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1. Preliminary remarks

Through financing arrangements, GIZ makes funding available to recipients, tied to a specific purpose, to help them carry out certain measures under their own responsibility. GIZ uses different types of agreements for this purpose, depending on the recipient (financing agreement, grant agreement, subsidy agreement, local subsidy).

Before any financing agreement, grant agreement, subsidy agreement or local subsidy (financing arrangement) can be issued, a check must be conducted to determine whether a potential recipient is eligible. GIZ's commercial and legal eligibility check is based on predefined criteria. GIZ examines whether the potential recipient is commercially, administratively and legally qualified to assume responsibility for implementing the measure or whether the potential recipient is not yet sufficiently qualified to do so.

The legal check is primarily designed to ensure compliance with public-benefit legislation. It is a mandatory component of financing agreements and is required and examined as part of the GIZ company audit.

2. People involved in the eligibility checking process

The officer responsible for the commission or cost centre uses the commercial and legal eligibility check to conduct an assessment of the organisational, financial and administrative capacity of the potential recipient to process a financing, grant or subsidy agreement in the correct manner.

All financing, grant, subsidy or local subsidy agreements are preceded by an eligibility check and must be approved in advance (plausibility check) by the unit responsible for drafting the agreement (the Procurement and Contracting Division or the country office).

When conducting commercial and legal eligibility checks, the officer responsible for the commission/cost centre of the project can request advice and support from commercial staff at the GIZ country office or – particularly for large contracts – engage the services of a national/international auditor. Under no circumstances may the potential recipient be involved in the checks.

3. Eligibility criteria

The following criteria are part of the eligibility check and must be examined. Additional criteria may be added at any time and must also be documented. The content matter of the commercial and legal eligibility check must not conflict with the legislation applicable for the recipient of financing.

3.1 Sanctions list check

Background

In the context of the German Government's foreign trade controls, as well as those of the EU and others, regulations have been put in place which are intended, among other things, to prevent the financing of terrorist organisations, to prevent conflict or to assert political demands. This is achieved, among other things, by the EU directives on combating terrorism, the German Foreign Trade and Payments Act and special embargo directives on specific goods.

GIZ is therefore obliged under European and German law to check sanctions lists relevant to its own commissions and financial transactions, act in line with the embargo directives of the German Government and others, and not to contravene these regulations. The rationale of these regulations is to prevent terrorists from receiving any financing, either directly or indirectly.

What needs to be examined as part of the commercial and legal eligibility check?

People involved in the eligibility checking process shall conduct a manual sanctions list check in accordance with P+R (Rule 517).

Assessing the findings of the check

If the check reveals a match on the sanctions list, i.e. there is a suspicion that the potential recipient is on the sanctions list,

- the IT system will generate a notification and temporarily block any further action where you have run an automatic check.
- you may not take any further steps towards concluding a contract where you have run a manual check.

In both cases, please notify the appropriate [contact](#) by email so that the transaction can be examined and verified in detail.

Validity of the checking process findings/of the document(s) examined

Repeat the sanctions list check for each contract/agreement.

3.2 Legal personality

Background

The direct recipient of financing must always be a corporation (legal entity) under private law or a legal person under public law. This can be presumed to be the case if the recipient is legally independent and also has legal competence and capacity to contract. This applies to German and foreign recipients in equal measure. Foreign corporations (legal entities) under private law or legal persons under public law must be examined to determine whether they are comparable with German corporations, i.e. whether the recipient has legal capacity from the standpoint of German law. Partnerships or associations that do not have legal capacity cannot be taken into consideration as direct recipients of financing, even if they sometimes act as executing agencies for public-benefit projects. Under certain exceptional circumstances, natural persons can be recipients of financing.

Consequently, it is necessary to determine whether the potential recipient of financing is a legal person. In case of doubt, GIZ must be able to submit corresponding evidence to the German tax authorities. The evidence may take a variety of different forms. What counts, however, is that the legal personality is plausibly and credibly proven.

For example: Deutsche Post AG is a legal entity based in Bonn. Its many branches are not independent legal entities. In the case of domestic (German) corporations (legal entities) under private law, this information is published at the bottom of the homepage (under *Impressum*) on every website.

What needs to be examined as part of the commercial and legal eligibility check?

1. **Legal form:** Confirmation of the legal independence of the contractual partner must be submitted.

- a. Domestic (German) corporation (legal entity) or legal person under public law: Both corporations under private law (such as registered associations (e.V.), foundations, limited companies of public utility (gGmbH), etc.) and legal persons under public law are considered as German corporations. Legal persons under public law are public bodies, public institutions and public foundations. Corporations under public law may include national and sub-national authorities (such as the German Federal Government, the German federal states (Länder), districts and municipalities), Chambers of Commerce and Industry, Chambers of Skilled Crafts or universities. As a rule, the legal personality of each corporation or legal person under public law is confirmed by an excerpt from the commercial register or the valid statutes. In case of doubt or if the information supplied is inadequate, it is possible to consult excerpts from the commercial register (fees may be chargeable) (Registerportal: handelsregister.de).

No separate documentary evidence is required for public bodies.

- b. Non-German legal persons: Excerpts from the commercial register, statutes or articles of association are accepted as evidence, although other types of evidence are admissible depending on the respective country's legal regulations, and may be used as documentary evidence. Examples include laws, certificates of incorporation, information on registration, decrees and possibly also tax registration numbers. Where regulations differ due to customary practices, GIZ may need to ask for an excerpt from the relevant statutory regulation. In addition, the tax office may request for a German translation to be provided. It is also necessary to confirm that multilateral organisations constitute a legal person.

