

PROFESSIONAL PAPER

GRANT AGREEMENT FOR PROJECT FINANCED BY EU FUNDS – WHAT IMPROVEMENTS ARE NECESSARY TO SUPPORT THE ABSORPTION OF EU FUNDING IN CROATIA?

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ABSTRACT: Grant Agreement in EU financed projects is an important segment of project implementation therefore its role is the key to better absorption of EU funding. In the upcoming financial perspective (2021 – 2027), it is necessary to improve project preparation process, increase the equality of parties as well as simplify the procedure of amending the Grant Agreement in order to increase project implementation effectiveness and achievement of project objectives thus contributing towards better absorption of EU funds. The objective of this paper is to identify and analyze key areas of the Grant Agreement that could be amended for the upcoming financial perspective and provide recommendations for improvement.

Key words: *EU funds, European Structural and Investment Funds, Grant agreement, project, absorption*

JEL: O22, K12

1. INTRODUCTION

By accession to the European Union and becoming a member state, Republic of Croatia (further on: Croatia) acquired the right to larger financial allocations of EU funding provided by European Structural and Investment Funds (further on: ESIF) that are allocated directly from European Budget and provide grants for different projects in public, private and civil sector. The importance of ESIF for a member state like Croatia manifest mostly within the allocation amounts that are much higher in comparison to previous pre-accession instruments. Furthermore, ESIF envisages funding for infrastructure projects in public and private sector that are of great importance to less developed member states and

their regions as they directly improve the quality of life which is why it is important to use these allocated funds to the maximum.

While ESIF provides large allocations to member states, the funds itself are being spent within specific projects whereas specific procedures and conditions apply. Member states are obliged to secure the procedures and implementing systems (a.k.a. management and control systems) that provide conditions for absorption of funding.

Grant Agreement is a basic contract under which the management and control system on one side and beneficiaries on the other regulate their rights and obligations within the project implementation thus having a direct impact on the absorption of funding. The Grant Agreement (further on: GA) is a vital part of a complex set of rules and regulations on EU and member state level and is implemented within several key strategic and operational documents, named operational programs, that are prepared and adopted specifically for the purpose of identifying objectives and priorities of ESIF funding in a specific member state. Due to the fact ESIF allocations are spent on project level and the fact GA is a vital part of every project implementation, it presents a direct contributor towards absorption if the provisions are defined to support the implementation.

Due to the fact Croatia obtained the historically high financial allocation for the financial perspective 2021 – 2027 enlarged for the funding allocated by Recovery and Resilience Facility, thus reaching over 25 billion euro of allocation, it is important to create the conditions for efficient absorption where the GA plays an important role.

Therefore, the objective of this paper is to analyze the provisions of the GA in Croatia, to identify key issues that need to be resolved and to propose how to resolve them in order to improve the project implementation and thus the ESIF absorption.

2. LEGAL FRAMEWORK REGULATING EU GRANTS

By joining the European Union, Croatia has acquired a number of rights and obligations, including those applicable in the field of using funds allocated in the EU Budget, in particular grants related to the ESIF when it comes to Member States.

The legal framework regulating the use of ESIF grants can be divided into two fundamental areas – key EU rules common to all Member States, and national rules aligned with senior European law and tailored to the specificities of a Member State. In this chapter, the authors will bring an overview of the legal framework of the EU and Croatia, which regulates the use of ESIF grants.

The legal framework for the use of EU grants is set primarily at EU level and is required to be applied by all Member States. It refers to primary and secondary EU law and sectoral strategies.

EU primary law consists of the EU Treaty and the Treaty on the Functioning of the EU, the provisions of which regulate member states' allocations to the EU Budget and the

distribution of funds in the form of an ESIF, the basic principles for the use of funds, as well as the obligation to establish national management and control systems of the ESIF.

Secondary EU law consists of EU regulations and delegated regulations that lay down legal standards common to all financing instruments (funds), but also those that apply specifically to individual funds.

