



Legal Alert

Greater flexibility in the implementation and settlement of projects co-financed under operational programmes

9 April 2020

The draft of the act on special solutions to support the implementation of operational programmes in connection with the COVID-19 pandemic was submitted to the Senate. The draft law gives the beneficiaries legal instruments to modify the grant agreements at the stage of project implementation in order to adjust the conditions of the implementation to possible changes caused by the COVID-19 pandemic.

The draft law aims to reduce the negative impact of the pandemic on spending of the European funds. The draft law applies to the implementation of programmes in the field of Cohesion policy in the financial perspective 2014-2020, the EEA and Norway Grants and the Swiss-Polish Cooperation Programme. Importantly, after its entry into force, the provisions of the law become legally effective since February 1, 2020. Below we present regulations of the draft law the most important from the perspective of beneficiaries.

Possibility of extending the deadlines for submission of payment applications and for completion of project implementation

According to the law, the deadlines specified in the grant agreements or decisions for submission of payment applications falling in the period until December 31, 2020 are extended by 30 days. However, in particularly justified cases, the competent authority may, at the request of the beneficiary, extend the indicated deadlines up to December 31, 2023. The deadlines for completion of projects shall be extended by 90 days, but not beyond December 31, 2023. Please note that the aforementioned deadlines are extended by operation of law, and therefore the extension does not require any changes to the grant agreements. It should be pointed out that the beneficiary is also entitled to submit the application for payment within the existing deadlines.

Possibility of amending the grant agreement

The draft law states that, upon a justified request of the beneficiary, the grant agreement or decision may be amended if, as a result of COVID-19's impact, the implementation of the projects in accordance with provisions indicated in the grant agreement or decision is impossible or significantly impeded. Thus, the possibility of deviations from the approved criteria on the project implementation was allowed.

Shifting the burden of the individual irregularity to the national budget

The draft law indicates that where an individual irregularity is a direct consequence of the COVID-19 pandemic and the beneficiary demonstrates that,

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despite due diligence, they were not able to prevent the irregularity, the expenditure shall be corrected by reducing the expenditure included in the statement of expenditure and the application for payment to the European Commission by an amount corresponding to the estimated value of the financial correction resulting from the individual irregularity. Significantly, the amount of the correction shall be borne by the national budget and the beneficiary will not be required to reimburse the amount of the correction due to absolving from responsibility for the irregularity.

Failure to achieve the objectives set out in the project due to the COVID-19 pandemic does not exclude the possibility of considering the expenditure as eligible costs

According to the draft law, if the achievement of the objective of project for which the expenditure was incurred, has become impossible due to Covid-19 pandemic, the funds disbursed may be considered eligible. In such a case the beneficiary shall demonstrate that despite taking the necessary steps to recover them with due diligence and in good time, or that it was impossible to recover them. The measures considered eligible under the above procedure will be monitored within three years since the date of the consideration. The beneficiary will be required to inform the competent authority each year during the period of three years since the date on which the expenditure was considered eligible about the amounts recovered. Thus, if the beneficiary succeeds in recovering any amounts after the above-mentioned date, they will be required to reimburse them to the competent authority without delay. It should be pointed out that the beneficiary will be obliged to reimburse the sums only in the amount recovered and no interest will be charged.

Waiver of the exclusion sanction from future EU funding in case of non-reimbursement due to the COVID-19 pandemic

The draft law states that beneficiaries who have not recovered the funds due to the COVID-19 are not sanctioned with exclusion from future EU funding.

Possibility to change, postpone or shorten deadlines

According to the draft law, on the initiative of the beneficiary as well as the competent authority, in order to limit the negative effects of COVID-19, the deadlines for performing particular activities in accordance with applicable law, may be changed, postponed or shortened for the period necessary to perform/complete these activities.

The possibility of extending the deadlines in administrative proceedings with regard to the reimbursement of funds and other receivables related to the implementation of projects granted with European funds

The provisions of the draft law indicate the possibility of extending the time limits in administrative proceedings pending for the reimbursement of European funds, other receivables related to the implementation of projects. The draft law also provides suspension of these proceedings, staying the execution of administrative decisions or the possibility to apply a relief in the payment of receivables.

How can we help?

- We explain the law.
- We advise on which of the available solutions is most beneficial and what conditions must be met to use it.
- We tell you what action should be taken and help with preparation of the required documents.
- We help with preparation of solutions dedicated to a given situation.
- We represent our clients in negotiations with competent authorities, as well as during administrative and judicial proceedings.