

ACT ON THE FINANCIAL MANAGEMENT AND CONTROL IN THE PUBLIC SECTOR

Prom. SG. 21/10 Mar 2006, amend. SG. 42/5 Jun 2009, amend. SG. 54/16 Jul 2010, amend. SG. 98/13 Dec 2011, amend. SG. 15/15 Feb 2013

Chapter one. GENERAL PROVISIONS

Art. 1. This act shall regulate the scope and realization of the financial management and control, as well as the principles and requirements to the financial management and control systems in the organizations in the public sector.

Art. 2. (1) The act provisions shall apply in the organizations in the public sector.

(2) In the meaning of this act, organizations of the public sector shall be:

1. (amend. SG 15/13, in force from 01.01.2014) budget organizations under the Public Finance Act, as well as municipal enterprises;
2. (revoked - SG 15/13, in force from 01.01.2014)
3. (revoked - SG 15/13, in force from 01.01.2014)
4. (revoked - SG 15/13, in force from 01.01.2014)
5. organizations, directing funds, guaranteed by the Republic of Bulgaria;
6. organizations, directing resources on EU funds and programmes;
7. the commercial companies under Art. 61 of the Commercial Act and the state undertakings under Art. 62, Para. 3 of the Commercial Act;
8. other organizations, directing public funds according to legislative instruments.

Art. 3. (1) The managers of the organizations under Art. 2 shall be responsible for the realization of the financial management and control in all the structures, programmes, activities and processes managed by them while observing the principles of legality, good financial management and transparency

(2) The managers at each level in the organizations under Art. 2 shall be responsible and shall account before the senior manager about their activity in relation to the financial management and control in the structures and units, directed by them.

Art. 4. (1) The managers of the organizations under Art. 2 shall be responsible for defining the objectives of the organizations, identification of the risks for their achievement and for introducing adequate and effective systems for financial management and control in compliance with the requirements of this act.

(2) The managers of structures and units, which fulfill the functions of payment, managing or intermediate bodies on EU funds, shall be responsible for providing adequate and effective systems for financial management and control in compliance with the requirements of this act and the applicable instruments of the European Union.

Art. 5. (1) The financial management and control in the public sector shall be a complete process, integrated in the activity of the organizations under Art. 2 and realized by the management and their employees.

(2) the financial management and control shall be realized through systems for financial management and control, including policies and procedures, introduced by the management of the organizations under Art. 2 in view to provide reasonable confidence that the objectives of the organizations have been reached through:

1. compliance with the legislation, the internal acts and contracts;
2. reliability and comprehensiveness of the financial and operative information;
3. economy, effectiveness and efficiency of the activities;
4. protection of the shares and information.

Chapter two. MANAGEMENT RESPONSIBILITY

Art. 6. (1) The managers of the organizations under Art. 2 shall be responsible for achieving the objectives of the organizations by managing the public funds in a lawful, economical, efficient and effective way.

(2) While implementing programmes and projects, including more than 1 organization and/or structure of the public sector, the relevant managers shall agree in written form about the scope of the managing responsibility, which each one of them bears. .

Art. 7. (1) The managers of the organizations under Art. 2 shall be responsible for:

1. determining the objectives of the organization, which they manage, for the development and applications of strategic plans, action plans and programmes for achieving the set objectives;
2. identification, evaluation and risk management, threatening the achievement of the objectives of the organizations;
3. planning, management and accounting of the public funds in view to achieving the objectives of the organizations;
4. observation of the principles for good financial management and transparency of the public funds, as well as for their lawful management and spending;
5. effective management of the staff and maintaining their competence level;
6. keeping and protecting the shares and information from loss, thefts, unauthorized access and misuse;
7. creation of appropriate organization structure in view to effective fulfillment of the duties;
8. division of the responsibilities of decision taking, performing control and implementation;
9. providing complete, true, exact and timely accounting of all the operations;
10. providing the function of internal audit in compliance with the legislation in force;
11. monitoring and updating the systems for financial management and control and undertaking measures for their improvement in fulfilling recommendation by the internal audit and other checks;
12. documentation of all the operations and acts and providing traceability of the organization processes;
13. introducing anti-corruption procedures;
14. accountability and reporting about the situation of the financial management and control systems;
15. introducing internal rules for financial management and control by an administrative act or a system of acts;
16. creating conditions for lawful and purposeful management, adequate and moral behavior of the staff in the organizations.