In addition to these regulations, some calls are subject to EU rules that are specific to the area or sector under which grants are awarded.

The importance of sectoral documents is reflected in the fact that projects that have been awarded ESIF grants must in some way contribute to the fulfilment of the objectives of strategic documents, therefore the objectives of projects are thus identified as always contributing to one of the objectives of sectoral strategies. Achieving project-level objectives constitutes a contractual obligation for grant beneficiaries under the provisions of GA, which will be discussed more in Chapter 6 Key Rights and Obligations of GA parties.

In conclusion, the EU legal framework is important because it lays down the general rules of use of the ESIF, which ESIF beneficiary Member States must adhere to when preparing calls for proposals and documentation contained in each call. Detailed elaboration of funding objectives and priorities, as well as the methodology and procedures for grants, monitoring and valuation of achievements have been left to regulate by the Member States. Also, sectoral strategies indirectly indicate to applicants who will be eligible for financing, which is why the objectives, results and activities of projects will contribute to the objectives of sectoral strategies, while in the context of GA they will be a contractual obligation of beneficiaries to fulfil.

Below there are basics of the legal framework of the Croatia relevant for granting ESIF funds.

The legislation of Croatia in the field of the ESIF refers to the provisions of the Treaty on Accession to the EU, the legal framework that makes the preconditions for the use of the ESIF and the sectoral strategies.

In this regard, between 2012 and 2014, Croatia prepared and adopted a number of legal and bylaws, as well as strategic documents in order to prepare for the use of the ESIF in this financial perspective. Some regulations have been amended and supplemented partly due to commitments made by joining the EU, as well as adapting to the specific needs of grant financing of ESIF projects resulting from grants, project preparation and implementation procedures.

Here is an overview of the documents that make up the most important part of the legal framework of the Croatia regulating the use of the ESIF:

- Treaty on the Accession of the Republic of Croatia to the EU
- Law establishing an institutional framework for the implementation of European Structural and Investment Funds in the Republic of Croatia in the financial period 2014-2020.

- Law on institutional framework for the use of EU funds in the Republic of Croatia
- Regulation on bodies in the management and control systems for the use of the ESF, ERDF and CF, in relation to the objective ‘Investing for growth and jobs’
- Public Procurement Act
- State Aid Act
- Common national rules (further-on: CNR) under which the GA form has been prepared
- other laws and bylaws applicable to legal relations that are the subject of a particular call.

The most important legal regulation of the Republic of Croatia for ESIF grant procedures, preparation, implementation, monitoring and evaluation of projects are the CNR. This is a set of rules adopted by the Ministry of Regional Development and EU Funds (below: MRRFEU) with a view to establishing a procedural framework that will use authorities in management and control systems to plan grants, prepare calls for grants, grant procedures, monitor and evaluate implementation.

3. GRANT AGREEMENT AND ITS POSITION WITHIN THE LEGAL FRAMEWORK

GA is a three partied legal act signed by the following parties; grant beneficiary, intermediate body 1 (further on: IB1) and intermediate body 2 (further on: IB2) whereas IB1 is in charge of call for proposal preparation and IB2 for supporting the beneficiary in project implementation and proofing of reports. In conclusion, there are three parties within the agreement; beneficiary, IB1 and IB2.

However, the agreement is bilaterally binding as it provides rights and obligations for each of the three parties.

GA is a formal contract that needs to be concluded in writing due to the obligation of all parties to submit their documentation to internal and external audit which is, according to obligatory EU regulation, possible only if the documentation exists in writing format. It is concluded as a result of a complex procedure of granting funding via calls for proposals that stipulate a number of eligibility criteria for applicants, projects, activities and expenses. Each applicant needs to be compliant to the rules stipulated in the call for proposals and successfully pass the evaluation of the quality of the project proposal. Therefore, it can be concluded that the project proposal presents an offer provided by the applicant to implement a certain project within a timeframe and under a certain budget.

