



Observations on the Operational Programme

"GOOD GOVERNANCE" (2014-2020)

The following observations are made in reference to Article 29(3) CPR. Bulgaria is asked to provide to the Commission any necessary additional information and, where appropriate, revise the Operational Programme (OP).

Any relevant country-specific recommendations adopted in the framework of the 2014 European Semester should be taken into account in the final draft of the programme, in accordance with Article 96(2)(a) of the CPR.

SECTION 1 STRATEGY FOR THE OPERATIONAL PROGRAMME'S CONTRIBUTION TO THE UNION STRATEGY FOR SMART, SUSTAINABLE AND INCLUSIVE GROWTH AND THE ACHIEVEMENT OF ECONOMIC, SOCIAL AND TERRITORIAL COHESION

(Reference: Article 27(1) and point (a) of the first subparagraph of Article 96(2) CPR)

- 1) There is an overall good alignment with the National Reform Programme (NRP), the Country Specific Recommendations (CSRs) and the Commission Position Paper (CPP) but still insufficient link with the national strategic frameworks for administrative and judicial reforms in terms of objectives and results to which the OP contributes.
- 2) While the modernisation of Bulgarian administration is a central goal, the OP is not sufficiently prioritised. The Commission recommends focusing more on capacity-building of the public administration in the areas of structural reforms where little progress has been observed according to the 2014 Country Specific Recommendations and the accompanying Staff Working Document.
- 3) Due to the importance and urgency of the administrative and judicial reforms in Bulgaria, high priority should be given to the earliest possible implementation of OP actions contributing to the fulfilment of recommendations under the latest Cooperation and Verification Mechanism (CVM) report.
- 4) The results and the lessons learned from the implementation of OP "Administrative Capacity" and OP "Technical Assistance" (based on the mid-term evaluations) should be an integral part of the analysis and the justification of strategic approach for the period 2014-20.

5) The rationale for allocating the major part of the OP budget to Priority Axis 1 should be justified. If there is a centralised approach (development of standards and integration of services) then it is not clear why this PA has the biggest share of the budget.

SECTION 2 PRIORITY AXES

(Reference: points (b) and (c) of the first subparagraph of Article 96(2) CPR)

6) The OP is well-structured and contains a good level of details as regards beneficiaries and types of activities to be covered by each Priority Axis (PA). However, the intervention logic needs to be strengthened. The narrative has to be reinforced with some data in order to better demonstrate the roots of the challenges and the needs. In particular, the OP should make a reference to the analysis in the national Strategy for Development of the Administration.

7) Specific attention needs to be paid to the intervention logic for e-government, e-justice, e-health, service delivery and reduction of administrative burden. All e-elements are insufficiently described and result-orientation is missing. To this end, the OP should demonstrate a stronger link between the planned interventions in e-services and the reduction of the administrative burden.

8) Although there are Specific Objectives (SO) under each Investment Priority (IP) which are all relevant, the identified needs are broad and diverse. In many cases, the SOs are formulated by using unclear concepts which will be difficult to assess by evaluations (e.g. "improving"). Thus, there should be a stronger link between the SO descriptions and the expected results

9) The result-indicators should be redrafted to set sufficiently ambitious targets relevant to measure progress towards completion of the SOs. To this end, Bulgarian authorities are invited to use more systematically internationally recognized criteria to evaluate the quality of public administration (e.g. WB Governance and Doing Business Indicators, Transparency International Corruption index, etc.).

10) Many of the result indicators are actually impact indicators and many of the output indicators are result indicators. In general, the indicators should not be linked to individual activities but reflect the outputs and results linked to the SO. To this end, Bulgaria is invited to adhere to the "Guidance Document on Indicators of Public Administration Capacity Building".

11) Baselines and target values have been included. However, in many cases the baseline does not refer to previous programme experience, but is just set at 100%. With the revision of the indicators, real baselines should be established, in line with the ESF Guidance on Monitoring and Evaluation.

12) All indicators in the performance frameworks are financial and output ones only. The Commission notes that the OP should be more ambitious in its result orientation and include result indicators in the performance frameworks.

