

Summary of Conclusions
Technical meeting between MA, NA, JS, FLC HU and FLC RO
With the participation of the Ambassador Extraordinary and Plenipotentiary
of Romania to Hungary
H.E. Mr. Marius Gabriel Lazurca

14.02.2019
Békéscsaba, Hungary

OBJECTIVE OF THE MEETING:

I. State Aid-related issues:

- Recording of awarded state-aid;
- Recovery of illegal/misused state-aid;
- Verification tools to be adopted by the FLC Units;

II. Programming 2020+

- Selection of Thematic Objectives: methodology, priorities, etc
- Calendar of the programming activity: what, who, when;
- Joint Working Group: size, competences, responsibilities;
- Minimum requirements of the ToR;

III. Eligibility and other FLC related issues

IV. Others

Participants:

EMBASSY OF ROMANIA in Hungary	Ambassador Extraordinary and Plenipotentiary of Romania to Hungary H.E. Mr. Marius Gabriel LAZURCA
Managing Authority	Mrs. Roxana RACOVIȚĂ – Head of MA Ms. Ioana MAIORESCU – counsellor



National Authority	Mrs. Nikoletta HORVÁTH - Head of Department Mr. Tamás MOLNÁR - National Authority Mr. András STEFANIK - National Authority Mr. Zoltán BARNA-LÁZÁR - HU State Aid expert
General Legal Department and Parliament Relationship and European Affairs - MRDPA	Mrs. Claudia ZDRENGEA - Head of Department
Oradea Regional Office for Cross-border Cooperation (BRECO)	Mrs Livia BANU - Director executive
Joint Secretariat	Mrs. Monica TEREAN - Head of JS Mrs. Lavinia CHIRILA - Expert Mrs. Monica SAV - Expert Mrs. Cosmina MIREA - Expert Mrs. Cristina VESA - Expert Mr. Sebastian STURZ - Monitoring coordinator Mr. Marius OLARIU - Expert
First Level Control HU	Mrs. Anikó PRIBOJSZKINÉ KÁSA - Head of FLC Unit
First Level Control RO	Mrs. Simona SCHITCU - Coordinator of FLC Unit

In the foregoing of the meeting, Mrs Roxana Racoviță, Head of Managing Authority, welcomed the participants, gave them the opportunity to introduce themselves and shortly presented the main topics on the Agenda, i.e.: handling state aid monitoring and recovery, starting the 2020+ Programming Period, handling FLC issues. She also expressed her regret that Mr. Peter Kiss-Parciu, Deputy State Secretary, could not attend the meeting and



announced the presence of H.E. Mr. Marius Gabriel LAZURCA to discussions regarding the topic Programming 2020+. Mrs Nikoletta Horváth thanked the opportunity and expressed her apology for Mr Péter Kiss-Parciu due to his unexpected high-level engagement he could not participate.

I. State aid-related issues:

The meeting began with State aid-related discussions and the Head of MA underlined that, for the next programming period, conditioned by a new cooperation programme between the 2 Member States, it would be advisable to seriously review the decision to finance state aid operations. The procedural framework, especially in what concerns the national legislation is not adapted to handle state-aid awarding in a different member state, as the case in cross-border cooperation programs.

Mrs. Nikoletta Horváth mentioned a meeting with DG Regio in Bratislava, at the end of previous week, where the problems caused by State aid incidence in ETC Programme - such as administrative burden on aid beneficiaries and legal issues (e.g.: State aid incidence may only appear when a MS takes a decision that distorts the competitiveness in the market, which is not the case for ETC Programmes) - were brought into European Commission (COM) attention, in a form of a Position Paper. Such document will be submitted to the MA, for consultation purpose.

1. Recording State aid/de minimis aid awarded to HU aid beneficiaries

- A centralized database for recording relevant information on aid beneficiaries in Hungary receiving state aid/de minimis aid as part of ERDF support has been agreed between the parties.
- The database will be updated by the JS, whenever necessary, based on information provided by MA structures, NA and aid beneficiaries.
- It will be a complementary tool of RegAS, keeping data on aid awarded by MA in Hungary and that cannot be entered into RegAS.
- The purpose is that JS, as schemes' administrator, has comprehensive information in order to accomplish its reporting obligations to the COM.

2. State aid/de minimis aid recovery

- The necessity to modify the Memorandum of Implementation (MoI), in order to regulate aspects related to state aid/de minimis aid recovery in case of Hungarian aid beneficiaries,



has been discussed. According to MRDPA legal department's opinion until the finalization of Mol, the financing contracts cannot be signed.

- Due to the principle of territoriality, a recovery decision issued by MA cannot be enforced in Hungary. Furthermore, each MS, according to EC Regulation 1303/2013, has to investigate irregularities committed by a beneficiary on its territory.