The process of granting funds begins with applying the project by the applicant and is concluded by issuing a financing decision by the IB1. The GA comes into force after it is signed by all three parties after issuing the financial decision.

When it comes to contractual law principles, GA features most of them as explained below:

| CONTRACTUAL LAW PRINCIPLES | RELEVANT CHARACTERISTIC OF THE GRANT AGREEMENT |
|-----------------------------------|---|
| Dispositivity | Applicant's will to sign or not to sign the GA |
| Fulfillment of the agreement | Beneficiary's obligation to implement the project according to GA provisions The obligation of the IB1 and IB2 to process the beneficiaries' reports and pay the funds |
| Prohibition of causing damage | Provisions that prohibit the beneficiary to cause damage by project implementation General provisions of Law of Obligatory Relations that apply to the monitoring and control system |
| Equal value of actions | Not applicable |
| Due diligence | GA stipulates that beneficiary needs to implement the project with the attention of a good master (not mandatory for the management and control system) |
| Equality | The position of the parties is not completely coordinated in practice although the GA stipulates their coordinated position |

Source: Authors

In conclusion, even though the GA is taking the main principles of contractual law under consideration, the provisions still place the beneficiary in a less equal position in comparison to the management and control system bodies whereas the beneficiary is partially subordinated to the IB1 and IB2 which is the characteristic of the administrative law and its procedures.

When considering the position of the Grant Agreement in the legal framework and relation to other regulation relevant for project implementation, it can be concluded that it is the lowest ranked act within the hierarchy of the acts. Therefore, it has to be compliant with the rules of the call for proposals and higher legal framework.

4. GRANT AGREEMENT KEY CONTENT

This chapter will explain key parts of the GA and its appendixes and will demonstrate its importance in implementing projects. The current regulation stipulates that the GA consists of General Conditions and Special Conditions.

The General conditions of the GA are conditions apply to all parties of the individual Grant and are made within Common National Rules adopted by the ministry in charge of EU funding. The General Conditions consist of 7 chapters and 31 articles that stipulate rights and obligations of the all parties.

The list of key chapters of the General Conditions is presented below:

1. General provisions
2. Obligations of the beneficiaries
3. Project implementation period and implementation delay
4. Payments
5. Grant Agreement amendments
6. Liability for damages and the Grant Agreement termination
7. Final provisions

The General conditions of the GA are immutable and they apply the same to all beneficiaries. On the other hand, Special Conditions of the GA are adjusted on project by project base due to the fact they specify in detail the rights and obligations of the individual beneficiary in relation to a specific project.

The paragraphs below present general basic overview of GA chapters.

1. General provisions

General provisions stipulate the legal basis of the GA and also provides the definition of terms. Moreover, this chapter provides means of communication between all parties. The last article within the chapter proscribes access to information and protection of personal data.

2. Obligations of the beneficiaries

This section provides articles that define all obligations of beneficiaries within project implementation. It defines rules of procurement, visibility, ownership and sustainability of the project as well as reports that need to be submitted during and after project implementation.

3. Project implementation period and implementation delay

This chapter provides basic rules related to the project implementation period. Also, it provides rules when the delay of the implementation of the project occurs due to unforeseen circumstances.

4. Payments

This chapter regulates costs that are (in)eligible for funding and which reimbursement method beneficiaries select. It also regulates all the reports beneficiaries are obliged to submit related to financial reimbursements. Within the number of articles, the article on requests for reimbursement is one of the most important ones as it directly influences the absorption. Request for reimbursement is the most important report covering both the financial and operational part of the project implementation between beneficiaries and IB2. This chapter also covers rules regarding advance payment, accounting, refunds.

5. Grant Agreement amendments

The chapter on Grant Agreement amendments provides basic for amending the GA consisting of specific set of conditions that need to be met specifically by the beneficiary in order to be able to request the GA amendment. It needs to be said that

both parties have right to amend the agreement in specific situations identified by these rules.

