

Conditions and procedure for considering expenditures reimbursed from 2014-2020 structural assistance to be eligible, for payment of support and making financial corrections

Adopted on 01.09.2014 No 143

The regulation is established on the basis of subsection 13 (5), subsection 29 (8), subsection 46 (2), subsection 47 (1) and subsection 48 (7) of the 2014-2020 Structural Assistance Act (hereinafter Structural Assistance Act).

Chapter 1 General provisions

§ 1. Scope of regulation

- (1) The regulation establishes the conditions and procedure for the considering as eligible the expenditures for the provision of assistance and certification of self-financing on the basis of the operational programmes specified in clauses 1 (1) 1) and 3) of the Structural Assistance Act, the conditions and procedure for submission and proceeding of a payment application and payment of structural assistance (hereinafter support), the extent of financial correction expressed in percentages, the requirements for formalization of the financial correction decision and the conditions and procedure for postponement of the repayment of support.
- (2) The requirements provided for in the regulation are the basis for the establishment of the conditions for the provision of support.
- (3) The conditions and procedure for considering expenditures to be eligible and for payment of support may be supplemented and specified in the conditions for the provision of support, taking account of the requirements provided for in the regulation, and ,in the cases not covered by the regulation, in accordance with the Estonian and European Union legislation.
- (4) The provisions of the regulation shall apply to expenditures incurred by a beneficiary, partner and final recipient.

Chapter 2 Eligibility of expenditure

Division 1 General conditions of eligibility of expenditure

§ 2. General conditions for considering expenditure to be eligible

- (1) The expenditure is eligible if it is justified, is incurred pursuant to subsections (3) and (4) and paid pursuant to subsection (5) and is in compliance with the European Union and Estonian law.
- (2) The expenditure is considered justified if the expenditure is appropriate, necessary and effective in order to achieve the objectives and results prescribed in the grant decision or

legislation on the conditions for the provision of support and it is incurred in the course of the activities to be supported specified in the grant decision or legislation on the conditions for the provision of support..

(3) The expenditure is considered to have been incurred during the eligibility period specified in clause 2 6) of the Structural Assistance if:

1) within the meaning of point (a) of Article 67 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, pp.320-469), upon provision of support on the basis of real expenditures actually incurred and paid (hereinafter actual expenditure), the work is done, goods are received or service is provided, forming the basis of the expenditure, during the eligibility period of the project and the expenditures incurred can be proven pursuant to subsection (4);

2) Upon provision of support on the basis of a standardized unit cost within the meaning of point (b) of Article 67 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and on the basis of lump sum payments within the meaning of point (c) of subsection (1) of the same Article and upon reimbursement of indirect expenses on the basis of the flat rate calculated from personnel expenditures within the meaning of point (d) of subsection (1) of the same Article, and upon reimbursement of other eligible expenditures on the basis of the flat-rate payment calculated for one or more defined expenditure category (hereafter simplified methods of reimbursement of expenditures) within the meaning of

Article 14 (2) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, pp.470-486), and upon provision of support and state aid on the basis of a joint action plan (hereinafter a joint action plan) within the meaning of § 17 of the Structural Assistance Act the activities to be supported, being the basis of expenditures upon the provision of support and state aid, shall be made during the eligibility period of the project.

(4) The actual expenditure incurred is proven when a beneficiary has reflected the financial debt resulting from a past event or concluded transaction, forming the basis of expenditure, in its accounting as financial liability on the basis of an invoice or other accounting document of equivalent evidential value, based on internationally recognized principles of accounting and financial reporting. In the case of the remuneration for employment or service duties (hereinafter salary) it may be an extract certifying wage calculation or a payroll.

(5) The expenditure actually incurred has been paid if it has been paid during the eligibility period of the project or within 45 calendar days after the eligibility period of the project, but not later than on 31 December 2023.

§ 3. Eligibility of personnel expenditures

(1) The personnel expenditures are eligible as follows:

- 1) salary in proportion to the time worked for the project;
- 2) holiday pay in proportion to the time worked for the project and in accordance with the procedure provided for by law;
- 3) benefits upon dismissal from service or employment, termination of the employment contract or service relationship and other benefits arising from the law in proportion to the time relating to the project;
- 4) the charges and the payments arising from the law on expenses specified in clauses 1)-3);
- 5) expenditure incurred relating to secondment or performance of employment or service duties arising from the law; 6) training cost;
- 7) expenses of medical examination of an employee and an official in proportion to the time worked for the project.

(2) If the personnel expenditures are reimbursed on the basis of actual expenditures incurred and an employee performs also other tasks in the same establishment in addition to the employment within the framework of the project, the time worked for the project shall be certified pursuant to Annex to this regulation "Form of the table for calculating time".

(3) Subsections (1) and (2) shall apply to personnel expenditures incurred on the basis of an employment contract and a directive on employment.

(4) A fee to be paid for services shall be considered eligible as personnel expenditure incurred in proportion to the time worked for the project on the basis of a contract of services or authorization agreement entered into with a natural person, specified in the Law of Obligations Act, which is subject to a social tax and unemployment insurance premium, and the social tax and unemployment insurance premium have been calculated on such fee if the fees for various services are identified separately.