- c. Ministries - a special case: Ministries, or their subordinate authorities or other state institutions in the partner country, frequently constitute potential recipients of financing, especially in the case of a financing agreement with a project's lead executing agency. In this context, it should always be ensured that these potential recipients have a permanent mandate or at least a temporary one of sufficient duration to cover the project term. However, ministries themselves frequently do not have legal capacity. They are backed, though, by the government bodies of the given state, which is a legal personality (in that case, the correct contractual partner would be: 'Government of [...], represented by the Ministry of [...]'). In case of doubt, or if the ministry or state institution is completely unknown as yet, GIZ must ask for evidence of the legal status of the potential recipient. The legal personality of a state institution in the partner country may also be evidenced by means of (implementing) legislation or a relevant decree.

- d. Natural persons - an exception to the rule: By way of exception and depending on the project design, natural persons in the partner country may be taken into consideration as potential recipients within the scope of a financing arrangement. Their identity must be confirmed by viewing an identity card, passport or equivalent document (e.g. a birth certificate). In close observance of the principle of data minimisation, only the individual's family name, given name, address, place and date of birth and citizenship may be entered, with the note 'Copy of identity card viewed on DD.MM.YYYY by [****],' and included in the

documentation in order to comply with the obligations to provide documentary evidence.

- e. Final recipient/Sub-Grantee (who receives funds from the recipient): They, too, must have a verifiable independent legal personality. Otherwise it would not be possible to enforce the contractual duties that the direct recipient must also fulfil vis-à-vis the recipients who receive the forwarded funds. Especially outside of Germany and depending on the project design, natural persons can be indirect recipients of financing; for example one-person businesses or start-ups in a developing country that are in need of support. The same obligations to provide documentary evidence as for direct recipients of financing apply (see 3.2 a-d).
- f. UN organisations and contractual partners that belong to the World Bank Group are exceptions to the above rules. In these cases GIZ does not require the documents set out since these organisations are generally recognised as legal personalities.

Assessing the findings of the check

The appropriate agreement, i.e. financing agreement, grant agreement or subsidy agreement or a local subsidy agreement generally will depend on the recipient.

Local subsidies can be granted to natural and legal persons in the partner country that are in need of additional funds (e.g. start-up financing for one-person businesses, scholarships) and/or that do not have the necessary administrative and commercial structures for proper handling of the subsidy and therefore require support from GIZ in this respect (case-by-case examination or evidence required). (This is classed for legal purposes as a direct contribution. According to public-benefit regulations, local subsidies generally fall under section 57 (1) sentence 1 of the German Fiscal Code (GIZ itself directly achieving tax-privileged purposes) rather than section 58 of the Fiscal Code, since the recipient is 'intrinsically in need').

Financing agreements, grant agreements and subsidy agreements, on the other hand, are in principle only granted to legal persons (case-by-case examination or evidence required).
One of the above documents must have been submitted.

No agreement can be entered into unless the documents are submitted (see above for exception in the case of UN organisations and the World Bank Group).

Validity of the checking process findings/of the document(s) examined

Documentary evidence must be up-to-date. The documents remain valid for up to 12 months after receipt of proof (if no new/updated documents are provided).

3.3 Public-benefit status

Background

In case of financing for projects within its public-benefit business area, GIZ must comply with specific public-benefit legislation. As a general rule, each of these financing arrangements must intend to promote development cooperation or international education work. In addition, they must serve the interest of the general public and not primarily serve profit-making interests, for example those of commercial enterprises. If the purpose of the project does not come under the objectives laid out in GIZ's Articles of Association, it

must be allocated to GIZ's taxable business area International Services (InS).¹

Detailed guidelines on applying public-benefit legislation to determine the correct allocation of commissions awarded to GIZ to finance development measures can be found in [P+R](#).

What needs to be examined as part of the commercial and legal eligibility check:

In accordance with the provisions of German public-benefit legislation, a distinction must be made between the direct recipient and the indirect recipient, who receives the funds from the direct recipient (whereby public-benefit rules must be complied with even when the direct recipient passes on the funds):

1. Domestic (German) corporation (legal entity) or legal person under public law

- a) A domestic (German) corporation (legal entity) under private law can only be the recipient of a financing if it has a public-benefit status itself as evidenced by its statutes and according to its actual management, i.e. if it exclusively and directly serves public-benefit purposes. At the time of granting the financing, GIZ must be convinced that the recipient qualifies as a public-benefit corporation (legal entity). A current certificate of exemption/corporation tax assessment, the assessment notice or a provisional certificate of exemption (a copy suffices in each case) issued by the responsible tax office may serve as proof. In case of doubt or if the information supplied is inadequate, it is possible to consult excerpts from the commercial register (fees may be chargeable) (Registerportal: handelsregister.de).
- b) German legal persons under public law may also be recipients of financing.
- c) The recipient (irrespective of whether it is a German corporation (legal entity) under private law or a German legal person under public law) must use the funds for public-benefit purposes. Prior to entering into the agreement, project descriptions in particular serve as documentary evidence (as well as the statutes or the articles of association). Once the agreement has been signed, project reports serve as evidence.
- d) At present, only InS can implement a financing arrangement with a German commercial (non-public-benefit) corporation under private law. In such cases, it is also imperative to comply with the EU state aid rules. In case of doubt, consult the Legal Affairs and Insurance Unit.
- e) The assessment of 'limited tax liability' is not required for recipients based in Germany.

2. Foreign recipients of financing

- a) Outside of Germany, a public-benefit body, a commercial corporation (legal entity) or a legal person under local law can be a recipient of financing.

However, financing of **foreign corporations (legal entities) under private law** that are subject to **limited tax liability** in Germany (irrespective of their legal form) and have their **registered office in the EU/EEA** can only be implemented in the public-benefit business area if they are recognised as public-benefit by the German tax authorities. As is the case for public-benefit German corporations (legal entities), current certificate of

¹In these cases, the assessment of the public-benefit status including the assessment of the "limited tax liability" of the recipient does not apply (however, state aid law must be observed).

exemption/corporation tax assessment, the assessment notice or a provisional certificate of exemption (a copy suffices in each case) issued by the responsible tax office may serve as proof. In this respect, all foreign corporations (legal entities) that have their registered office in the EU/EEA must first be examined to determine whether they are subject to limited tax liability in Germany. Foreign corporations (legal entities) are subject to limited tax liability in Germany if they generate a taxable income in Germany (cf. Article 49 German Income Tax Act).