6. Liability for damages and the Grant Agreement termination

Liability for damages and the Grant Agreement termination prescribe liability of beneficiary and the bodies of management and control system. It needs to be said that bodies of the management and control system are in a better position than beneficiaries because they are liable only for damages done intentionally or through gross negligence, while beneficiaries are liable due professional care.

7. Final provisions

Within this chapter the issue of applicable law and language, acting in good faith and mutual cooperation, co-financing of projects with funds of the European Investment Bank, and simplified financing possibilities are regulated.

When it comes to Special Conditions of the GA, they are used to regulate the General Conditions more closely by inserting individual provisions for beneficiary's project implementation based on the submitted and evaluated projects.

The Special Conditions part of the GA usually consist of 13 chapters as following:

1. Name of the beneficiary, intermediate body level 1, intermediate body level 2
2. Purpose of the Special conditions
3. Project implementation with project implementation period, period of eligibility of expenditure
4. Grant amount, percentage of funding and payment arrangements
5. Project sustainability and audit trail
6. Project partners
7. Ineligible expenses
8. Measures to ensure information, communication and visibility
9. Project management and contract transfer
10. Other conditions
11. Communication of all grant parties
12. Provisions on applicable law and settlement of disputes arising from the Agreement
13. Attachments (more on the attachments will be described afterwards)

Important to note is that in the Special Conditions for the first time the project reference number that is dedicated to the specific project and serves as an identifier is inserted. This number is used in project implementation when beneficiary is communicating with IB1 and IB2.

It is important to emphasize that in the case of disagreement of provisions of General Conditions and Special Conditions, provisions of Special Conditions are prioritized.

Appendixes are an integral part of the GA as they complement General Conditions and Special Conditions of the GA. The most important part of the appendixes is project

description and project budget, while other parts regulate project reports, procurement regulation, financial corrections as well as other project relevant issues. In this regard, project implementation documentation as a crucial part of the appendixes has a great significance for every beneficiary, because it provides a template for request for reimbursements which are the key reports in project implementation.

5. KEY RIGHTS AND OBLIGATIONS OF PARTIES

This chapter will provide insight into rights and obligations of all parties that are regulated within the GA.

When it comes to rights and obligations of beneficiaries they can be divided in two categories:

1. First category is the right of the beneficiary to be provided an EU funded grant for their project. This is the key right and motivational point and the reason of every beneficiary to submit its project to the process of project application and evaluation.
2. Second category is beneficiaries' obligation to implement the project in compliance to the conditions of the GA. Obligations of the beneficiaries are cumulative and beneficiary meets them throughout the implementation of the project. These obligations are the sole responsibility of the beneficiary itself.

Rights and obligations are intertwined. An example for this is the request for the reimbursement. Beneficiary must fill in the request after the end of each quarter of the project implementation and after the project end date. There is a 15-day window to fulfill this obligation when request is filled quarterly and 30-day window for the final request. If the beneficiary doesn't fulfill his obligations on these matter, IB2 will send him a note with 8-day window to fulfill it. If the beneficiary does not comply, IB2 has right to terminate the GA and request a complete refund from the beneficiary.

Beneficiaries also have an obligation to procure goods, works and services throughout their project and then need to be compliant to the Public Procurement Act or special rules for non-obligors of public procurement law if the beneficiary is a private body.

Furthermore, one of the more important obligations within project implementation is the visibility of EU financing which is prescribed by the General conditions of the GA and set of rules by individual operational program. All goods, service and works that are acquired within EU funded projects must have a clear visual designation of EU financing. If the beneficiary does not oblige this rules, IB2 can request a refund for the works, goods or services for which visibility rules were not in place.

To conclude, every beneficiary of the EU funds has a right to obtain a grant for the projects he implements. When he receives the grant, he signs the GA which gives him the right to implement the project. His right will only be achieved when he completes the project and its activities, objectives and results, as well as fulfills all obligations regarding

public procurement and project reporting.