§ 4. Ineligible expenditures

The following expenditures are ineligible:

- 1) loan interest, except in relation to support given from the financial instrument in the form of an interest rate subsidy or guarantee fee subsidy;
- 2) a fine, financial penalty, contractual penalty and fine for delay payable upon the noncompliance with the obligation;
- 3) the procedural expenses related to the court proceedings, except for the provision of support as technical assistance specified in § 20 of the Structural Assistance Act (hereinafter technical assistance), but not the costs of the opposing party and a third party;
- 4) non-monetary expenses;
- 5) insurance premiums, except for casco, traffic, property, travel, sickness, occupational safety, liability of the employer insurance premiums and insurance premiums accompanying the salary;

- 6) benefits or allowances paid in addition to the salary, which does not qualify as a salary within the meaning of the law;
- 7) overhead costs specified in subsection (9) (5), except upon the provision of support on the basis of the simplified methods of reimbursement of expenditures or as the state aid; 8) the purchase price of land not built on and land built on in the amount exceeding ten per cent of the eligible expenditures of the project, except where the percentage upon the provision of support from the financial instrument may be higher pursuant to point (b) of Article 69 (3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council;
- 9) investment in the infrastructure and the purchase of real estate in a project financed from the European Social Fund, except in the amount specified in Article 98 (2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council;
- 10) expenses incurred on the basis of a leasing contract if the lessor is not a credit or financial institution operating on the basis of the Credit Institutions Act;
- 11) the VAT, except in the case the VAT is non-recoverable on the basis of the Value-Added Tax Act pursuant to point (c) of Article 69 (3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council. If investment support is provided from the financial instrument to a final recipient, the taking account of the VAT is based on Article 37 (11) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.
- 12) the expenditures which have been previously reimbursed to a beneficiary from another measure or state budget funds or other foreign aid funds.

Division 2 Calculation of net revenue

§ 5. Procedure for taking account of net revenue of project upon definition of eligible expenditures

- (1) Net revenue shall be dealt with within the meaning of Article 61 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.
- (2) Upon the deduction of net revenue the provisions of Article 61 (3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council shall be applied to a revenue generating project with eligible expenditures in the amount of over 1,000,000 euros before the deduction of net revenue, reimbursed from the European Regional Development Fund and the Cohesion Fund, if all the following circumstances are present:
 - 1) the revenue of the project is appraisable before making the grant decision;
 - 2) the net revenue is generated by the project after the end of the eligibility period of the project;
 - 3) the co-financing rate for the priority axis is not reduced pursuant to Article 61 (5) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.
- (3) The 1st level intermediate body shall make the selection between the options specified in

Article 61 (3) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and shall provide for the procedure for calculating net revenue in the legislation on conditions for the provision of support.

(4) Upon the deduction of net revenue the provisions of Article 61 (6) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council shall be applied to a revenue generating project with eligible expenditures in the amount of over 1,000,000 euros before the deduction of net revenue, reimbursed from the European Regional Development Fund and the Cohesion Fund, if all the following circumstances are present:

1) the revenue of the project is not appraisable before making the grant decision; 2) the net revenue is generated by the project after the end of the eligibility period of the project;

3) the co-financing rate for the priority axis is not reduced pursuant to Article 61 (5) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

(5) Subsections (2) and (4) of the section shall not apply to the project, which is subject to points (c) to (g) of Article 61 (7) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and Article 61 (8) of the same regulation.

(6) Upon deduction of the net revenue the provisions of Article 65 (8) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council shall be applied to a revenue generating project, which is not covered by subsections (2) and (4), and the eligible expenditures of which are 50,000 euros or more before the deduction of net revenue, if the revenue is generated during the eligibility period.

Division 3 Implementation of simplified methods of reimbursement of expenditures

§ 6. General principles of provision of support on basis of simplified reimbursement of expenditures

(1) If the support provided for a project from the European Social Fund is up to 50,000 euros, the support is provided for the project only on the basis of the simplified methods of reimbursement pursuant to Article 14 (4) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council, except where upon the provision of the state aid the support is provided as a proportion of the eligible expenditures or the project or activity has been purchased as a whole by way of public procurement pursuant to Article 67 (4) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

(2) The conditions and procedure for implementation of a simplified method of reimbursement of expenditures shall be provided for in the legislation on the conditions for the provision of support or a grant decision taking account of the conditions provided for in points (b) to (d) of Article 67 (1), Article 67 (5), Article 68 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and Article 14 (2) and (4) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council. Upon the provision of support from the operational programme of the fund for aid specified in clause 1 (1) 3) of the Structural Assistance Act, special conditions provided for by Regulation (EU)

No 223/2014 on the European Aid for the Most Deprived (OJ L 72, 12.03.2014, p. 1-41), shall be taken account of upon preparation and implementation of the flat rates.

(3) The simplified methods of reimbursement of expenditures may be combined within the framework of one project in the case where each of them covers only expenditures related to different activities to be supported. Where the expenditure is expenditure to be reimbursed on one the basis of one method, it cannot be reimbursed on the basis of another method or actual expenditures incurred.

(4) Based on a joint action plan pursuant to Article 104 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council support is only provided on the basis of the standardized unit cost and lump sum payment.