(2) The managers of the organizations under Art. 2 shall apply the instructions for realization of the management responsibility, issued by the Minister of Finance in relation to Para. 1, as well as the instruction, issued by their senior manager.

Art. 8. (1) (Amend. - SG, 54/2010; amend. SG 15/13, in force from 01.01.2014) The managers of the organizations under Art. 2, Para. 1, p. 1, 5 and 6 – first level budget administrators, with the exception of the Supreme Judicial Council and the Audit Office, annually by 31 March shall submit to the Minister of

Finance information about the functioning, adequacy, efficiency and effectiveness of the financial and control systems in the organizations, including for the budget administrators of lower level under them, for the previous year.

(2) The form, contents, procedure and terms for providing the information under Para. 1 shall be determined by Rules, adopted by the Council of Ministers.

Art. 9. (1) The managers under Art. 2, Para. 2 may delegate their authorities under this act to other officials from the organization, managed by them, where in these cases they shall determine their concrete rights and obligations.

(2) The delegation under Para. 1 shall not liberate the manager from responsibility for the implementation of the delegated authorities.

Chapter three.

ELEMENTS OF THE FINANCIAL MANAGEMENT AND CONTROL

Art. 10. (1) The managers of the organizations under Art. 2 shall realize financial management and control through the following interrelated elements:

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

(2) The managers at each level in the organizations under Art. 2 shall provide the building up, development and functioning of the elements of the financial management and control in compliance with the organization specifics.

(3) The Minister of Finance shall issue methodical directions about the elements of the financial management and control under Para. 1.

Art. 11. (1) The managers of the organizations under Art. 2 shall be responsible for the building, situation and improvement of the control environment.

(2) The control environment shall include:

1. the personal correctness and professional ethics of the organization management and staff;
2. the management philosophy and style of operation;
3. the organization structure, providing division of the responsibilities, hierarchy and clear rules, rights, duties and levels of reporting;
4. the policies and practices of human resource management;
5. the staff competence.

Art. 12. (1) the managers of the organizations under Art. 2 shall be responsible for the risk management.

(2) The risk management shall include identification, evaluation and control of potential events or situations, which may influence negatively the organization objective achievement and it shall be intended to give reasonable confidence, that the objectives will be achieved.

(3) For the implementation of the activities under Para. 1 and 2, the managers shall confirm a strategy, which shall be updated every 3 years or in case of occurring substantial changes in the risk environment. The control activities, aiming at risk decreasing shall be analyzed and updated at least once a year.

(4) The managers of the organizations under Art. 2 shall organize, document and report before the

competent bodies the undertaken measures for risk prevention from frauds, irregularities, concerning the financial interests of the European Communities.

Art. 13. (1) The managers of the organizations under Art. 2 shall introduce control activities, including written policies and procedures, created for giving reasonable confidence, that the risks have been limited within admissible limits, determined in the process of risk management.

(2) The control activities must be adequate and the costs for their realization should not prevail the expected benefits from them.

(3) The managers shall create and apply control activities, which shall include at least:

1. solving and approval procedures;
2. responsibility division in a way, which shall not allow one employee to have at the same time responsibility for approval, implementation, accountancy and control;
3. the dual signature system, which shall not allow undertaking financial obligation or performing payment without the signature of the manager of the organization under Art. 2 and the persons, responsible for the accountancy recordings;
4. rules for access to the shares and the information;
5. preliminary control for lawfulness, which may be performed by appointed for this purpose financial controllers or other persons, determined by the organization manager;
6. procedures for full, correct, exact and timely accountancy of all the operation;
7. reporting and checkup of the activities – evaluation of the operation efficiency and effectiveness;
8. monitoring procedures;
9. human resource management rules;
10. rules for documenting all the operations and acts, related to the organization activity;
11. (new - SG, 42/2009) rules for observing personal correctness and professional ethics.

(4) The procedure and way of realization of the preliminary control shall be determined by the managers of the organizations under Art. 2 in compliance with the instructions of the Minister of Finance.