Management and control system is the other party of the GA. Their main responsibility is to monitor project implementation by assessing and adopting requests for reimbursement that the grant beneficiary must submit due to the rules of the GA. There are two intermediate bodies, IB2 with its role of administrative control of all documentation beneficiary provides through request for the reimbursement, and IB1 that approves payments. Both bodies have 30 days each to meet deadlines, IB2 for control of the documentation, and IB1 for payment.

Intermediate bodies also have an obligation of ex-ante and ex-post control of public procurement procedures conducted within projects. Ex-ante control is necessary for such procurement procedures within project that are identified as risky according to a specific formula stipulated in the Common National Procedures, while ex-post control is conducted for all procurement procedures during project implementation after their completion.

Taking into account the controls performed by the intermediate bodies, both bodies have obligation to control whether the beneficiary is compliant to the provision of the GA. Furthermore, IBs are the ones who decide upon the requests for amendments of the GA that are submitted by the beneficiary.

Relations between parties within the GA start on the day of the signature of the GA as it is the day the GA comes into force. As this is the tripartite agreement, the date of signature of the last party of the Agreement is taken as the beginning of their relations. After the GA is signed by the last party, intermediate bodies are obliged to inform the beneficiary about the contact person for all the period of project implementation. Usually this is done by e-mail or via platform eFondovi (<https://efondovi.mrrfeu.hr>) dependent of the Operational plan within which the grant was allocated to the beneficiary.

All communication from the side of the beneficiary is done by the person identified as the contact person. He is responsible to deliver all reports stipulated by the GA to intermediate bodies, and intermediate bodies will inform him on any subject regarding project implementation.

6. AMENDMENTS OF THE GRANT AGREEMENT RELATED TO THE PROJECT IMPLEMENTATION STATUS

The GA with its General and Special conditions specify the conditions to be met for the purpose of amending the GA. One of the most important requirements is that a justified reason for amendments is provided by the beneficiary.

Furthermore, any modification of the project that would lead to beneficiary or partners' ineligibility, project ineligibility, or that could change the results of the evaluation process is not acceptable. Also, the principle of equal treatment must not be violated.

Modifications that are acceptable are ones in regards of changes in project activities, changes in project partners and changes in the budget. Modifications regarding project activities (introducing new or modifying existing) shall be eligible if the following conditions are cumulatively met:

1. The changes are due to the unforeseen circumstances,
2. If not amended, GA would have encountered implementation difficulties,
3. Amendments will not lead to increase in the total amount of the grant.

The GA prescribes two possibilities of grant amendments; first there is amendment of minor importance and secondly there is amendment that requires an annex of the GA.

Amendments of minor importance are usually ones related to minor budget shifts, minor changes in activities and have no significant effect on project implementation. The main precondition for such amendments is that they are not requiring the amendments of the GA provisions. The obligation of the beneficiary is to inform the IB2 about these amendments of minor importance and can carry out implementation of the project without hindrance. Amendments that require annex of the GA are the ones that have a serious impact on implementation of the project. Some of the examples are major budget shifts, changes in project duration or amendments necessary due to beneficiary not fulfilling project indicators. For these amendments to be accepted, both intermediate bodies must come to a conclusion and agreement on the subject matter and the explanation provided by the beneficiary and annex of the GA must be signed. Beneficiary cannot apply amendments or continue project implementation according to the requested amendments before the annex is signed, so there is a possibility that project will come to a stall. Therefore, amendments that lead to the annex of the GA must be well planned.

Intermediate bodies must act according to General conditions of the GA when dealing with decisions about drafting the annex of the GA. IB2 has 20 days to decide on the request of the beneficiary. It may request additional information from the beneficiary and in that case the time it takes for the beneficiary to respond does not count in the 20 days mentioned earlier. When IB2 makes a decision, it has 5 days to inform IB1 about it. Then IB1 has 20 days to make a decision and 5 days to inform the IB2. After the decision has been made and if it's a positive one, grant beneficiary has 15 days to sign the annex. In conclusion, to request for an annex, beneficiary must be prepared that the procedure can take up to 65 days. Therefore, it would be reasonable not to go into process of annex if the project is coming to an end.