(5) The methods and rates of simplified reimbursement of expenditures, used for activities of a state in the European Union policies and nationally, may be applied to a similar type of activities and beneficiaries pursuant to points (b) to (e) of Article 67 (5), point (c) of Article 68 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and Article 14 (1) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council.

§ 7. Reimbursement of eligible expenditures on basis of standardized unit cost

(1) The regulation and directive on the conditions for the provision of support may provide for reimbursement of expenditures on the basis of the standardized unit cost pursuant to point (b) of Article 67 (1), Article 67 (5) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and Article 14 (4) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council.

(2) For reimbursement of expenditures on the basis of the standardized unit cost the 1st level intermediate body or the 2nd level intermediate body with the consent of the 1st level intermediate body is required to carry out or order an analysis for calculation of the standardized unit cost, except in the case provided for in subsection 6 (5).

(3) The analysis specified in subsection (2) shall be unbiased, contain reasons and be based on the actual eligible expenditures incurred, price quotes, statistical data or other objective information. The analysis and the standardized unit costs found on the basis thereof and the methodology of implementation shall be coordinated in writing with the managing authority before the establishment in the regulation or directive on the conditions for the provision of support.

(4) If the amount and calculation of the standardized unit cost or the procedure of implementation thereof are amended, the expenditures incurred in the course of the activities, which were commenced after the entering into force of the decision on amendment, may be reimbursed under the amended conditions on the basis of the standardized unit cost.

§ 8. Reimbursement of eligible expenditures on basis of lump sum payment

(1) If the support provided for a project pursuant to point (c) of Article 67 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and point (3) of Article 14 of Regulation (EU) No 1304/2013 of the European Parliament and of the Council does not exceed 100,000 euros, the regulation and the directive on the conditions for the provision of support may provide for the reimbursement of expenditures on the basis of lump sum payment or payments, inter alia, in accordance with point (3) of Article 14 of Regulation (EU) No 1304/2013 of the European Parliament and of the Council. The given upper limit shall not apply to the provision of support on the basis of the joint action plan.

(2) Upon the provision of support on the basis of the grant decision, joint action plan or the directive specified in subsection 16 (1) the following shall be determined:

- 1) the amount of lump sum payment or payments on the basis of the budget submitted by the beneficiary, assessing previously the eligibility of expenditures noted in the budget of the project pursuant to subsection 2 (2);
- 2) the objectives related to the occurrence of activities, results to be achieved and the bases for proving the achievement of such results.

§ 9. Reimbursement of indirect eligible expenditures of project on flat-rate basis

(1) The legislation on the conditions for the provision of support may provide for the reimbursement of the indirect expenditures of the project on a flat-rate basis pursuant to point (d) of Article 67 (1) and Article 67 (5), Article 68 (1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council and Article 14 (4) of Regulation (EU) No 1304/2013 of the European Parliament and of the Council.

(2) For reimbursement of indirect expenditures on the basis of point (a) of Article 68 (1) of Regulation (EU) No 1303/2013 of the European Parliament of the European Parliament and of the Council, the 1st level intermediate body or the 2nd level intermediate body with the consent of the 1st level intermediate body is required to carry out or order an analysis for calculation of the flat rate, which shall be unbiased, contain reasons and be based on the actual eligible expenditures incurred. The analysis and the amount of a flat rate found on the basis thereof and the methodology of implementation thereof shall be coordinated in writing with the managing authority before the establishment in the regulation or directive on the conditions for the provision of support..

(3) The expenditures listed in clauses 3 (1) 1)-4) and subsection 3 (4) are deemed direct personnel expenditures, except the expenditures of the administrative personnel of the project which is incurred in connection with the activities specified in subsection (6).

(4) The personnel expenditures specified in subsection 3 (1) which are related to the administration of the project specified in subsection (6) and the overhead expenditures of the project specified in subsection (5) are considered indirect expenditures of the project.

(5) The following expenditures are considered to be the overhead expenditures of the project:

- 1) expenditures on office supplies;
- 2) expenditures on communication, including the Internet, telephone and postage expenditures;
- 3) information technology expenditures, including office equipment rental and maintenance and repair of the servers, networks and office equipment;
- 4) expenditures related to heating, water supply, electricity and cleaning of premises; 5) renting of premises;
- 6) security service;
- 7) land tax;
- 8) the expenditures of opening and administration of the bank account related to the project and transfer fee of payment where there is a separate bank account for the project; 9) expenditures related to internal secondment upon the provision of support as technical assistance.

(6) The following activities are considered to be the administration of the project:

- 1) accounting;
- 2) secretarial and personnel work;
- 3) the activities of a procurement professional;
- 4) the activities of an administrative employee; 5) the activities of an information technologist; 6) other ancillary work.

(7) Clauses (6) 3) and 5) shall not apply upon the provision of support as technical assistance.

§ 10. Reimbursement of remaining eligible expenditures of project from direct personnel expenditures calculated on flat rate basis

It may be provided for in the legislation on the conditions for the provision of support that the eligible expenditures of a project supported from the European Social Fund, which are not direct personnel expenditures, shall be reimbursed pursuant to point (2) of Article 14 of, Regulation (EU) No 1304/2013 of the European Parliament and of the Council in the amount of up to 40 per cent of the eligible direct personnel expenditures calculated on a flat rate basis.

