimized the risks of suspension of payments in respect to separate schemes, procedures and/or for the entire operational program.

Based on the identified potential opportunities for corruption at the level of a Decree analogous proposals and measures can be implemented also for the other programs, financed by EU funds. The proposed measures could be applied to a greatest extent also towards the programs spending funds primarily for procedures for selection of contractors, regulated in Decree - Operational Program "Human Resources Development" /OPHRD/, Operational Program "Development of the fisheries sector" /OPDFS/, Rural development program /RDP/.