7. PROBLEMS WITH THE IMPLEMENTATION OF THE GRANT AGREEMENT PROVISIONS IN PRACTICE AND RECOMMENDATIONS FOR IMPROVEMENT

Even though the implementation of the GA has its sources in the project preparation phase, the main issues derive from the project implementation itself and its relation to the provisions of the GA.

The most important issues in the GA itself refer to the following aspects:

1. Preparation and implementation of procurement procedures

One of the biggest problems for beneficiaries in project implementation are related to public procurement procedures due to many reasons. The first one is related to project planning phase during which the beneficiary needs to identify the procurement procedures that will be prepared and implemented within the project as well as identify its duration. A common issue during this phase is that beneficiaries (e.g. applicants) estimate the duration according to the provisions of The Procurement Act, however the estimated timeframe frequently doesn't include appeal procedures as well as the timeframe necessary for processing a large number of bids an accompanying documentation which is why in implementation phase amendments of the GA are necessary, but not always allowed by the IBs. In case of a mistake made by the beneficiary, such interpretation by the IBs could be just only if the prior project evaluation procedure was not conducted by the same IBs. Therefore, the GA should include provisions that would introduce liability of the IBs in the evaluation procedure (for example, if they gave a positive evaluation of a project and its content as well as timeframe) and relate them to the possibility of amendments when duration of public procurement is at stake. This would, on one side, improve the quality of evaluation and, on the other, decrease the number of adopted projects where the initial timeframe is not in accordance to regulations and procedures.

2. Opposed opinions of different bodies within the monitoring and control system in regard of the irregularities in project implementation and lack of liability in case of mistakes

Irregularities and financial corrections represent the mean of penalization of beneficiaries within project implementation if their conduct is not in line with GA provisions. Rules on irregularities and financial corrections are a part of GA and are being implemented by the IBs. The Rules stipulate a list of irregularities as well as accompanied financial corrections for each project implementation segment and phase whereas the financial correction derive from 5 do 100% depending on the identified irregularity.

Decisions on irregularities are made by the IBs within the process of control of project reports issued by beneficiaries. The beneficiaries deliver their reports and accompanying documentation to IB2 whereas IB2 determines whether they are compliant to the provision of the GA and Rules on irregularities. Should a possibility of irregularity arise,

IB2 has the following options: to claim that an irregularity was committed and issue a decision about the financial correction or to issue a document stating that there is a possibility of irregularity whereas then the IB1 is obliged to make the decision. In both cases, if the decision on irregularity is adopted by the IBs a financial correction is assigned and a percentage of project cost is denied. The GA doesn't stipulate a mean of appeal, but the beneficiaries usually issue complaints towards the governing body. The duration of decision-making in case of such a complaint is stipulated by the GA, but often not respected by the governing body placing the beneficiary in an unfavorable situation.

Furthermore, the decision on irregularities can be made by an independent audit body that is actually in charge of controlling the compliance of the control and monitoring systems. In case an audit concludes that the system has made a mistake (f.e. not identifying an irregularity), they can issue a decision even after the project has been completed and all payments made. In such cases, the decision on irregularities is final and the beneficiary can challenge it only in court which a long lasting and expensive procedure.

This is a specific situation where the bodies within the monitoring and control system and independent audit have different legal opinions on one legal matter and they interpret the legal framework differently which is placing the beneficiary in a very unfavorable position and is creating a legal loophole within the EU funding framework. A common situation is that the IBs interpret the provisions of GA and Rules on irregularities different then the governing body which is their superior.