Art. 14. The managers of the organizations under Art.2 shall build up and apply information and communication systems, which shall provide:

1. identification, collection and dissemination in an appropriate form and terms of reliable and credible information, which should allow to each official to undertake a certain responsibility;
2. effective communication, which should pass on the horizontally and vertically on all hierarchic levels of the organization;
3. building up an appropriate information system for organization management in view to letting to know all the employees clear and exact instructions and orders in relation to their role and responsibilities, related to the financial management and control;
4. applying a system for documentation and paper-turnover, containing rules for drawing up, formation, movement, use and storing of the documents;
5. documentation of all the operations, processes and transactions in view to providing adequate audit path for traceability and monitoring;
6. building up and effective and timely reporting system, including: levels and terms for reporting; types of reports, which shall be submitted to the management; forms of reporting in case of found mistakes, irregularities, incorrect use, frauds and misuse.

Art. 15. (1) The managers of the organizations under Art. 2 shall build up a monitoring system of the financial management and control in view to evaluation its adequate functioning and to guarantee its timely updating in case of change of the conditions.

(2) The system under Para. 1 shall include current monitoring, self-assessment and internal audit.

Chapter four.
COORDINATION AND HARMONIZATION OF THE FINANCIAL MANAGEMENT AND CONTROL

Art. 16. (1) The Minister of Finance shall be responsible for the coordination and harmonization of the financial management and control in the organizations under Art. 2.

(2) For the implementation of the tasks under this law, the Minister of Finance shall be assisted by a Central harmonization unit for financial management and control, which shall be at direct submission to the Minister of Finance.

(3) The Central harmonization unit for financial management and control shall appoint persons, who meet the requirements for the relevant position and have at least 2 years length of service in the area of the internal control, the internal and external audit.

Art. 17. (1) The Minister of Finance shall be responsible for the development, dissemination and updating of methodical directions in the area of the financial management and control in the public sector in compliance with the applicable EU acts and good practices.

(2) The methodical directions and instructions of the Minister of Finance, issued on the application of the law, shall be published in the information bulletin and on the website of the Ministry of Finance.

(3) the Minister of Finance shall coordinate and assist the professional training in the area of the financial management and control and the management responsibility in the organizations.

Art. 18. (1) In view to updating and further development of the methodology, the Minister of Finance shall realize a current monitoring in the Ministries and Municipalities on the application of the requirements of the act and the issued instruments, based on it.

(2) The managers of the organizations under Art. 1 shall provide assistance while realizing the current monitoring.

Art. 19. (Repealed. - SG, 54/2010)

Art. 20. (1) The Minister of Finance shall draw up an annual report on the condition of the financial management and control in the public sector, summarizing the information, received under Art. 8.

(2) The Minister of Finance by 31 May shall draw up and introduce to the Council of Ministers a consolidated annual report on the internal control in the public sector, which shall include the report under Para. 1 and the annual report on the condition of the internal audit. After its adoption by the Council of Ministers, the consolidated report shall be submitted to the National Assembly and the Audit Office.

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

(4) The Audit Office, by 30 June shall submit to the National Assembly its report on the condition and financial management and control and the internal audit and opinions on the reports under Para. 2 and 3.

Chapter four.

“a” PREVENTIVE FINANCIAL CONTROL (NEW – SG 98/11, IN FORCE FROM 01.01.2012)

Art. 20a. (new – SG 98/11, in force from 01.01.2012) A system for preventive financial control may be established within organizations under Art. 2, Para 2, Item 7, where the organization belongs to Sector “State Government”.

Art. 20b. (new – SG 98/11, in force from 01.01.2012) (1) The system for preventive financial control shall be established in an order of the Minister of Finance, which shall determine the financial controller for its implementation, the type and scope of obligations and costs covering the time limits, responsibility and other issues on its implementation.

(2) The preventive financial control means control for legality, effectiveness, efficiency and economy, implemented through the provision of an opinion by the financial controller prior to assuming obligations and incurring costs determined by the Minister of Finance as set out in Para 1.

(3) The system for preventive financial control shall be without prejudice to the exercise of preliminary control and the implementation of the double signature system within the organizations referred to in Art. 20a.