When financing **has been granted to foreign corporations (legal entities) under private law** that are subject to **limited tax liability** in Germany and **do not have their registered office in the EU/EEA**, no recognition of public-benefit status by the German tax authorities is required.

In the case of **foreign corporations (legal entities) under private law that are not subject to limited tax liability** in Germany, the financing may be implemented in the public-benefit business area as long as the project content fulfils the requirements of German public-benefit law (see next section).

The crucial factor is that the recipient's actual activity, i.e. the foreign corporation's (legal entity's) project that is being specifically promoted, is in accordance with GIZ's public-benefit corporate purpose. One indication can be seen in the statutes of the corporation (legal entity), i.e., if it is itself a public-benefit organisation under local law. The project must in any case be geared to realising non-benefit purposes. The actual content of the project and the agreement are decisive in this context.

Examples of inadmissible use of the funds would be where the main objective of the agreement is to position the company on the market or to generate an economic advantage.

Thus, financing arrangements with commercial enterprises based outside of Germany must be examined very carefully. For example, financing may generally be provided to small enterprises in the partner country that are classed as 'in need of support' and with which GIZ intends to pursue general development goals or environmental policy objectives that also promote the structural development of the partner country (e.g. a subsidy for a business start-up to create jobs, or a subsidy for an agricultural cooperative to safeguard the livelihoods of the farmers who make up the cooperative). It should therefore be noted that if the individual interests of companies or traders are mainly being promoted, this does not constitute promoting public welfare and rules out the existence of public-benefit purposes from the outset.

- b) **Obligations to provide documentary evidence** are more stringent when financing is awarded to foreign corporations (legal entities). Before entering into the agreement, the statutes and the specific project description must be provided, and after entering into the agreement, proof of use of funds and reports both from the recipient and from an auditor must be submitted (if an external audit was contractually agreed upon). In the final analysis, GIZ must satisfy itself that the funds are being used for public-benefit purposes.
- c) Financing arrangements with state institutions in a developing country usually pose no problems in this respect, especially if the recipient is the political partner, a ministry or one of its subordinate authorities.
- d) Nor are there usually any problems in connection with project-related financing arrange-

ments with a multilateral organisation in the field of development cooperation (a UN organisation, the World Bank, etc.).²

- e) For foreign commercial recipients, it is also mandatory to check compliance with the provisions of the **EU rules on state aid** (in case of doubt, consult the Legal Affairs and Insurance Unit) if the foreign commercial recipient of a financing arrangement (1) has a registered office in the EU/EEA, or (2) has a registered office in the partner country but has shareholders or sales markets in the EU/EEA.

- 3. **Natural persons:** If a natural person is the recipient of financing, it must be verified whether GIZ is directly realising its public-benefit purposes by means of this financing. The assessment of 'limited tax liability' is not required for natural persons.

Check for and confirm compliance with the above legal provisions governing public-benefit status with the scope of the commercial and legal eligibility checks.

Assessing the findings of the check:

If the preconditions for complying with public-benefit legislation are not met, the only option is for InS to implement the financing agreement.

Validity of the checking process findings/of the document(s) examined:

Documentary evidence must be up-to-date. The documents remain valid for up to 12 months after receipt of proof (if no new/updated documents are provided).

Carry out an in-depth public-benefit appraisal for every individual agreement with commercial corporations (legal entities) or commercial legal persons under public law. In the case of projects implemented in GIZ's public-benefit business area, always confirm the public-benefit nature of such financing arrangements before entering into an agreement.

(Detailed guidelines on applying public-benefit legislation to determine the correct allocation of commissions awarded to GIZ to finance development measures can be found in [P+R](#))

3.4 Accounting

Background

All potential recipients must keep accounts. The bookkeeping system should make it possible for an expert third party to gain an overview of the recipient's business transactions and financial situation within a reasonable amount of time. It should be checked whether an appropriate bookkeeping system exists and is used by qualified staff.

Exceptions can be made for special agreements with UN organisations and contractual partners from the World Bank Group, where no GIZ accounting/audit regulations apply.

What needs to be examined as part of the commercial and legal eligibility check?

- 1. **Local subsidies:** At the very minimum, a record of income and expenditure must be kept.

²The assessment of 'limited tax liability' may be waived for recipients which are multilateral organisations in the field of development cooperation (UN organisations the World Bank) as well as exclusive state institutions (states, governments, ministries).

2. Financing agreements, grant agreements and subsidy agreements:

- a) At the very minimum, a record of income and expenditure must be kept for contract values of up to EUR 50,000. As documentary evidence, the potential recipient should submit screenshots of the Excel tool used. In addition, the potential recipient must ensure that the personnel employed can ensure the correct settlement of funds.
 - b) Contract values exceeding EUR 50,000.01 require the use of a software-assisted accounting system (e.g. SAP, Winpaccs, etc.) operated by qualified staff.
 - c) As a minimum requirement, the accounting system must meet national standards and comply with national legislation. This appraisal should be carried out by the GIZ country office, if necessary. In general, the potential recipient must confirm that it complies with nationally established standards.
 - d) Properly drawn up annual financial statements must be submitted in accordance with national standards. If these are not available, the potential recipient must submit its annual turnover/implemented budget. The potential recipient must state whether the annual financial statement is subject to a statutory audit. If so, the most recently audited statement must be submitted together with the auditor's opinion and attached to the document.
3. In general, check whether the recipient has an electronic or manual timesheet system that can be audited; i.e. to see whether it is possible to allocate the hours worked to various projects.