For that purpose, liability of the control and monitoring system should be inserted in the GA, however the number of controls should be decreased and simplified, especially in the field of administrative and financial aspects and focus should be put on fulfillment of project objectives and results.

3. Delays in processing of beneficiaries' reports,

Due to lack of capacity, IBs often breaches deadlines stipulated in the GA, meaning the publication of calls or, within project implementation, adoption of reports and paying is delayed, sometimes over 6 months, which has a negative impact on the project implementation as well as the cash flow of the particular projects. Even though the GA has stipulated exact deadlines for all parties, a solution to this issue has not been found neither are IBs sanctioned for such breaches of contract. On the other side, if the beneficiary is late with reporting, the GA stipulates a possibility of contract termination on behalf of IBs.

The provisions of the GA should be amended in a way that introduces the liability of the control and monitoring system, as well as the possibility to provide compensation in case the paying deadlines are breached without pressuring the beneficiary to request compensation vis court proceedings.

As far as other possible amendments of the GA are concerned, additional ones should be adopted in regard of the following:

1. Liability of the management and control system during evaluation phase.

Namely, if the system evaluated and approves a project, it is believed that the project is completely in line with the regulation published within the call for proposals and that the project is feasible. If during implementation there is an issue with feasibility and timeframe, the responsibility should not be carried only by the beneficiary, but also by the monitoring and control system that evaluated and approved such a project. Such liability would improve the evaluation process and its quality and the IBs would have to understand the project much better and approve only the ones that are actually feasible according to the original proposal thus eliminating a number of problems during the implementation phase.

2. Liability of all parties for breaching deadlines should be introduced in order to foster project evaluation as well as implementation.

3. Decreasing the number of conditions that beneficiaries need to fulfill in order to amend the main GA.

As mentioned before, there are four conditions beneficiaries need to fulfill when requesting the amendments of the GA. Not only this contractual provision places them in an unequal position towards IBs that actually decide upon each request, but it complicates the implementation. The first condition requires that the amendments be due to unforeseen circumstances that occurred after the conclusion of the GA. This condition needs to be abolished or the notion of unpredictable circumstances needs to be more clearly defined, because in this form their action in the GA is unnecessary. Namely, it is clear that the beneficiary will request an amendment to the GA if he is unable to fulfill his contractual obligations due to new circumstances. If the beneficiary could not fulfill the contractual obligations due to circumstances he could have foreseen, it is necessary to introduce provisions that will devise mechanisms for acting and accepting amendments, especially considering that all circumstances occur after signing the GA, after the management and control system evaluated the project application and determined that the project was feasible.

In a situation where the project has already been adopted and GA signed, it is necessary to introduce a higher level of flexibility in order to establish the conditions for the successful completion of the project in critical situations.

Also, introducing monitoring and control system responsibility in the award process through more efficient implementation of the project evaluation phase would provide funding for feasible projects and reduce the number of poorly prepared and unfeasible projects, which is the EU's goal.

The second condition requests that amendments are necessary for the proper implementation of the GA should be excluded because most amendments are not necessary for the implementation of the GA, but contribute to the achievement of project results and objectives, which is the primary goal of beneficiaries, monitoring and control system and EU.

The third condition requires that no contracting party is responsible for the circumstances that led to the need to amend is a condition that should be abolished because it is very difficult to prove that neither party is responsible for the circumstances that led to the need to amend the GA.

In regard of the fourth condition, the GA should retain provisions that do not allow an amendment to the GA that alters the outcome of the grant award procedure. Most of the other conditions should be abolished and the consideration of the request for amendments of the GA should be studied expertly on a case-by-case basis, as it seems now, only with an unnecessary burden on the four mentioned conditions.

4. Reducing the number of checks/controls and shortening deadlines for processing reports and other requests set by beneficiaries.

Congestion of the monitoring and control system occurs due to the large number of controls that need to be carried out. As stated in the previous chapters, the beneficiary is obliged to submit a report for each quarter of the project implementation, and the bodies in the management and control system have a limited number of days to process and make a decision on the acceptance of expenditures.