(4) The financial controller shall report directly to the Minister of Finance.

Art. 20c. (new – SG 98/11, in force from 01.01.2012) (1) All documents related to assuming obligations and incurring costs subject to a system for preventive financial control shall be signed by the head, the person responsible for the financial accounts and by the financial controller.

(2) In cases of negative opinion of the financial controller regarding the assumption of an obligation and/or incurring of costs he shall submit a written opinion to the head and the person responsible for the financial accounts, which shall be reasoned and stating all relevant grounds.

Art. 20d. (new – SG 98/11, in force from 01.01.2012) For the period of functioning of a system for preventive financial control the financial controller shall submit to the Minister of Finance monthly reports. The reports shall state: the implemented checks; cases of assuming obligations or incurring costs despite a negative opinion of the financial controller; established problems and the reasons thereof.

Art. 20e. (new – SG 98/11, in force from 01.01.2012) When carrying out prevention financial control the financial controller shall have the right:

1. to free access to public premises, management, staff and all assets of the organization related to the functioning of what is established in the order of the Minister of Finance mentioned in Art. 20b, Para 1;
2. to access to all information, including classified taking into account his level of access, and to all documents, including electronic, stored in the organization and required for the functioning of what is established in the order of the Minister of Finance mentioned in Art. 20b, Para 1;
3. to request from responsible officials information, reference, opinions, documents and other information required for what is established in the order of the Minister of Finance mentioned in Art. 20b, Para 1.

Art. 20f. (new – SG 98/11, in force from 01.01.2012) When performing his functions the financial controller shall be obliged:

1. to identify himself by an identity document and an order for conducting preventive financial control;
2. to report objectively and accurately the results of the control activity;
3. not to make available to the public facts and circumstances learned by him during or in relation to the performance of his functions.

Art. 20g. (new – SG 98/11, in force from 01.01.2012) (1) As financial controllers shall be appointed natural persons meeting the following requirements:

1. to be legally capable;
2. not convicted for deliberate crimes of general character and not judicially deprived of the right to occupy such positions;

3. to hold a higher education “master” degree in the field of economics, law, public administration or equivalent specialty;

4. to have at least 7 years of professional experience in the field of the financial management, financial control, audit or accounting.

(2) As financial controllers shall not be appointed persons:

1. who have worked in the controlled organization during the last three years or took part in its management or have personal interest in its activities;

2. whose spouse or cohabitant, relative of direct lineage without limitations, or of peripheral lineage or relative-in-law of up to third degree, works or takes part in the management of the controlled organization;

3. members of management or control bodies of trade companies or state enterprises.

(3) The circumstances referred to in Para 2 shall be attested in a declaration.

(4) The Minister of Finance or an official authorized by him shall sign a contract with the financial controller determining the tasks, the time limits for their performance and the amount of remuneration.

(5) The remunerations of the appointed financial controllers shall be paid from the budget of the Ministry of Finance.

Art. 20h. (new – SG 98/11, in force from 01.01.2012) The established system for preventive financial control shall not exclude the implementation of other forms of control provided for in a law or introduced into the organization.

Art. 20i. (new – SG 98/11, in force from 01.01.2012) The implementation of preventive financial control under this chapter shall not release the head of the organization of his responsibilities under this Law.

Art. 20j. (new – SG 98/11, in force from 01.01.2012) The Minister of Finance may issue guidelines and instruction for the implementation of this chapter, which shall be published on the internet site of the Minister of Finance.

Chapter five.

ADMINISTRATIVE-PENAL PROVISIONS (NEW – SG, 54/2010)

Art. 21. (New - SG, 54/2010) (1) (amend. SG 15/13, in force from 01.01.2014) The managers of the organizations under Art. 2, p. 1, 5 and 6 , first level budget administrators, with the exception of the Supreme Judicial Council and the Audit Office, which have not fulfilled their obligation for submitting to the Minister of Finance information about the condition of the financial management and control systems within the term under Art. 8, Para. 1, shall be punished by a fine from BGN 200 to 1000.

(2) (new – SG 98/11, in force from 01.01.2012) In cases of failure to provide access or documents and information under Art. 20e the guilty officials shall be fined between BGN 500 and 2000.