Assessing the findings of the check

If no such accounting system is in place, one must be introduced. If this is not possible, no financing agreement may be entered into with the potential recipient.

If no commercially qualified staff is employed, risk-reduction measures should be taken, see Section 4.2 Risk-reduction measures.

If no verifiable time recording system is in place, the potential recipient must sign a voluntary commitment to install such a system and set up a corresponding system for the individual agreement.

Declaration of voluntary commitment to install a time recording system

'By signing this document, we commit ourselves to installing a manual or electronic time recording system that is used to record the actual number of working hours spent on the project and that presents these hours in verifiable form.'

Validity of the checking process findings/of the document(s) examined

Documentary evidence must be up-to-date. The documents and the voluntary commitment remain valid for up to 12 months after receipt of proof (if no new/updated documents are provided).

3.5 Contract award procedure

Background

When procuring services, construction work and supplies, GIZ is obliged to comply with the relevant contract award rules set out in the German Act against Restraints of Competition (GWB) as well as the legal provisions set out in the German Regulation on the Award of Public Contracts (VgV), the German Contracting Rules for the Award of Public Service Contracts (VOB) and the Regulation on the Award of Public Supply and Service Contracts Below the EU Thresholds (UVgO).

When the financing recipient awards contracts for supplies and services (including advisory services) that are to be wholly or partly funded by the financing arrangement, it must observe the regulations relating to the award of public contracts that are in force in its country or in the country of assignment. Moreover, it must also comply in each case with GIZ's minimum standards for contract awards for procurement in order to ensure a minimum level of competition.

The regulations that apply in the financing recipient's country must always be observed. The contract award procedures stated in GIZ's minimum standards are binding minimum requirements that must be applied, unless nationally applicable law is even more stringent.

What needs to be examined as part of the commercial and legal eligibility check?

As part of the eligibility check, it is examined whether the potential recipient has its own written contract award rules, these rules have been verifiably used for procurements to date, and the contract award rules that apply in the recipient's country have so far been complied with.

Assessing the findings of the check

- a) **Individual agreement/project description provides for the procurement of services and materials and equipment:** The recipient's internal contract award rules must be in line with national legislation. The GIZ's minimum contractual standards must also be known, understood and applied. If there are no internal contract award rules and the potential recipient has no experience in ensuring correct procurement procedure, procurements must be removed from the project description. The procurement must then be handled by GIZ, if necessary.
- b) **Individual agreement/project description provides for the small-scale procurement of services and materials and equipment:** The recipient's internal contract award rules must be in line with national legislation. The GIZ's minimum contractual standards must also be known, understood and applied. If there are no internal contract award rules and the potential recipient has no experience in ensuring correct procurement procedure, the GIZ project and/or the GIZ country office can provide support and advise the recipient on initial contract awards. GIZ will not approve procurements or undertake any other form of 'acceptance'. GIZ support serves to develop the potential recipient's capacities and is intended to enable the potential recipient to handle procurement on its own in the long term.
- c) **Individual agreement/project description does not provide for any procurement of services or materials and equipment:** If there are no internal contract award rules and/or the potential recipient has no experience in ensuring correct procurement procedure, the lack of this eligibility criterion does not mean that the potential recipient will be negatively assessed. If procurements are subsequently included, this eligibility criterion must be reviewed again.

Validity of the checking process findings/of the document(s) examined

The contract award procedure presented remains valid for up to 12 months after receiving the information

(if no new/updated information is provided). The procurement procedure is an eligibility criterion that must be assessed for each individual agreement. The check is based on the project description and the relevant budget.

3.6 Internal and external controls

Background:

An **internal control system** consists of a set of coherent technical and organisational rules for methodical management and in-house checks in order to ensure compliance with guidelines and prevent damage that might be caused by the organisation's own staff or malicious third parties. Measures may be undertaken independently of processes in the form of retrospective checks, for example by the Internal Auditing Unit, or as process-oriented preventive rules.

An internal control system is based on the following principles:

- a) **The principle of transparency:** This principle states that to-be concepts must be established for specific processes. The aim is to make it possible for an external party to judge the extent to which the people involved work in conformity with these concepts. At the same time, this defines management expectations at the respective organisation.
- b) **The cross-check principle:** This principle states that every key procedure in a well-functioning control system can be cross-checked by a second person.
- c) **The principle of separation of functions:** This principle states that executive tasks (e.g. processing purchases), booking tasks (e.g. financial accounting, stock records) and administrative tasks (e.g. stock management) that are carried out as part of a corporate process (e.g. purchasing process seen as a process that extends from determining requirements up to outgoing payments) should not be performed by one and the same person.
- d) **The need to know principle:** This principle states that staff members should only be provided with the information they need to perform their work. This also covers the pertinent security measures for IT systems.

External control is an auditing procedure under which external auditing firms examine quality assurance systems of auditees. External control is not performed by an internal staff member of the potential recipient, but by an external third party.

What needs to be examined as part of the commercial and legal eligibility check?

- It must be established whether internal and external controls are in place within the organisation of the potential recipient. A brief description of these controls should be added and/or a description of how the above principles are put into practice.
- External audits from other donors and auditing bodies should therefore be examined and included in the assessment, as far as possible.

Assessing the findings of the check

- The above principles must be enshrined in the financing agreements, grant agreements and subsidy agreements and applied accordingly.
- For local subsidies and subsidy agreements/grant agreements/financing agreements worth up to EUR 100,000, there is no need for an official control structure, but the cross-check (if the contractual party is not an individual) and transparency principles must be observed by way of minimum standards.

Validity of the checking process findings/of the document(s) examined

The internal and external control systems presented remain valid for up to 12 months after receiving the information (if no new/updated information is provided).

3.7 Previous experience

Background

It must be examined if experience has been gained with each potential recipient. The extent and quality of technical and administrative implementation of previous financing arrangements are examined in this context. The findings of previous external audit reports are the primary means of checking this. If no such findings are available, the Financial Management - Contracts section (FiVa) draws on experience related to the processing of financing arrangements that is relevant for accounting.