Due to the large number of projects in progress, there is congestion in the management and control system and it does not comply with the provisions of the GA regarding deadlines, but without any sanctions. This is one of the reasons for the poor results of the Republic of Croatia when it comes to the amount of disbursed funds.

If reporting were done semi-annually in terms of progress reports and annually in terms of receivables for paid expenses, with the introduction of higher advances, congestion of management and control system would be less, payments would be made faster and more efficiently, and this would positively affect the rate disbursement of EU funds.

The focus should be on project achievements, not on financial-administrative issues. By introducing the obligation to prepare audit reports at the end of project implementation, certified auditors would check the legality of implementation in financial and administrative terms, as is done in projects funded by EU programs, which would allow Ministry of Regional Development and EU Finding in the function of coordination body to abolish financial and administrative aspects of reports. In this sense, management and control system and beneficiaries would be relieved and it would be possible to focus on project achievements.

On the other hand, non-compliance with the provisions of the GA and the regulations that make up the implementation framework should be punished more severely so that beneficiaries, who are more subject to less rigorous controls during the project implementation phase, are aware that EU budget funds should be used, prescribed by law. This applies in particular to irregularities in the implementation of public procurement procedures.

5. Abolition of the two-stage decision-making level

Within the management and control system itself, it is necessary to abolish the two-tier level of decision-making (IB1 and IB2) and reduce everything to one level and a smaller number of decision-making bodies. This will increase the efficiency of management and control system, speed up procedures, approve expenditures and make payments.

At the same time, it is necessary to develop management and control system to strengthen the control of project achievements, because they represent the meaning of EU funding as they contribute to the achievement of public policy objectives at EU and national level.

8. CONCLUSION

This paper presents the importance of the GA in the implementation of projects financed by EU grants, as well as its importance in improving the use of ESIF in Croatia in the next financial perspective (2021 – 2027).

An overview of key provisions prescribing the obligations of contracting parties and examples of implementation of these provisions on specific projects implemented in Croatia in this financial perspective, show that the beneficiary is a weaker contracting party because, on the one hand bears full responsibility for project failure and on the other hand, the possibilities of amending the contractual provisions are difficult and dependent on the decision of the management and control system.

As can be seen from the above examples, the rigidity of the provisions of the GA negatively affects the implementation of projects that operate in the real environment and with the realization of a number of risks for which the beneficiary is not fully responsible the use of more flexible instruments, while respecting hierarchically superior regulations and the provisions of the call for grants should be in place.

The capacity of the management and control system and beneficiaries to interpret the provisions of the GA is of the main importance for making better use of the ESIF as one of the fundamental instruments for economic growth, and the importance of establishing a culture of compliance, mandatory law principles and, in particular, principle *pacta sunt servanda*.

Improving the provisions of the GA must be linked to changes to the Common National Rules, which should certainly be published in full, as this will strengthen the capacity of beneficiaries, but will also ensure better control of management and control system. Examples of good practice are the procedures established by the EC in EU programs that Croatia can partially take over and adapt to its needs.

If the Ministry of Regional Development and EU Funds, as the coordinating body responsible for preparing the strategic, institutional and legislative framework for the use

of ESIF in the next financial perspective, considers the recommendations for improving contractual provisions, it can significantly contribute to improving project implementation and thus ESIF utilization rate. which will be extremely important for the citizens of Croatia.

9. LIST OF ABBREVIATIONS

| | |
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| CNR | Common National Regulation |
| ESIF | European Structural and Investment Funds |
| GA | Grant Agreement |
| IB1 | Intermediate body 1 |
| IB2 | Intermediate body 1 |

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5. Common National Regulation, Operative Program Competitiveness and Cohesion 2014 – 2020, V3.3, General and Specific conditions of the GA, Ministry of Regional Development and EU funds, <https://www.strukturnifondovi.hr>, 2018