Chapter 3 Payment of support

Division 1 Submission and proceeding of payment application

§ 11. Submission of payment application

(1) A payment application is a declaration of intention of a beneficiary, submitted together with the required data and documents, for payment of support determined by the directive

on the conditions for the provision of support, a grant decision, a contract of the implementation of the joint action plan or financial instrument or the directive on the implementation of the financial instrument.

(2) A payment application shall be submitted by the beneficiary to the 2nd level intermediate body pursuant to the conditions for the provision of support established by the legislation, decision or contract specified in subsection (1) through the register of structural support (hereinafter register) register, specified in subsection 37 (1) of the Structural Assistance Act (hereinafter register), or outside the register.

(3) A state authority is required to submit a payment application for paid eligible expenditures in the case of the cost which is equal to or exceeding the threshold of public procurement once a month, and in other cases at least once every quarter.

(4) A state authority is not be required to submit a document certifying the payment of expenditures together with the payment application and the local government and the agency thereof and any other legal person in public law is not required to submit the documents certifying the payment of salary expenditures.

§ 12. Proceedings of payment application

(1) A payment application submitted on the basis of subsection 14 (1) shall be proceeded for no longer than 90 calendar days, and the payment application submitted on the basis of clause 18 (1) 1) and § 19 for no longer than 15 calendar days as of the receipt of the payment application (hereinafter term for the proceeding of the payment application).

(2) In the case where the payment application has some deficiencies or additional information is needed to decide on the eligibility of expenditures, the 2nd level intermediate body may extend the term by the period of time for elimination of deficiencies or for the submission of documents or information, notifying the beneficiary thereof.

(3) The 2nd level intermediate body shall confirm a payment application in the register at the latest two working days before the due date for the proceeding of the payment application. The specified two working days shall be included in the number of days specified in subsection (1).

(4) If the managing authority detects any deficiencies in the data of the payment application in the course of inspection pursuant to subsection 30 (4) of the Structural Assistance Act or needs more information in order to decide on the eligibility of expenditures, additional information is given by the 2nd level intermediate body.

(5) If the managing authority prohibits payment of support on the basis of subsections 30 (5) and (6) of the Structural Assistance Act, it shall submit the reasons for prohibition in writing to the 2nd level intermediate body.

Division 2 Conditions for payment of support

§ 13. General conditions for payment of support

- (1) The support shall be paid until 31 March 2024. Payment applications may be submitted to the 2nd level intermediate body until 17 January 2024.
- (2) The support shall be paid out in accordance with the percentage of support from the eligible expenditures (hereinafter percentage of support assigned) specified in the legislation or contract specified in subsection 11 (1) and not more than the amount of support assigned which may be implemented on the basis of the payment application.
- (3) Where the support covers both the resources of a fund specified in clause 2 1) of the Structural Assistance Act and the national co-financing, the payment shall be made in accordance with the proportions laid down to the resources of the fund and national co-financing.
- (4) If the support is paid to a partnership project of the public and the private sector, the provisions of Article 64 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council shall also be taken into account upon payment of the support.
- (5) The final payment shall be made after the certification of the implementation of the project activities.

§ 14. Payment of support on basis of actual expenditures incurred

- (1) Upon the provision of support on the basis of actual expenditures incurred the support shall be paid out on the basis of a payment application under the following conditions:
 - 1) the eligible expenditure has been incurred and paid or
 - 2) the eligible expenditure has been incurred and it has been paid to the extent of selffinancing.
- (2) The 2nd level intermediate body may, under clause (1) 2), make the payment directly to the supplier or contractor (hereinafter issuer of invoice) if the beneficiary has so stated in the payment application and has received the confirmation from the issuer of invoice that he is aware of that, except where the beneficiary is a public authority. The right of the 2nd level intermediate body to make payment directly to the issuer of the invoice does not mean that the obligations of the beneficiary are transferred to the 2nd level intermediate body or that the beneficiary has transferred the claim for payment to the issuer of the invoice. The claim for payment of expenditure shall be deemed to be fulfilled by the beneficiary or partner when the 2nd level intermediate body has made the payment.
- (3) On the basis of clause (1) 2) payments shall be made on condition that it is possible for the 2nd level intermediate body to proceed the payment application by the due date noted on the invoice.
- (4) On the basis of clause (1) 2) payments shall not be made:

1) to the beneficiary during the time when the beneficiary has failed to submit, by the due time and to the extent required, the documentary proof of the using of the advance payment for eligible expenditures pursuant to § 18 or § 19. 2) where the beneficiary is a public authority.

(5) If a payment is made to the beneficiary under clause (1) 2), the beneficiary shall have the obligation to submit the required documents certifying payment to the 2nd level intermediate body within ten calendar days as of the receipt of the payment. The obligation to pay is deemed to be fulfilled by the beneficiary after the certification of payment of the unpaid part of the eligible expenditure. In the case of salary expenditures and accompanying taxes the documents certifying payment shall be submitted to the 2nd level intermediate body within ten calendar days after the payment of accompanying taxes.

(6) The 2nd level intermediate body may, on the basis of clause 30 (1) 2) of the Structural Assistance Act, suspend the proceeding of the next payment application until the fulfilment of the obligation specified in subsection (5).