What needs to be examined as part of the commercial and legal eligibility check?

To provide prompt feedback on experience of handling GIZ financing arrangements, the following information is required for the written request: **previous contract numbers** (if available); **creditor number**; **complete name and address of recipient**. The result of this check must be passed on to the unit that draws up the agreement before it is entered into.

1. Agreement is signed locally:

- a. Previous experience of handling GIZ financing arrangements:
The responsible GIZ country office must be consulted to determine previous experience of handling locally concluded financing.
- b. No previous experience of handling GIZ financing arrangements:
If the potential recipient has not previously served as a contractual partner of GIZ, there is no need to consult the GIZ country office separately.
If this potential recipient has experience of handling financing arrangements with other donors, the officer responsible for the commission should ask about this and document the findings for the commercial and legal eligibility check, stating the names of the donors and the volume of financing involved.

2. Agreement is signed at Head Office (request to : FiVaKEPinfo@giz.de):

- a. Audits are available:
If GIZ has already commissioned audits of the potential recipient, these must be included in any assessment of the potential recipient's eligibility. Information on previous audit findings can be obtained from the Financial Management – Contracts section (FiVa - FiVaKEPinfo@giz.de). This team has a corresponding list of all audits and their findings.
- b. No audits are available:
If no audits have been carried out, the Financial Management – Contracts section should be consulted about its experience to date with the potential recipient's accounting practices.
- c. No previous experience of handling GIZ financing arrangements:
If the potential recipient has not previously served as a contractual partner of GIZ, there is

no need to send a separate enquiry to the FiVa-KEP mailbox.

If this potential recipient has experience of handling financing arrangements with other donors, the officer responsible for the commission should ask about this and document the findings for the commercial and legal eligibility check, stating the names of the donors and the volume of financing involved.

d. Special contracts with UN organisations and contractual partners from the World Bank Group:

For special contracts (e.g. UN organisations, World Bank Group, etc.), to which GIZ's accounting/audit regulations do not apply, it is not necessary to send an enquiry to the FiVa-KEP mailbox.

Assessing the findings of the check

1. Agreement is signed locally

a. Agreement is signed locally- financing agreements:

The responsible unit at the GIZ country office must be asked about the previous experience with the recipient of handling locally signed financing agreements. (For financing agreements of up to EUR 100,000 and of those exceeding a value of EUR 100,000 the GIZ country office assumes responsibility for the financial processing if the technical and commercial criteria are met, see P+R 223.)

The unit must be asked to assess the following eligibility criteria:

- Timely and complete submission of the evidence of the use of funds and the corresponding vouchers
- Compliance with GIZ's contract award procedure
- Accounting system meets national standards at least.

The country offices classify their feedback in one of the three following categories:

1. positive - no infringement of GIZ regulations and of the above eligibility criteria
2. positive but notification of shortcomings
(for example; incomplete, tardy, incorrect submission of accounting documents)
3. negative (for example: potential recipient refuses to submit vouchers).

b. Agreement is signed locally – local subsidies:

The responsible unit at the GIZ country office must be asked about the previous experience with the recipient of handling local subsidies. The assessment is based on the eligibility criteria that apply to local subsidies (see [Guidelines for Local Subsidies](#)).

The country offices classify their feedback in one of the three following categories:

1. positive - no infringement of GIZ regulations and of the above eligibility criteria
2. positive but notification of shortcomings
(for example; incomplete, tardy, incorrect submission of accounting documents)
3. negative (for example: potential recipient refuses to submit vouchers).

2. Agreement is signed at Head Office:

a. Audit is available:

The Financial Management – Contracts section reports on any findings and recommendations from a financial perspective. In regard to findings from previous audits, the following points will be applied on a case-by-case basis. The following percentages of the pro rata findings result from the volume of audited costs bearing in mind the financial findings from the respective audits, and may provide guidance. An individual decision must be made if more than 5% of the findings apply.

1. Up to 5% of the findings apply – no restrictions on cooperation: positive
2. Between 5.01% and 20% of the findings apply – cooperation possible provided the risk-reduction recommendations in previous audits were acted on.
3. Between 20.01% and 49.9% of the findings apply – cooperation may be possible with a written agreement, prior to signing the financing agreement, that the risk-reduction measures recommended in previous audits will be implemented. Recommendation: The recipient should confirm implementation of the risk-reduction measures to the project and describe them in detail.
4. More than 50% of the findings apply – cooperation cannot be recommended from a financial perspective.

The Financial Management – Contracts section provides information on the risk-reduction recommendations (Section 4.2) from the available audits. These are used to reduce the commercial risks at company level related to future agreements and must be agreed upon between the GIZ project submitting the application and the partner.

b. No audits are available:

If no audits are available related to a specific partner, the Financial Management – Contracts section asks for internal experience related to the processing of financing arrangements, such as the timely and correct submission of documents (lists and copies of vouchers) and provides feedback on the following categories:

1. positive - no infringement of GIZ regulations
2. positive but notification of shortcomings (for example; incomplete, tardy, incorrect submission of accounting documents)
3. negative (for example: potential recipient refuses to submit vouchers).

Validity of the checking process findings/of the document(s) examined

The information remains valid for up to six months after receipt.

3.8 Compliance with the law and anti-corruption

Compliance with the law means that the potential recipient has not broken any laws (as far as is known), for example by evading tax payments or encouraging undeclared work.

Corruption is the misuse of public or private-sector positions of power or influence for private benefit. This may take the form of bribery, dispatch money, embezzlement, nepotism, blackmail, fraud, kickbacks, the exertion of unlawful influence, secret arrangements and insider trading. Anti-corruption covers all activities designed to prevent and combat corruption wherever it occurs.

Compliance with the law and anti-corruption management are a key component of GIZ's compliance management system.