Priority Axis 1 "Administrative services and e-governance"

13) The organisation and steer of the service optimisation process needs to be better explained. Bulgarian authorities are invited to complement the Model for Integrated services (which is only a methodology) with an Action Plan in order to ensure sustainability of the support.

E-government

14) Overall, the treatment of e-government under the OP is scattered and not entirely coherent, lacking a clear reference model and well-defined priorities. The Commission recommends strengthening its focus with a particular emphasis on:

- the definition of general priorities and guidelines, in line with the Digital Agenda for Europe and the e-Government Action Plan 2011-2015¹;
- the revision of Specific Objectives and Indicators to foster and closely monitor the selected priorities, the establishment of the key technological enablers, and the progresses towards cross-border interoperability. Examples of relevant indicators can be found in the e-Government Benchmark Framework 2012-2015²;
- the identification of activities to support the emergence of innovative e-Government practices and tools.

15) In addition, further efforts are needed:

- to better specify the e-government strategy in terms of roadmap and priorities both in terms of needs and objectives, in the context of a clear e-government development model;
- to better specify how the OP will improve the user centricity of e-government, for example by integrating the content of actions described under SO 1 in terms of prioritised services;
- to specify which actions are planned to support the uptake of e-services. Bulgaria should follow the Conclusions of the European Council of October 2013 which has specifically requested that ESIFs are used to develop and upgrade the digital skills;
- to specify the link to a Single Point of Access to Administrative Electronic Services and ensure interoperability of different e-government services;
- to specify how the e-government model will eliminate the need to provide the same information to different administrations at different level - national or sub-national;

¹ <http://ec.europa.eu/digital-agenda/en/european-egovernment-action-plan-2011-2015>

² http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/eGovernment%20Benchmarking%20method%20paper%20published%20version_0.pdf

- to clarify whether there will be an operational one-stop-shop for SMEs and business in general;
- to map all available e-services and provide a transparent indication on the cost of compliance with all administrative requirements on all levels - national, regional and local - and thus establishing a benchmark for all new proposals for the Regulatory Impact assessment;
- to implement the on-line service payment, eliminating additional banking fees and consequently reducing cost;
- to establish a regular businesses e-consultation for any new legislative proposals or for modification of existing legislations;
- to clarify through a revision of SO 1 and 3:
 - the focus of each SO in relation to identified needs;
 - the specific expected results in relation to identified needs and objectives;
 - the demarcation point between the two Specific Objectives;
 - the link between the proposed indicators and the SO descriptions, for example by designing relevant indicators based on international benchmarking related to the main weaknesses to be overcome (e.g. user centricity);
- to review the key e-Government enablers and explicitly map their relation with the SOs under Priority Axes 2 and 3;
- to provide more details on the scope/types of envisaged investments in hardware infrastructure in order to determine their eligibility under ESF.

16) E-health:

- The description of e-health related investments does not present a full picture of their scope and how they will bring improvement for the healthcare system in terms of transparency, limiting corruption, quality and standards in healthcare delivery. In addition, the scope of needs to be carefully defined – to what extent it covers management of the health policy and to what extent health services provided by the larger public sector.
- The implemented actions in e-health should be reflected in terms of expected results or indicators, for example: number of e-health services delivered; number of patients benefiting from e-health service etc. The OP envisages "Development of a national e-health information system" but the scope of this action is not sufficiently clear, especially considering many possible strands of intervention for e-health. Therefore, Bulgaria is asked to provide information on the focus of planned interventions.
- The Commission notes that in line with one of the key recommendations of the EU e-health network, e-health systems need to be interoperable with other European

and international systems, especially regarding electronic processing of patients' files, including e-records and e-prescriptions accessible to all the necessary parts or parties of the healthcare systems and in order to facilitate networking between health professionals and European reference centres. Currently, such focus on interoperability has not been specified in the OP.

17) The OP contains several references to e-Customs and demonstrates a good understanding of the need of modernisation of customs and related taxation services and respective administrative capacity building. Bulgarian authorities are invited to also include a reference to the national implementation of the EU Customs Competency Framework.