§ 15. Payment of support on basis of simplified methods of reimbursement of expenditures

(1) Upon payment of the support on the basis of the simplified methods of reimbursement of expenditures the actual cost of the expenditure and payment thereof shall not be certified or proven or verified.

(2) Upon the provision of support on the basis of the standardized unit cost the support shall be paid out on the basis of the documents certifying the occurrence of the activity if the result being a prerequisite for payment of support has been achieved or if the activity has been carried out.

(3) Upon the provision of support on the basis of the lump sum payment the support shall be paid out only in an amount assigned and in the case the result which is a prerequisite for the payment of the support has been fully achieved and the achievement thereof during the eligibility period of the project is verifiable.

(4) Upon the provision of support for covering indirect expenditures of the project on a flat rate basis specified in § 9 the support shall be paid out on the basis of the actual direct personnel expenditures.

(5) Upon the provision of support for covering other eligible expenditures on a flat-rate basis specified in Section § 10 the support shall be paid out on the basis of the actual direct personnel expenditures incurred.

16. Payment of support on basis of joint action plan

Upon the provision of support on the basis of a joint action plan the support shall be paid out taking account of the opinion of the steering committee specified in subsection 17 (2) of the Structural Assistance Act.

§ 17. Payment of support to financial instrument

Support shall be paid out to the financial instrument pursuant to a contract on the implementation of the financial instrument or the directive on the implementation of the financial instrument and in accordance with Article 41 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council. **Division 3 Advance payments**

§ 18. Advance payment of non-state aid

(1) The advance payment of the support specified in subsection 29 (5) of the Structural Assistance Act (hereinafter advance payment of non-state aid) may be made under the following conditions:

- 1) up to 40 per cent by the grant decision or of the amount of support assigned by a legislation on the conditions for the provision of support, but not more than the amount of the financing need estimated for payment of the part of support of eligible expenditures for 90 calendar days or
- 2) on the basis of a advance payment invoice prepared on the basis of a procurement contract with the cost equal to or exceeding the threshold of public procurement within the meaning of the Public Procurement Act or an accounting document with equivalent probative value and a

guarantee from the contractor received from a financial or credit institution or insurance company to ensure compliance with the obligations undertaken by the contract if the warranty period is at least 45 calendar days longer than the term for the certification of the advance payment specified in subsection (13) and it covers the total amount of the advance payment.

(2) Upon making advance payments on the basis of clause (1) 1) the final five per cent of the assigned support may not be paid out as advance payments.

(3) On the basis of clause (1) 2) advance payment may be made to a beneficiary and pursuant to subsection 14 (2) if the condition specified in subsection 14 (3) is possible to implement.

(4) The possibility to make advance payment of non-state aid shall be provided for in the conditions for the provision of support. The conditions for the provision of support may set restrictive conditions on making an advance payment of the non-state aid.

(5) The 2nd level intermediate body shall have the right to refuse to make advance payment of non-state aid even if the making of an advance payment of non-state aid is permitted pursuant to the legislation on the conditions for the provision of support or grant decision.

(6) On the basis of clause (1) 1) the advance payment shall not be made to a beneficiary company.

(7) An advance payment of non-state aid shall not be made in the case of a lump sum payment specified in § 8.

(8) In order to get advance payment of non-state aid a beneficiary shall submit the following information and documents together with the payment application:

- 1) upon application for an advance payment on the basis of clause (1) 1) the amount of advance payment together with the corresponding contracts, based on the forecasts of the due dates arising on the basis of the timetable for the implementation of the activities approved by the grant decision or directive on the conditions for the provision of aid and contracts entered into at the request of the 2nd level intermediate body;
- 2) upon application for an advance payment on the basis of clause (1) 2) the amount of the advance payment, the procurement contract within the meaning of the Public Procurement Act and the invoice of advance payment prepared on the basis of the procurement contract or an accounting document of the same probative value.

(9) With regard to the using of advance payment received on the basis of clause (1) 1), the beneficiary is required to submit to the 2nd level intermediate body the report on the using of advance payment together with the documents and information certifying the creation of eligible expenditures and payment thereof within 15 calendar days following the period of expenditures covered with advance payment under the conditions required in the regulation or directive on the conditions for the provision of support or grant decision.

(10) In order to get each subsequent advance payment on the basis of clause (1) 1) it is required that according to the report specified in subsection (9) at least 80 per cent of the previous advance payments, received on the same basis, have been used to cover the part of support for eligible expenditures unless the term under subsection (9) has arrived.

(11) If the beneficiary fails to perform the obligation specified in subsection (9), the 2nd level intermediate body shall claim immediately the refund of the advance payment on the basis of clause (1) 1) in the amount with regard to which the beneficiary has failed to submit the report to the extent advance payment specified in subsection (10) and the beneficiary is required to refund the unproven advance payment within up to 15 calendar days. The financial correction shall be applied upon exceeding the term for refund.

(12) If the beneficiary has received the advance payment of non-state aid pursuant to clause (1) 1) and its use is undocumented:

- 1) the expenditures submitted on the basis of a payment application pursuant to clause 14 (1) 1) shall be deemed to be paid at the expense of the advance payment pursuant to clause (1) 1);
- 2) payment on the basis of clause 14 (1) 1) shall not be made.