- A misused aid/an indirect aid unlawfully awarded (by the beneficiary of non-refundable financing to a third party, not part of the project partnership), represents an irregularity and will be treated as such.

- In case of a suspicion of irregularity arisen from an activity under state aid incidence, the MA will notify the NA who will be responsible for analyzing the irregularity and based on the original proposal the National Authority shall reimburse to the Managing Authority the amounts to be recovered, and after that will recover the illegal/misused aid, according to the national procedures.

- According to NA opinion (State aid expert), in the Mol three different situations are to be envisaged:

- a) In case the HU aid beneficiary is also the project beneficiary, the procedure will be the same as in case of irregularities, but it will be considered both as an irregularity and a misused aid, at the same time. The differences in case of a misused/illegal state aid as compared to irregularity: the aid has to be recovered from the aid beneficiary, the interest has to be calculated according to relevant EU regulation, the date for calculating the interest is the date when the aid has been paid.

- b) In case of indirect aid, i.e. when an advantage is transferred by the project beneficiary to a third party, as the aid provider is not the MA, the recovery of the equivalent value of the aid transferred (determined based on market price) is a matter to be solved by the Member State on whose territory the non-refundable financing beneficiary is located. In such case the ERDF granted to HU project beneficiary will be recovered as irregularity.

- The Head of JS underlined the need of external state aid expertise for analyzing the irregularities related to State aid, and in this respect, an excerpt of ToR for state aid technical assistance service contract in Romania can be sent to NA, for reference. Such expertise might be very helpful for properly arguing a possible decision of suspending/recovery in case of misused/illegal state aid identified during the monitoring process.



- NA opinion on this matter is that such expertise could be also acquired for the HU part, if the funds allocated for the Programme are sufficient, or it could be handled by involving the State Aid Monitoring Office.

Deadlines regarding the verifications performed by NA should be mentioned in the Mol, taking also into account that the interest to be applied in case of misused/illegal state aid has to be calculated according to EC regulations. NA will follow-up by informing the MA with regards to such deadline, according to the HU national procedures.

c) – The third situation, according to the Hungarian consultant, arises in case of unlawful state aid¹, when no irregularity has been committed by the beneficiary, when the aid grantor has to recover the unlawful aid and the MS has no power to issue a recovery decision if the MS is not the aid grantor. At the same time, the MA cannot enforce a recovery decision in Hungary.

- The JS proposed to mention in the Mol that MA delegates all tasks related to State aid recovery to the NA, but the NA's opinion was that, in the case of unlawful aid, the NA has no authority to recover the aid.

It has been agreed that such situation should be brought into COM attention, in order to get a point of view/solution on the matter, consequently, the Mol will be further updated based on COM response/recommendation. The JS will follow-up.

- According to HU State aid expert and State Aid Monitoring Office in Hungary, a case of unlawful state aid can only be decided by the COM, in cases when the state aid rules haven't been complied with at the moment of awarding the aid.

3. Template of State aid awarding contract

- In NA opinion, the template should not be compulsory, but only indicative.

- In MA/JS opinion, the SA awarding contract should contain at least minimum provisions in order to ensure the aid recovery from aid beneficiary. The schemes approved at Programme level, requires as a precondition for expenditure validation, the conclusion of such contract between project beneficiary and a third party in case of a transfer of advantage. Also, the Project Implementation Manual mentions that the Programme will provide the template for

¹ As per Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union





such contract. In order to have a consolidated, generally agreed format, the template will be publically consulted.

It was decided that the template to be indicative, but other types of awarding contracts should contain at least several mandatory clauses in order to provide the legal basis for aid recovery in case of indirect aid.

4. Notification from MA to NA in case of illegal/misused aid

- The template includes relevant information in case of a suspicion of illegal/misused state aid, to be sent by the MS to NA, so that the NA can proceed with its own verifications.
- No recommendations/observations have been raised in relation to this document.

5. Annex to Subsidy contract

- An annex to Subsidy contract has been elaborated, mainly to clarify specific aspects regarding state aid recovery, such as: interest rate, date from which the interest is calculated etc.
- No recommendations/observations have been raised in relation to this document.

6. Verification tools to be adopted by the FLC Units

- The verification tools for State Aid adopted by FLC Units, both Ro and HU, are based on interactive beneficiary's own declaration, containing information regarding the implementation of state aid activities, in accordance with GfA provisions, with the conditions stipulated in the 2 aid schemes, and in relation to indirect aid, as well.
- The declarations are to be submitted with each partner report of projects that have passed a state aid assessment phase (i.e. 2nd and 3rd Restricted Calls and 3rd Open Call) and are elaborated for the 4 Investment priority (Ip) falling under state aid incidence in Romania: 6c, 7c, 8b and 9a, while in Hungary only for 3 Ips: 6c, 7c and 8b.
- In case an inconsistent/irregularity might result from beneficiary's responses, the FLC will notify JS, in writing and the irregularity procedure will be applied.