18) The interplay between e-government objectives and the goals of the Connecting Europe Facility (CEF), Digital Service Infrastructures (DSIs) and Horizon 2020 should be reflected in the OP narrative.

19) Mainstreaming of climate action in the OP should be considered in trainings on climate change issues and support for the inclusion of green procurement into the e-procurement system.

Priority Axis 2 "Effective and professional governance in a partnership with the civil society and business"

20) The OP "Good Governance" should include appropriate provisions for improving the processes of strategic planning and implementation of policies which, by their nature, have a cross-sectorial character by stimulating cross-sectorial cooperation mechanisms (dedicated working groups, joint actions between the policy-makers and implementing authorities and private stakeholders, etc.) at the level of the national authorities, as well as cooperation between the national and sub-national authorities.

Priority Axis 3 "Transparent and Effective Judicial System"

21) Priority should be given to actions contributing to fulfilling all recommendations under the CVM such as, among others, the finalisation of a system for random allocation of cases in the judiciary, verified by independent experts and ensuring full transparency and accountability for any deviations from the principle of random allocation.

22) Judicial reform interventions need significant improvement toward better focus and result orientation. It should be specified to what extent the following challenges will be addressed: implementation of the reform on public prosecutors, e-justice (in particular communication between courts and parties), evaluation of court activities. In addition, Bulgaria is invited to specify how it plans to address the recommendations related to anti-corruption from the Commission's Anti-Corruption reporting mechanism.

23) The IT infrastructure investments for the judicial system need to be better explained in terms of scope/sources of financing in order to determine the eligibility under ESF.

24) Bulgaria is invited to specify how it intends to extend the scope and improve the quality of training in the judiciary system

Priority Axis 4 "Technical Assistance for administration structures, participating in the governance and absorption of ESIF"

25) The Commission recommends focusing the title of the PA on "result orientation" or "performance" instead of "absorption". If some overall coordination mechanisms and other cross-cutting activities for the management of all ESIF are planned to be covered, this should be explicitly specified in the text. In such a case, the reference to 'operational programmes' could be misleading (term not applied to Rural Development and Fisheries programmes) and the 'ESIF programmes' should be used instead.

26) Bulgaria is invited to clarify in more details how the OP will support actions linked to reinforcing the compliance with State aid rules (e.g. what measures are foreseen in terms of supporting capacity building, training, and the extension of the current de minimis register to cover all types of State aid). Consequently, the OP should determine which PA is most relevant to support such actions.

27) The OP should envisage targeted comprehensive public procurement training to contracting authorities (including elaboration and provision of methodological guidance to contracting authorities, exchange of good practices) from the outset of the 2014-2020 period (particularly to small rural municipalities, which are more prone to committing errors).

28) The Commission notes that fighting corruption by putting in place effective and proportionate anti-fraud measures is a new obligation of the Managing Authorities for 2014/2020 (Art. 125 of Regulation (EC) No. 1303/2013). The OP refers to the overall anti-fraud and anti-corruption broad reform agenda (PA3) but it does not cover the specific measures required by the Regulation in relation to the management of the Funds. To this end, the Managing Authority of OP "Good Governance" should coordinate with the Central Coordination Unit at the Council of Ministers as this is a horizontal requirement that will apply to all OPs. The European Commission has provided detailed guidelines to Member States on risk identification and analysis. If the choice is made to develop these measures at the level of each MA under the TA of the specific OP, it should also appear in OP "Good Governance" under PA5. At the same time, any horizontal actions should be covered under PA 4 of OP "Good Governance".

29) The implementation of techniques for quality management such as the CAF model foreseen for the judiciary system under PA3 could also be targeted for key bodies such as the Public Procurement Agency.

30) The Commission invites Bulgaria to provide a more detailed appraisal of actions carried out by the networks of data and information centres under the 2007/13 programming period to justify their envisaged continuation.

31) The interface between the Unified Management Information System (UMIS2020) and IACS as a tool to avoid double funding should be maintained, similar to the 2007-2013 programming period. The Commission proposes that the text in PA4 refers to this tool. A relevant reference should also be made under Section 8 on coordination between the programmes.