(13) Upon receipt of the advance payment on the basis of clause (1) 2) the beneficiary shall submit to the 2nd level intermediate body, pursuant to the conditions and terms provided for in the procurement contract within the meaning of the Public Procurement Act, the documents certifying the transfer of works, delivery of goods or services by which the using of the advance payment during the eligibility period of a project is certified, taking account of the conditions and terms required in the grant decision.

§ 19. Advance payment to beneficiary of state aid and de minimis aid

- (1) The advance payment may be made to a beneficiary of state aid and de minimis aid prior to the certification of eligibility of expenditures under the conditions specified in subsection (2) and Article 131 (4) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (hereinafter advance payment of state aid).
- (2) In order to get the advance payment of state aid the beneficiary shall submit the guarantee with regard to the forecast of the payment of expenditures of the payment application and other documents and information required in the regulation on the conditions for the provision of support or the grant decision.
- (3) The beneficiary shall submit a report to the 2nd level intermediate body on the using of the advance payment of state aid together with the documents certifying the eligible expenditures incurred and their payment under the conditions and by the term required in the regulation on the conditions for the provision of support or grant decision.
- (4) In the regulation on the conditions for the provision of support or grant decision the term for the submission of documents and information specified in subsection (3) may be up to three years as of the receipt of the advance payment of state aid, but not later than within 50 calendar days after the eligibility period of the project if the specified term arrives earlier.
- (5) The unproven amount of the advance payments of state aid may make up to 40 per cent of the amount of support assigned by the grant decision.

§ 20. Requirements for guarantee to be submitted for advance payment of state aid

In order to get state aid as advance payment the beneficiary is required to provide a guarantee which shall comply with the following conditions:

- 1) the issuer of the guarantee is a credit institution or a financial institution acting in Estonia on the basis of an activity license or a credit institution or a financial institution of a foreign state operating as a branch in Estonia, the state or a body implementing the financial instrument;
- 2) the guarantee period is at least 45 calendar days longer than the term for certification of the advance payment specified in subsection 19 (4);
- 3) the guarantee covers the whole amount of the advance payment;
- 4) the long-term credit rating of a credit institution or financial institution, or the parent undertaking of a credit institution or financial institution providing the guarantee is at least Baa1 (Moody's) or BBB+ (Standard & Poor's).

Chapter 4 Financial corrections

§ 21. Percentages of financial correction

- (1) If it becomes evident pursuant to subsection 46 (1) of the Structural Assistance Act that the beneficiary has neglected its obligations or requirements established thereon and upon

the making of a financial correction decision it is impossible to assess the size of the financial impact due to the nature of a failure to perform the obligation or claim, but there is a well-founded risk that the failure to comply brought about the financial impact, the support shall be reduced, depending on the seriousness of the negligence, by 2, 5, 10, or 25 per cent of the support assigned to activities or a set of activities depending on the impact of the circumstances on the eligibility of support, unless otherwise provided for in this chapter.

(2) If a beneficiary or a partner that is not a contracting authority within the meaning of the Public Procurement Act has violated the obligation specified in subsection 26 (6) of the Structural Assistance Act, the support to be assigned to the contract shall be reduced by 10 per cent. Depending on the seriousness of the violation the financial correction rate of 1, 5, 25 or 50 per cent may be applied.

(3) If more than one violation is identified in the procurement, the impact of which cannot be assessed or the assessment thereof is unreasonably time consuming or resource intensive, the maximum rate of financial correction shall be applied in the case of different violations of the same procurement.

(4) If the beneficiary has neglected the notification requirements and the compliance with the specified requirements is not possible later, the support shall be reduced by 5 per cent of the support allocated to the activities or a set of activities.

(5) If the support has been paid on a flat rate basis and the financial correction is made with regard to actual direct personnel expenditures incurred, the support paid on the flat rate basis shall be also reduced proportionally.

§ 22. Percentages of financial correction related to public procurement

(1) Where on the basis of the circumstances being the basis for the recovery of the support it becomes evident that the beneficiary has neglected its obligations or requirements established on it, and it is impossible to assess the size of the resulting damage or its assessment is unreasonably time-consuming or resource intensive, the support shall be reduced in accordance with the provisions of subsections (2)-(14).

(2) The support to be allocated for a procurement contract exceeding the international threshold of public procurement shall be reduced 100 per cent if it becomes evident that the contract notice specified in § 106 of the Public Procurement Act has not been submitted for publication to the Publications Office of the European Union. A financial correction rate of 25 per cent may be applied if the publication has been made to the extent that allowed an undertaking operating in the territory of another Member State of the European Union (hereinafter Member State) also to participate in the procurement procedure, including if the contract notice has been published in the register of public procurements.

(3) The support to be allocated for a procurement contract exceeding in total the international threshold of public procurement, shall be reduced 100 per cent if it becomes evident that there has been a violation of the prohibition specified in subsection 23 (1) of the

Public Procurement Act. A financial correction of 25 per cent may be applied if the disclosure has been made to the extent that allowed an undertaking operating in the territory of another Member State of the European Union (hereinafter Member State) also to participate in the procurement procedure, including if the contract notice has been published in the register of public procurements.