Background

- GIZ has a high level of accountability for the funds it uses. It is bound by applicable national and international legislation. Under the general agreements on technical cooperation, GIZ is also required to observe and comply with the laws in the partner country. Acting in compliance with the law is therefore a guiding principle for GIZ's actions.
- Over and above this, GIZ must ensure as far as possible that potential contractual partners (including potential recipients of financing) also feel bound by the law. These stringent accountability requirements also apply to potential recipients of funds. Therefore, detailed checks are required to determine who is to receive these funds.
- The aim of the commercial and legal eligibility check is to identify any contraventions of the law or corruption risks on the part of the potential recipient, and to consider whether these prevent the conclusion of an agreement with the organisation concerned.

What needs to be examined as part of the commercial and legal eligibility check?

- It should be ascertained whether, over the last five years, the potential recipient, its official bodies and/or an executive manager are known to have broken the law and/or whether allegations of corruption have been raised and whether an appropriate response system is in place.
- This could be checked in the following ways:
 - 1) GIZ research (through the person conducting the commercial and legal eligibility check performs the research):
 - o Firstly internet and media research should be conducted using a search engine, at least in English and the official local language, by institution/organisation and also using various keywords such as 'corruption', 'bribery', 'abuse', 'personal gain' and/or 'fraud' (examine the first page of hits in the different variations). Additionally, it would be appropriate to contact the country director and/or the head of finance and administration to ascertain whether they are aware of anything unusual relating to cooperation with the potential recipient.
 - o Moreover, internet research should be used to check whether the recipient of the financing has a system in place that enables it to respond appropriately to any contravention of the law and/or any cases of corruption, as well as reporting transparently on any such cases (e.g. a whistleblower system, presentation of a compliance and/or anti-corruption system on the website, annual compliance reports with case statistics). Alternatively, this information may also be obtained from the recipient. If you should conclude, after the research work, that no adequate information is available, you must always obtain voluntary information from the recipient (see 2).
 - 2) Voluntary disclosure on the part of the recipient
 - o 'I hereby confirm that no allegations have been made or investigations carried out in the last five years in relation to the organisation, members of its executive bodies or executive managers concerning breaches of the law, corruption or other offences (e.g. fraud, misappropriation, breach of trust). In addition, we confirm that an effective system of preventing and system for preventing and combating corruption is established and consistently implemented.'
 - o If an allegation has been made, the organisation is obliged to demonstrate what steps were taken to investigate the facts of the matter and that an effective corruption prevention and control system is in place and is rigorously implemented.

- o If any investigation is ongoing, the organisation is obliged to present the facts of the matter and what steps - if any - the organisation has already taken as a result.

Please note: Even if the research points to breaches of the law or corruption, this does not automatically rule out the potential recipient.

Assessing the findings of the check:

1. Research and/or voluntary disclosure did not provide any relevant information dating from the past five years. No need for action.
2. Research and/or voluntary disclosure revealed hits from the past five years. However, the potential recipient processed these cases properly or was able to refute the relevant allegations. Obtain a written statement from the potential recipient. If the potential recipient refuses to provide information or does not adequately address these cases, the instructions for action under item 3 below apply.
3. There are current indications that are not yet clarified, or investigations are under way. In these cases, specify the circumstances under which an agreement can be entered into.

Instructions for action

- Clarify the situation. Consult your line manager and, if necessary, the Compliance and Integrity Unit as well as the responsible key account manager, where appropriate.
 - If the agreement is entered into on the responsibility of the operational unit, in spite of the pertinent indications, risk-reduction measures (see for example Section 4.2) should be agreed with the potential recipient to secure the funds and the decision approved by the divisional director.
 - Document the reasons for the decision in the eligibility check and file in an audit-compliant manner.
 - If no assessment is possible, do not conclude an agreement.
4. If the allegations are grave and have been confirmed, do not conclude an agreement until the organisation has proven it has established an effective system for avoiding breaches of the law or for preventing and combating corruption. This includes proof that it applies this system rigorously.

Validity of the checking process findings/of the document(s) examined:

The documentation of the results remains valid for up to 12 months after implementation (if no new/updated information is provided).

3.9 Safeguards + Gender

It is mandatory to check this eligibility criterion:

- for potential recipients of financing (subsidy agreement, grant agreement, financing agreement) within the scope of a project classed as **'high risk'** under the Safeguards+Gender management system, with a volume of financing of **more than EUR 100,000.00** involved.

Background

- Sustainable development is GIZ's guiding principle. GIZ's work is underpinned by the conviction that social responsibility, ecological balance, political participation and economic performance must be interconnected in order to ensure that people can live in safety, security and dignity. A key element of our contribution to sustainable development is the careful assessment of the impacts of our work and the avoidance/mitigation of **possible unintended adverse impacts** on people and other protected resources within the context of our projects.

- GIZ's Safeguards+Gender management system is designed to identify possible unintended adverse impacts of our projects at an early stage, to address them through appropriate **mitigation measures** and to monitor them in the further course of the project. It is an integral part of GIZ's commission management and implements our 'do no harm' standard.
- Relevant provisions in our contract templates pass on these **due diligence requirements** to recipients of financing. In the case of GIZ projects assessed as entailing a **high Safeguards+Gender risk**, we must also satisfy ourselves on the basis of a check, that potential recipients of financing have their own due diligence standards and that they have relevant skills and procedures in place in the Safeguards areas relevant for the project in question. This is why the Safeguards+Gender eligibility criterion is part of the commercial and legal eligibility check.
- The eligibility criterion applies to financing delivered through subsidy agreements, grant agreements and financing agreements. It does not apply to local subsidies and financing arrangements for natural persons. The risks of possible unintended adverse impacts and effective prevention/mitigation measures should be identified and discussed with recipients of local subsidies as part of consultancy/capacity building services.
- The Safeguards+Gender management system defines the safeguards areas to be considered for possible unintended adverse impacts as follows:
 - Environment
 - Climate: Mitigation
 - Climate: Adaptation
 - Conflict and context sensitivity
 - Human rights
 - Gender equality.
- In the context of the Safeguards+Gender management system, the term '**risk**' refers to:
 - the evaluation of how likely it is that a project will bring about unintended adverse impacts, and what level of damage such impacts could cause.
- Unintended adverse impacts are understood to mean:
 - undesirable impacts triggered, amplified and/or consolidated by the project that directly, indirectly and/or cumulatively affect people and other protected resources in the project and/or stakeholder environment.