32) Result indicators should be developed in a way to measure performance of the use of technical assistance (e.g. average time between project selection and final closure by MA, simplification measures for beneficiaries, etc.). This should be done in the light of lessons learned from the previous programming period (in terms of absorption, error rates, implementing difficulties, administrative burden, results achieved) and the specific objectives for 2014/2020. Moreover, the output indicator 'number of FTE whose salaries are co-financed from TA' should be added.

33) The demarcation line between activities supported under PA4 of OP "Good Governance" (horizontal TA) and the respective TA priority axes of the sectorial OPs should be better explained.

34) The Commission underlines the importance of implementing a uniform approach regarding staff remuneration under all ESIF programmes based on objective criteria and performance as specified in the Partnership Agreement.

35) The OP needs to also clarify the role of some horizontal structures, such as AFCOS, Public Procurement Agency, National Statistics Institute and the State Aid Unit of Ministry of Finance. The Commission notes that only the bodies directly involved in the management and control of the funds are entitled to salaries and other general running costs paid under the horizontal TA.

36) The role of the support unit for Natura 2000 needs to be clarified. This unit could be targeted as a beneficiary under OP "Good Governance" for carrying out coordination activities covering several OPs for the implementation of Natura 2000 but it cannot be defined as a key player of the ESIF management and control systems. The OP should therefore specify the scope of actions aimed to improve the capacity of the staff dealing with the management of the Natura 2000 network.

Priority Axis 5 "Technical Assistance"

37) Bulgaria is invited to make a risk assessment of the organisational changes deriving from the merger of the MAs of the former ESF OP "Administrative Capacity" and ERDF OP "Technical Assistance" (2007-2013) into a single MA and to plan appropriate transition measures ensuring a smooth continuity of operations.

Other

38) Results should be expressed using the indicators of European Statistics with direct effect on macro-economic data, where these exist at the appropriate NUTS level, and if they

correspond to the intervention logic and fulfill the criterion of responsiveness to funded activities as required by the general ex ante condition 7. An inventory of indicators compiled by Eurostat is published at:

http://epp.eurostat.ec.europa.eu/portal/page/portal/region_cities/documents/Regional_%20statistics_overview_20130919.xlsx

Results with expected effects on participants and entities should be indicated by indicators which capture the change in the situation of supported participants or entities directly. Impacts should be assessed by evaluation.

SECTION 3 FINANCING PLAN

(Reference: point (d) of the first subparagraph of Article 96(2) CPR)

39) In the financing plan (tables 17/18a) the overall performance reserve only represents 4.48% of the allocation to the OP. This seems to be due to the exclusion of the amount for technical assistance from the overall 6% reduction of the performance reserve. However, while according to Article 22 (1) CPR indeed no performance reserve shall be established for Technical Assistance priority axes, the corresponding allocation is not excluded from the resources to which the overall 6% performance reserve shall be applied according to Article 20 CPR. Thus, in order to reach an overall performance reserve of 6% of the OP allocation, the percentage for the other priority axes has to be increased accordingly to compensate for the exclusion of the TA axis. If the intention was indeed to leave the performance reserve for this OP below 6%, this would have to be compensated by a corresponding higher performance reserve above 6% for another OP. In this case, compliance between the overview table on the performance amounts foreseen by fund and category of region as required by art. 15(1)(a)(vii) of the CPR to be included in the PA and each OP would need to be checked as far as the performance reserve is concerned.

SECTION 7 AUTHORITIES AND BODIES RESPONSIBLE FOR MANAGEMENT, CONTROL AND AUDIT AND THE ROLE OF RELEVANT PARTNERS

(Reference: Article 96(5) CPR)

40) While the description of the involvement of relevant partners is thorough, including their involvement in monitoring, the OP should also envisage partners' participation in evaluation activities, e.g. OP evaluation plan.