(4) The support to be allocated for a procurement contract shall be reduced 100 per cent if it becomes evident that upon the organizing of public procurement on the basis of Chapter 5¹ of the Public Procurement Act the competitive dialogue or a procurement procedure with the negotiated tendering procedure without prior publication of a tender notice has been used contrary to subsection 103⁵ (2) and § 103⁶ of the Public Procurement Act. Depending on the seriousness of the violation a financial correction rate of 5, 10 or 25 per cent may be applied.

(5) The support to be allocated for the procurement contract shall be reduced 100 per cent if it becomes evident that there was a conflict of interest upon the organizing of public procurement.

(6) The support to be allocated for the procurement contract shall be reduced 100 per cent from the amount to the extent of which the volume of the performance of the procurement contract, concluded as a result of the organization of the procurement proceedings, has been reduced without reducing the price of the procurement contract. In addition, the support to be allocated to the procurement contract shall be reduced 25 per cent from the final amount of the procurement contract if the decrease in the volume of the performance of the procurement contract has been significant.

(7) The support to be allocated for the procurement contract shall be reduced 100 per cent from the amount to the extent of which the additional procurement contract has been concluded if clause 28 (2) 3) or clause (5) 1) of the Public Procurement Act is not followed and the additional procurement contract is significant compared to the original procurement contract. If the cost of the additional procurement contract or additional procurement contracts does not exceed 20 per cent of the cost of the original procurement contract, the financial correction rate of 25 per cent shall be applied.

(8) The support to be allocated for a procurement contract or procurements contracts shall be reduced 100 per cent of the amount to the extent of which the concluded procurement contract or procurements contracts exceed the 20 per cent restriction specified in clause 28 (5) 1) of the Public Procurement Act.

(9) If it becomes evident that the terms specified in §§ 35, 73 or 96 of the Public Procurement Act have not been followed upon the performance of the procurement proceedings and the reduction of the terms has been:

1) higher than 50 per cent of the terms specified in §§ 35, 73 or 96 of the Public Procurement Act, the support to be allocated for the procurement contract shall be reduced 25 per cent;

2) higher than 30 per cent of the terms specified in §§ 35, 73 or 96 of the Public Procurement Act, the support to be allocated for the procurement contract shall be reduced 10 per cent;

3) less than 30 per cent of the terms specified in §§ 35, 73 or 96 of the Public Procurement Act, the support to be allocated for the procurement contract shall be reduced 5 per cent. Depending on the seriousness of the violation the financial correction rate of 2 per cent may be applied.

(10) If it becomes evident that upon the organization of the procurement procedure too little time has been left for the issue of the contract documents and out of the term for the submission of the specified tenders the period of issue makes up less than:

1) 50 per cent, the support to be allocated for the procurement contract shall be reduced 25 per cent;

2) 60 per cent, the support to be allocated for the procurement contract shall be reduced 10 per cent;

3) 80 per cent, the support to be allocated for the procurement contract shall be reduced 5 per cent.

(11) The support to be allocated for the procurement contract shall be reduced 25 per cent:

1) from the support allocated for the procurement contract exceeding the public procurement threshold if it becomes evident the contract notice specified in § 29 of the Public Procurement

Act has not been disclosed in the register but the corresponding obligation arose from the Public Procurement Act, the Structural Assistance Act or their implementing provisions;

2) the prohibition specified in § 23 of the Public Procurement Act has been violated in the procurement contracts whose total cost exceeds the public procurement threshold;

3) upon organizing public procurement exceeding the international threshold the negotiated tendering procedure with prior publication of a tender notice has been used contrary to subsection 27 (2) of the Public Procurement Act;

4) upon organizing public procurement the principles specified in subsections 31 (3) and (4) of the Public Procurement Act have not been complied with;

5) upon organizing the procurement procedure a criterion for qualification of a tenderer, declaration of a tender admissible or evaluation of a tender, which is contrary to the Public Procurement Act, has been specified in the contract notice or procurement documents;

6) the conditions for qualification established in the public procurement do not comply with and are not proportionate to the object of the public procurement;

7) the technical description prepared for the organization of the procurement procedure precludes or unreasonably restricts competition or causes unequal treatment. If the scope of violation is monetarily appraisable, the financial correction rate specified in this provision shall be applied to the monetarily appraisable part of the procurement contract;

8) in organizing the procurement proceedings the conditions set for qualification were not followed and a tenderer who did not meet the current qualification criteria was qualified;

