

## **Article 25 Granting of facilities for the implementation of programmes and execution of contracts**

- (1) In order to ensure the effective implementation of programmes under IPA, the Beneficiary shall take all necessary measures to ensure:
  - a) that, in the case of service, supplies or works tender procedures, natural or legal persons eligible to participate in tender procedures pursuant to Article 23 above shall be entitled to temporary installation and residence where the importance of the contract so warrants. This right shall be acquired only after the invitation to tender has been launched and shall be enjoyed by the technical staff needed to carry out studies and other preparatory measures to the drawing up of tenders. This right shall expire one month after the decision of contract award;
  - b) that personnel taking part in Community financed activities and members of their immediate family are accorded no less favourable benefits, privileges and exemptions than those usually accorded to other international staff employed in Kosovo<sup>1</sup>, under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation;
  - c) that personnel taking part in Community financed activities and members of their immediate family are allowed to enter Kosovo<sup>1</sup>, to establish themselves in Kosovo<sup>1</sup>, to work there and to leave Kosovo<sup>1</sup>, as the nature of the underlying contract so justifies;
  - d) the granting of all permits necessary for the importation of goods, above all professional equipment, required for the execution of the underlying contract, subject to existing laws, rules and regulations of the Beneficiary;
  - e) that imports carried out under IPA will be exempted from customs duties, import duties and other fiscal charges;
  - f) the granting of all permits necessary for the re-export of the above goods once the underlying contract has been fully executed;
  - g) the granting of authorizations for the import or acquisition of the foreign currency necessary for the implementation of the underlying contract and the application of national exchange control regulations in a non-discriminatory manner to contractors, regardless of their nationality or place of establishment;
  - h) the granting of all permits necessary to repatriate funds received in respect of the activity financed under IPA<sub>5</sub> in accordance with the foreign exchange control regulations in force in Kosovo<sup>1</sup>,
- (2) The Beneficiary shall ensure full co-operation of all relevant authorities. It will also ensure access to state-owned companies and other governmental institutions, which are involved or are necessary in the implementation of a programme or in the execution of the contract.

## **Article 26 Rules on taxes, customs duties and other fiscal charges**

- (1) Save where otherwise provided for in a Sectoral Agreement or a Financing Agreement, taxes, customs and import duties or other charges having equivalent effect are not eligible under IPA and are excluded from Community financing..

(2) The following detailed provisions shall apply:

- a) Customs duties, import duties, taxes or fiscal charges having equivalent effect in the case of the import of goods under a Community financed contract are not eligible under IPA and are excluded from Community financing. The imports concerned shall be released from the point of entry into Kosovo<sup>1</sup> for delivery to the contractor, as required by the provisions of the underlying contract and for immediate use as required for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above mentioned duties, taxes or charges;
- b) Community financed contracts for services, supplies or works carried out by contractors registered in Kosovo<sup>1</sup> or by external contractors shall not be subject in Kosovo<sup>1</sup> to value added tax, documentary stamp or registration duties or fiscal charges having equivalent effect, whether such charges currently exist or are instituted in the future, EC contractors shall be exempted from VAT for services rendered, goods supplied and/or works executed by them under EC contracts with the right of the contractors to offset or deduct input VAT paid in connection with the services rendered, the goods supplied and/or the works executed against any VAT collected by them for any of their other transactions. Should the EC contractors not be able to make use of this possibility, they shall be entitled to obtain VAT refund directly from the tax authorities upon submission of a written request accompanied by the necessary documentation required under the national/local law for refund and by a certified copy of the underlying EC contract. Sub-contractors to EC contractors shall not be exempted,

For the purposes of this Framework Agreement, the term "EC contractor" shall be construed as natural and legal persons, rendering services and/or supplying goods and/or executing works and/or executing a grant under an EC contract. The term "EC contractor" shall also cover pre-accession advisors, also known as resident twinning advisors, and experts included in a twinning covenant or contract. The term "EC contract" means any legally binding document through which an activity is financed under IPA and which is signed by the EC or the Beneficiary.

At least the same procedural privileges shall apply to such contractors as applicable to contractors under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation.

- c) Profit and/or income arising from EC contracts to EC contractors operating in Kosovo shall be taxable in Kosovo<sup>1</sup> in accordance with the national/local tax system. However, natural and legal persons, including expatriate staff, from the Member States of the European Union or other countries eligible under IPA (excluding Kosovo), executing Community financed contracts shall be exempted from those taxes in Kosovo<sup>1</sup>.
- d) Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, engaged in carrying out tasks defined in technical co-operation contracts, shall be exempted from customs duties, import duties, taxes and other fiscal charges having equivalent effect, the said personal and household effects being re-exported or disposed of in the state, in accordance with the regulations in force in Kosovo<sup>1</sup> after termination of the contract.

## **Article 27 Supervision, control and audit by the Commission and the European Court of Auditors**

- (1) All Financing Agreements as well as all resulting programmes and subsequent contracts shall be subject to supervision and financial control by the Commission including the European Anti-Fraud Office (OLAF) and audits by the European Court of Auditors. This includes the right of the Delegation of the Commission in Kosovo to carry out measures such as ex-ante verification of tendering and contracting carried out by the related, operating structures, as long as ex-ante control has not been waived in accordance with Article 16 above. The duly authorized agents or representatives of the Commission and of OLAF shall have the right to carry out any technical and financial verification that the Commission or OLAF consider necessary to follow the implementation of a programme including visits of sites and premises at which Community financed activities are implemented. The Commission shall give the national authorities concerned advance notice of such missions.
- (2) The Beneficiary shall supply all requested information and documents including any computerized data and take all suitable measures to facilitate the work of the persons instructed to carry out audits or inspections.
- (3) The Beneficiary shall maintain records and accounts adequate to identify the services, supplies, works and grants financed under the related Financing Agreement in accordance with sound accounting procedures. The Beneficiary shall also ensure that the agents or representatives of the Commission including OLAF have the right to inspect all relevant documentation and accounts pertaining to items financed under the related Financing Agreement and assist the European Court of Auditors to carry out audits relating to the use of Community funds.
- (4) In order to ensure the efficient protection of the financial interests of the Community, the Commission including OLAF may also conduct documentary and on-the-spot checks and inspections in accordance with the procedural provisions of Council Regulation (EC, Euratom) No 2185/1996 of 11 November 1996 <sup>(7)</sup>. These checks and inspections shall be prepared and conducted in close collaboration with the competent authorities designated by the Beneficiary, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. The Beneficiary shall identify a service which will assist at OLAF's request in conducting investigations in accordance with Council Regulation (EC, Euratom) No 2185/1996. If the Beneficiary wishes, the on-the-spot checks and inspections may be carried out jointly with them. Where the participants in Community financed activities resist an on-the-spot check or inspection, the Beneficiary, acting in accordance with national rules, shall give Commission/OLAF inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

The Commission/OLAF shall report as soon as possible to the Beneficiary any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event, the Commission/OLAF shall be required to inform the above-mentioned authority of the result of such checks and inspections.

- (5) The controls and audits described above are applicable to all contractors and sub-contractors who have received Community funds including all related information to be found in the documents of the national fund of the Beneficiary concerning the national contribution.
- (6) Without prejudice to the responsibilities of the Commission and the European Court of Auditors, the accounts and operations of the National Fund and, where applicable, operating structures may be checked at the discretion of the Commission by the Commission itself or by an external auditor assigned by the Commission.