SECTION 8 COORDINATION BETWEEN THE FUNDS, THE EAFRD, THE EMFF AND OTHER UNION AND NATIONAL FUNDING INSTRUMENTS, AND WITH THE EIB

(Reference: point (a) of Article 96(6) CPR)

41) Demarcation with OP "Regions in Growth": The Commission notes that the design of the municipal development plans has already been funded under OP "Regional Development" in the 2007-2013 period. Therefore, the similar activity envisaged under OP "Good Governance" needs to be clearly justified.

42) Demarcation with OP "Human Resources Development": Bulgaria needs to ensure complementarity and a coordination mechanism between both OPs regarding coherent investments in the area of health, in particular e-health.

43) Demarcation with the multi-national program under the Internal Security Fund: While the Commission welcomes the reference to the Internal Security Fund, Bulgarian authorities are invited to provide more information on the sectors, target groups and categories which will be addressed in order to avoid overlap between the two programmes.

44) Demarcation with the Rural Development Programme (RDP): The Commission recommends that the public procurement training envisaged for the RDP administration should be expanded to cover contracting authorities (municipalities).

SECTION 9 EX-ANTE CONDITIONALITIES

(Reference: point (b) of Article 96(6) CPR)

45) The OP "Good Governance" should give priority to the financing of actions in relation to all general ex-ante conditionalities (EAC) not yet fulfilled. Bulgaria is invited to differentiate the measures related to the corresponding action plans to be financed under horizontal Technical Assistance (PA4) from those to be financed under the more general public administration reform priorities of PA1 to 3 (e.g. e-Procurement).

46) The OP "Good Governance" could also complement the other OPs regarding actions needed to fulfil the thematic EACs. In this case, a distinction should be made between horizontal types of actions targeting the legal framework or the institutional set-up (to be financed under OP "Good Governance") and more operational actions targeting the preparation of project pipelines (to be financed under the other OPs). This could be envisaged for instance to finance strategic prerequisites such as the building-up of a tangible NGN investment plan under OP GG for the efficient preparation of broadband projects targeted under Rural Development OP.

47) The OP "Good Governance" could support adequate measures to meet the criterion under EAC 3.1 to ensure the existence of a mechanism to monitor the implementation of the measures of the Small Business Act and their impact on SMEs.

48) The Commission notes that the OP is also concerned by the general EAC on Public Procurement which is only partially met. The corresponding action plan referred to in the Partnership Agreement should be provided.

49) The Commission notes that the OP limits itself to support e-procurement and administrative capacity in the Public Procurement Agency while the Action Plan for the fulfilment of the corresponding EAC should be much broader (see Commission's observations to the Partnership Agreement) and the support for its implementation is crucial for improving the effectiveness in most areas of ESIF interventions. For example, institutional cooperation

mechanisms (key performance indicators, interconnection of information repositories) between public procurement bodies (i.e. beyond just the Public Procurement Agency – could be covered under PA1, the reduction of delay in Court appeals - under PA3, the modification of a simplified Public Procurement Act as a contribution for smart regulation under PA1, the access to information and training on public procurement - under PA2 and the strengthening of ESIF control systems - under PA4.

SECTION 10 REDUCTION OF ADMINISTRATIVE BURDEN FOR BENEFICIARIES

(Reference: point (c) of Article 96(6) CPR)

50) The OP should be more specific in formulating precise objectives in terms of reduction of administrative burden for beneficiaries, reduction of error rates compared to the current period, implementation of e-Cohesion (art. 122(3) CPR) and the way TA will be used.

Other

51) The Commission services draw the attention of Bulgaria to the fact that the future Decision approving the operational programme is without prejudice to the Commission's position regarding compliance of any operation supported under that programme with the procedural and substantive State aid rules applicable at the time when the support is granted. The granting of State aid falling within the scope of Article 107(1) TFEU, granted under aid schemes or in individual cases, requires prior approval by the Commission under Article 108(3) TFEU, except where the aid is exempted under an exemption regulation adopted by the Commission under Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 to certain categories of horizontal aid and its amendments³ or under Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest⁴ or granted as general de minimis aid.

³ OJ L 142, 14.5.1998, p.1-4 and OJ L 204, 31.07.2013, p.11

⁴ OJ L 7, 11.01.2012, p. 3-10