- 9) the qualification requirements established in the public procurement were not followed and a tenderer, who complied with the current qualification requirements, was disqualified; 10) upon organising the procurement proceedings the qualification requirements have been used as prerequisites for declaring admissible;
- 11) in organizing the procurement procedure the criteria for declaring admissible or appraisal have not been followed and the tenderer who did not comply with the current requirements has been declared successful;
- 12) in organizing the procurement procedure the criteria for declaring admissible or appraisal have not been followed and a tenderer who complied with the current conditions has not been declared successful;
- 13) in organizing the procurement procedure there is no sufficient audit trail or it is not sufficient to determine the legitimacy of the result obtained;
- 14) in organizing the procurement procedure the tenderer has been allowed to amend the tender after the arrival of the term for the submission of tenders;
- 15) in the open or restricted procurement procedure there have been negotiations by which the general principles of organizing the public procurement have been damaged;
- 16) in the procurement procedure in the form of a negotiated tendering procedure with prior publication of a tender notice the initially described conditions have been amended;
- 17) in the public procurement the obligation specified in the first sentence of subsection 48 (1) of the Public Procurement Act has not been applied;
- (18) the procurement contract concluded as a result of the organizing of the procurement proceedings has been amended contrary to subsections 69 (3) and (4) of the Public Procurement Act and the amendment of the procurement contract has been significant. In addition, upon the increase in the total amount of the procurement contract the support shall be reduced 100 per cent from the increased amount;
- 19) upon organizing of the procurement procedure the contracting authority has not notified all the interested parties, tenderers or interested applicants of the amendment of the contract notice or contract documents or has materially violated the procedures for giving explanations provided for in § 56 the Public Procurement Act, which has not allowed all the interested parties, tenderers or interested applicants to submit the proper tender or documents proving qualification.
- (12) In the cases specified in clauses (11) 3)-16) and 19) the financial correction rate of 5 or 10 per cent may be applied, dependent on the seriousness of the violation.
- (13) The support to be allocated for a procurement contract shall be reduced 5 or 10 per cent dependent on the seriousness of the violation if it becomes evident that:
- 1) in organizing the procurement procedure the term for the submission of applications or tenders has been amended but an amendment to this effect has not been disclosed to all interested parties, applicants or tenderers as an amendment of the contract notice, an invitation to tender or procurement documents;

2) upon organizing the procurement procedure the object of public procurement has not been described with sufficient precision.

(14) The support to be allocated for the procurement contract shall be reduced by up to 10 per cent if it becomes evident that upon the organizing of the procurement procedure a violation has occurred of the requirements provided for in the Public Procurement Act, which has not been specified in subsections 2)-11) and 13), or if it is the organizing of the public procurement where the value of the procurement contract remains below the public procurement threshold or, in the case of the subscription of services organization of a design contest in a simplified procedure. Depending on the seriousness of the violation a financial correction rate of 25 per cent may be applied.

§ 23. Formalization of financial correction decision

(1) A financial correction decision shall set out:

- 1) the name of the decision-maker;
- 2) the name of the beneficiary;
- 3) the name and number of the project;
- 4) the facts and legal basis of the financial correction facts and the considerations on which the making of the decision was based;
- 5) the reduced or cancelled support, including bringing out separately the amounts of support and self-financing;
- 6) the reference to the obligation for repayment arising from subsection 48 (1) of the Structural Assistance Act and the amount of support to be repaid if the support is subject to repayment;
- 7) the time limit for repayment of the repayable support;
- 8) the bank account number where the repayable support shall be transferred, the reference number and recipient's name of the income account of repayment of the institution, except if the amount to be repaid shall be offset by the amount of support to be paid in the decision on financial correction;
- 9) the reference to the basis of the obligation to pay a fine for delay where the beneficiary has the obligation to pay a fine for delay;
- 10) the obligation to pay interest where the beneficiary has received state aid or the repayment of the support is postponed;
- 11) the possibility, place, term and procedure for contesting the decision where the beneficiary has the right to submit a challenge or a right of appeal;
- 12) other necessary information related to the reduction or cancellation and repayment of the support .

(2) The financial correction decision shall be sent to the beneficiary in general through the register. In the case it is impossible to deliver the financial correction decision through the register or the project is over, the decision shall be sent electronically by email or by

registered mail with advice of delivery and shall be entered into the register within ten working days as of the date of making the decision.

(3) The financial correction decision shall be deemed to be serviced on the beneficiary if it has been sent to the beneficiary in a manner specified in subsection (2).

§ 24. Postponement of repayment of support

(1) For postponement of repayment of support a beneficiary shall submit an application setting out the justification of the necessity for postponement and the postponement plan (hereinafter postponement application) to the 2nd level intermediate body no later than within ten working days as of the receipt of the financial correction decision. At the request of the 2nd level intermediate body the beneficiary is required to attach documents reflecting financial status to the postponement application. The 2nd level intermediate body may require a guarantee from the beneficiary.

(2) The decision to satisfy the postponement application or refusal to satisfy the application shall be made within ten working days as of the receipt of the postponement application. In justified cases the term for making the decision may be extended by a reasonable time notifying the beneficiary thereof.

(3) The repayment of support may be postponed up to 12 calendar months as of the date of the decision to satisfy the application. Where necessary, the 2nd level intermediate body may, in coordination with the managing authority, set a longer period of repayment.

(4) The decision to satisfy or refuse to satisfy the postponement application may be made together with the financial correction decision.

(5) The decision specified in subsection (2) shall be sent to the beneficiary pursuant to subsection 23 (2).

(6) If the beneficiary fails to pay contributions in accordance with the postponement plan, the 2nd level intermediate body may repeal the decision to satisfy the postponement of the repayment of support on the basis of subsection 48 (6) of the Structural Assistance Act and claim the repayment of the support from the beneficiary within 30 calendar days as of the date of receipt of the corresponding decision.

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