What needs to be examined as part of the commercial and legal eligibility check?

The project has a high Safeguards+Gender risk rating and the funding volume is greater than EUR 100,000.00

Within the Safeguards+Gender management system, a conclusive **risk assessment** is conducted for every area covered by the Safeguards (with the exception of gender). This marks the final assessment of the in-depth analyses conducted (in-depth environmental and/or climate impact assessment, integrated context and human rights analysis, integrated peace and conflict analysis (iPCA) or stand-alone human rights analysis), which is noted in the assessment. The final assessment, passed as plausible by the Safeguards+Gender Desk, should be filed under ZAK in the commission file. A high-risk project will generally have been explored at a ZAK meeting at departmental level and have the written approval of the Management Board in the commission file. The information about the high risk classification should be an integral part of the hand-over of responsibility for the commission from the officer responsible for preparing the commission (AV-V) to the officer responsible for the commission (AV). Following the start of the project a bridging or initial meeting will generally also have been held

with the Safeguards+Gender Desk. The Safeguards+Gender Desk provides the operational departments with regular monitoring lists that deliver information on their projects classed as entailing a high risk.

1. Checking the procedures and capacities of the potential recipient, giving reasons

- The ability of the potential recipient **to independently comply** with the **stricter Safeguards-related due diligence requirements** within the scope of a project ranked as entailing a high Safeguards+Gender risk must be examined.
- For each individual case it must be verified whether the potential recipient has **effective procedures and capacities of its own** that will enable it to comply with environmental and social standards **in the areas in which the GIZ project has been ranked as entailing a high risk**. This means: The potential recipient must have procedures and capacities that will enable it to identify and analyse in good time possible unintended adverse impacts of the activities implemented by the recipient in the areas of climate change mitigation, adaptation to climate change, conflict and context sensitivity, human rights and gender equality, as well as taking appropriate prevention or mitigation measures to address these and monitoring them with the help of a monitoring system. To this end, environmental and social impact systems/environmental and social standards/Safeguards frameworks and the pertinent analytical instruments, corporate strategies, policies, codes of conduct or other papers on the relevant topics may be used.
- The **project proposal** submitted by the potential recipient should also be used. This must contain a **separate risk analysis**. Please note that the potential recipient should not only analyse external risks to the project, but should also always analyse possible unintended adverse impacts, identify mitigation measures as an integral part of the project proposal and present the ways it intends to provide the skills and capacities this will require.
- Please record your findings including the documents used in the record of commercial and legal eligibility checks and **give plausible reasons**. In this you should also look at experience of previous cooperation with the potential recipient.

2. Submitting your findings to the Safeguards+Gender Desk for a plausibility check

- You should submit your findings and reasoning to the **Safeguards+Gender Desk** (safeguardsandgender@giz.de) **for a plausibility check**. The Safeguards+Gender Desk will look at documents submitted by the potential recipient, its project proposal with risk analysis and the explanations of the GIZ project. Please submit the record of commercial and legal eligibility checks and the project proposal with risk analysis as well as the documents of the potential recipient to the S+G Desk, or provide links to the websites where these documents can be consulted. Do not pass on the documents to Contract Management until the plausibility check has been conducted.

Assessing the findings of the check

- Where the potential recipient has in place procedures and capacities to handle any possible unintended adverse impacts/to enforce environmental and social standards an agreement may be concluded.
- Where the potential recipient **does not have** in place procedures and capacities in the area(s) assessed as entailing a high risk, **no subsidy agreement, grant agreement or financing agreement may be concluded**. Should the volume of financing not exceed EUR 100,000 and should all other preconditions for a local subsidy be met, and the GIZ project be able to provide support measures in the field of Safeguards+Gender, financing can be concluded as a **local subsidy**.

Validity of the checking process findings/of the document(s) examined

There are no validity regulations for this eligibility criterion, since it relates not only to an institutional check but always relates to a specific project.

4. Overall risk assessment based on the commercial and legal eligibility check and risk-mitigation measures

4.1 Overall assessment

Background

After all of the eligibility criteria listed in the commercial and legal eligibility check have been examined and assessed, the officer responsible for the commission/cost centre of the project undertakes an overall assessment. The unit that draws up the agreement (GIZ country office or GIZ Head Office (OE E2B0) as set out in P+R carries out a plausibility check for overall assessment purposes.

A previous commercial and legal eligibility check must have been conducted and the approval of the unit that draws up the agreement (GIZ country office or GIZ Head Office (OE E2B0)) obtained before the financing agreement, grant agreement, subsidy agreement or local subsidy agreement can be entered into (see [Quick Guide: Financing](#)).

What needs to be examined as part of the commercial and legal eligibility check?

Always tick one of the alternatives given below.

The overall assessment can be performed in one of four ways:

1. **Alternative:** The recipient is legally/commercially eligible to implement a financing arrangement and an agreement can therefore be entered into.

☐ Financing agreement/☐ Grant agreement/☐ Subsidy agreement

Assessment: If the assessment of the commercial and legal eligibility check is positive in all its items, tick alternative 1. The agreement is then drawn up using the standard template contract.

Choosing the right type of agreement: If the recipient is GIZ's implementation partner (i.e. the lead executing agency) or one of its subordinate structures, the funds are provided under a financing agreement.