(3) (prev. text of Para 02, suppl. – SG 98/11, in force from 01.01.2012) The acts for establishing the breaches under Para. 1 and 2 shall be drawn up by officials, determined by the Minister of Finance.

(4) (prev. text of Para 03 – SG 98/11, in force from 01.01.2012) The penal decrees shall be issued by the Minister of Finance or by officials, authorized by him/her.

(5) (prev. text of Para 04 – SG 98/11, in force from 01.01.2012) Establishing the breaches, issuance, appeal and implementation of the penal decrees, shall be performed under the terms and procedure of the Administrative Breaches and Punishments Act.

Additional provisions

§ 1. In the meaning of this act:

1. "Public funds" shall be all the funds, collected, received, kept, distributed and spent by the organizations in the public sector, including budget revenues, credits, costs and subsidies.

2. "Management responsibility" shall be the obligation of the managers of the organizations under Art. 2 to realize each of their acts, observing the principles of good financial management, lawfulness and transparency, including accounting for their acts and results of them before those, who have assigned to them the management responsibility.

3. "Good financial management" shall be the requirement the public funds to be spent and managed economically, effectively and efficiently.

4. "Reasonable confidence" shall be a satisfactory level of confidence, which requires the costs for internal control not to exceed its expected benefits.

5. (amend. - SG, 54/2010) "Risk" shall be an event, which would influence the achievement of the organization objectives. The risk shall be measured by its effect and by the possibility of its occurrence.

6. "Fraud, concerning the financial interests of the European Communities" shall be every intentional action or lack of such:

a) in relation to costs, connected to using or producing false, wrong or incomplete statements or documents, which leads to misuse or illegal drawing of funds from the general budget of the European Communities or from budgets, managed by or on behalf of the European Communities; hiding information in breach of concrete obligation with the same result; using such funds for different aims from those, for which they have been initially granted;

b) in relation to revenues, connected to using or producing false, wrong or incomplete statements or documents, which leads to illegal decreasing of funds of the general budget of the European Communities or the budgets, managed by or on behalf of the European Communities; hiding information in breach of concrete obligation with the same effect; misuse of legally received benefit with the same effect.

7. "Irregularity, concerning the financial interests of the European Communities" shall be every breach of the public law as a result of an act or lack of act by an economic operator, which has had, or would have a result of the breach of the general budget of the European Communities or of the budgets, managed by them or through decreasing or loss of revenues as a result of own funds, which are collected directly on behalf of the European Communities, or through performing an incorrect cost.

8. "Managers" shall be the persons, managing the organizations under Art. 2, performing management functions and bearing management responsibility.

9. (new – SG 98/11, in force from 01.01.2012) Sector "State Management" means sector "State management" according to the ESA 95 Methodology of Annex A of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ, L 310/1 of 30 November 1996).

Transitional and concluding provisions

§ 2. Within 6-month term from the enforcement of the act, the Council of Ministers shall adopt the ordinance under Art. 8, Para. 2.

§ 3. Within 6-month term from the enforcement of the act, the Minister of Finance shall issue instructions for realization of the management responsibility under Art. 7, Para. 2 and the methodical directions on the elements of the financial management and control under Art. 10, Para. 3, as well as the instructions under Art. 13, Para. 4.

§ 4. The implementation of the act shall be assigned to the Minister of Finance.

This act was adopted by the 40th National Assembly on 24 February 2006 and has been sealed by

the official stamp of the National Assembly.

Concluding provisions
TO THE LAW ON AMENDMENT AND SUPPLEMENTATION OF THE LAW ON THE
FINANCIAL MANAGEMENT AND CONTROL IN THE PUBLIC SECTOR

(PROM. – SG 98/11, IN FORCE FROM 01.01.2012)

§ 5. This Law shall enter into force from 1 January 2012.

Transitional and concluding provisions
TO THE PUBLIC FINANCE ACT

(PROM. SG 15/13, IN FORCE FROM 01.01.2014)

§ 123. This Act shall enter into force on 1 January 2014 with the exception of § 115, which enters into force on January 1, 2013, and § 18, § 114, § 120, § 121 and § 122, which came into force on 1 February in 2013.