If funds are being made available to a recipient based in Germany, the appropriate form of contract is a subsidy agreement.

Grant agreements are concluded in cases where recipients are based outside Germany but are not given a financing agreement.

2. **Alternative:** A financing/grant/subsidy agreement can be entered into with the following **accompanying measures**, which must be contractually agreed upon. (Where applicable, list in an appendix, and always inform the GIZ country office or Procurement and Contracting Division when drawing up the agreement.)

Assessment: If the eligibility check reveals (minor) deficits or uncertainties in one or more cases, risk-reduction measures should be incorporated in the pertinent sections of the agreement or in the project file. Please pass this information on to the responsible contract manager before the agreement is drawn up.

3. **Alternative:** The recipient is **not yet** legally/commercially eligible to implement a financing arrangement. However, a local subsidy can be concluded.

Assessment: The assessment revealed major/significant deficits in terms of commercial and legal eligibility, which means the recipient cannot independently and responsibly implement a financing arrangement. The alternative is then to conclude a local subsidy. See also: [Guidelines for Local Subsidies](#)

4. **Alternative:** No financing arrangement can be signed. **No contract** can be entered into with this recipient.

Assessment: If the eligibility check is negative, the recipient is neither eligible for a local subsidy nor for a financing arrangement. No contractual relationship involving financing is currently possible with this contractual partner.

4.2 Risk-mitigation measures

Background

If (minor) shortcomings or uncertainties emerge from the evaluation of one or more examination criteria, but conclusion of an agreement nevertheless seems reasonable after an appropriate and careful risk assessment, risk-minimising measures must be included at appropriate points in the agreement. However, these measures can only be implemented if the existing shortcomings are outweighed by an overall positive assessment. The risk-minimising measures are identified on a case-by-case basis depending on the project content. However, it is important to remember that every measure has (possibly significant) implications for the cost and personnel structure.

Risk-mitigation measures (examples)

- Fewer restrictions on copies of vouchers:
 - Leads to: More copies of vouchers, more insight into the recipient's bookkeeping
 - Consequences: More copies to be examined during financial processing
- Higher frequency of external audits:
 - Objective assessment by a certified auditor, including auditor's opinion; external audits establish misappropriation and the uneconomical use of funds caused either consciously or unconsciously by the recipient of financing (this may lead to non-compliance).
 - Consequences: Higher costs for external audits
- Close scrutiny of contract award procedures and/or financial processing and/or technical implementation (do not grant approval!)
 - Leads to: Capacity development for the recipient, high degree of control when implementing procedures
 - Consequences: GIZ staff capacities are tied up, the recipient presumes that GIZ has already agreed to the procedures and that there will be no further objections, e.g. on the part of the auditor.
- Training for recipients
 - Leads to: Capacity development for the recipient
 - Consequences: GIZ capacities are tied up, including additional cost
- Disbursement amounts are reduced
 - Leads to: Lower cost risk, possibly prefinancing by the recipient
 - Consequences: Reduction in outgoing funds

- Shorter disbursement periods
 - Leads to: More frequent financial reports/vouchers, lower amounts disbursed
 - Consequences: GIZ staff capacities are tied up
- Reduction in overall contract value
 - Leads to: GIZ pledges lower contract value. If the original agreement is implemented to GIZ's satisfaction, another financing arrangement may follow; no substantial contractual obligations as long as the GIZ project has not yet received all the funds from the commissioning party.
 - Consequences: :/.
- GIZ project as member of a steering committee
 - Leads to: High degree of codetermination during project implementation, high degree of information about project implementation
 - Consequences: Sufficient time and financial capacities must be available

5. Designating the recipient of the agreement by name

The officer responsible for the commission or cost centre ensures that the recipients of financing agreements, grant agreements and subsidy agreements are designated by name in the offer to the client/commissioning party.

If the recipient of the agreement is not yet named in the offer, the officer responsible for the commission or cost centre must ensure that the commissioning party is notified of the recipient's name in writing before the agreement is concluded. Otherwise, the financing arrangement cannot be treated as a transitory item as defined in the German VAT Act (UStG). Corresponding confirmation by the commissioning party must be passed on to the unit that draws up the agreement before it is concluded.

6. Forwarding of funds

If funds are to be passed on by the recipient to one or more final recipients, this must be stated in the description of the measure. The identity of the final recipient(s) must therefore be checked and documented before the agreement is signed, applying the same commercial and legal eligibility guidelines as for the first recipient. The documentation covers at least the legal personality and public-benefit status (including limited tax liability).

If the final recipient has not been confirmed prior to signing the contract, the potential final recipients must be made known to GIZ in writing, and GIZ's approval has to be obtained, before any funds are forwarded. A supplement to the agreement is mandatory in this case.

7. Signing of the commercial and legal eligibility check and of the plausibility check

The commercial and legal eligibility check must be signed by the people involved in the eligibility checking process and at least by the officer responsible for the commission/cost centre.

The plausibility check is carried out by the contract officer in the unit that draws up the agreement (GIZ country office or GIZ Head Office (OE E2B0)) and signed accordingly.

If the unit responsible for drawing up the agreement and the unit responsible for the commission

(operational unit) disagree in their assessment of the commercial and legal eligibility check and cannot reach a consensus, the operational unit must submit an assumption of risk by the operational director of division, which must be added to the contract file. The assumption of risk may not under any circumstances disregard the legislation in force.

8. Checklist for cofinancing arrangements

If the commission under which the financing arrangement is to be concluded not only contains additional funds (i.e. on top of the funds provided by a German federal ministry) under a cofinancing agreement, the agreement with the cofinancing donor often imposes additional obligations on GIZ, and these must also be transferred to the recipient of financing.

Please advise the contract manager responsible if a cofinancing agreement is in place. In such cases, also complete the cofinancing checklist (part of the commercial and legal eligibility check) and the visibility plan between GIZ and the cofinancier to the unit responsible for drawing up the agreement.