Conclusions regarding State aid issues:

- In order to modify the Mol, the COM opinion is necessary. The JS will address the COM, with regards to the **recovery procedure of an unlawful aid**, having in mind that NA has no legal basis for such recovery, while the MA cannot enforce a recovery decision on the territory of another Member State, if such decision is necessary having already the Commission decision for recovery.



- The State aid/de minimis aid awarding contract will be indicative; other types of such contracts will include at least minimum compulsory clauses.
- At FLC level, the SA related verifications will be made based on interactive beneficiaries' own declarations, to be submitted with each partner report, in case of projects selected under Calls for proposals falling under SA incidence. Nevertheless, during FLC verifications, it will become apparent if the facts stated in the Declarations are true.

II. Programming 2020+

- The Head of MA, Mrs. Roxana Racoviță, mentioned that the aim of the meeting is to prepare the next Programming period, to make the first step regarding the preparation of the next Programme, in case a new Cooperation Programme between Romania and Hungary will exist. Simultaneously, Mrs. Roxana Racoviță welcomed the participation of H.E. Mr. Marius Gabriel LAZURCA, underlining the importance of bilateral cooperation for Romania.

- In the opening of the discussions on the topic, the Ambassador Extraordinary and Plenipotentiary of Romania to Hungary, H.E. Mr. Marius Gabriel Lazurca had an intervention regarding the importance of the cohesion policy and of the cooperation between the two Member States, Romania and Hungary.

Speaking on behalf of the RO Ministry of Foreign Affairs, H.E Mr. Lazurca expressed his gratitude for participating in the first meeting dedicated to shaping the future cooperation program between the 2 countries, starting from the lessons learned and in line with new regulation framework. He also congratulated the Program's structures in both countries for the results achieved so far, emphasized the important progress registered by the current Programme as compared to the previous one, especially as a result of a continuous learning process and underlined the merits of the Managing Authority in creating a better administrative environment for the Program's beneficiaries on both sides of the border, leading thus to tangible results in terms of economic growth and balanced development in sectors such as healthcare, risk-prevention and disaster management.

- On behalf of the Hungarian delegation, Mrs. Nikoletta Horváth, expressed her apology for Mr Péter Kiss-Parciu due to his unexpected high-level engagement he could not participate.



She outlined the major task of the next programming at the current phase, namely shaping of the future legislative package which is very important for a good start: Hungary constantly comments the draft versions, takes part in SMWP meetings and tries to find alliances for a joint position during the meetings. She also mentioned that knowing the expectation of the EU – being more visible and producing tangible results, but at the same time to keep Interreg a good tool to build partnership and relationship, Hungary intends to have a strategic common approach on all the border regions. Its main goal is to raise the living standards in all the border regions and to make European funds more visible, with tangible results, keeping an eye on the local people, local needs and local initiatives. Mrs. Nikolett Horváth emphasized that, depending on the border need and negotiations, HU plans to finance strategic impact projects, and "people to people" initiatives, but of course it depends on the future allocation of each border section.

- The Head of MA presented the main points that have to be dealt with in order to have the next Programme ready in due time. Mrs. Racoviță presented an initial schedule that foresees the launching of the tender for programming (including analysis of the eligible area) in April 2019, before the Joint Working Group for Programming shall be established. The proposal for the next JWG on Programming, taking into account the lessons learned, is to adopt some simplification measures, in terms of: membership, tasks and number of meetings.

- NA proposed to have the Task Force/ JWG first, because normally the tasks are delegated to them, this is the practice but, as the head of MA highlighted, setting up task force is conditioned to government decision in Romania and also, as the public procurement takes time, the head of MA proposed to have the ToR first and to launch the public procurement, and then, by the time of the result of the procurement, the task force will be set up.

- The NA expressed its opinion that, for efficiency, the compentence of the taskforce/JWG for Programming should develop in a progressive manner, starting from county level and the Ministries directly involved, and, once the thematic objectives for the next programme are selected, the compentence of taskforce/ JWG for Programming could change, depending on the involvement of other relevant ministries. Also a setting up of a strong coordination between regions and between the two Member States should be ensured, as well.

- The head of MA proposed that the taskforce/JWG for Programming should have less responsibilities than the one that was in force for the current programming period, in order to accelerate the programming process.



- The MA mentioned that there is a draft ToR concerning the tender for programming 2020+ in which it was established a general methodology and some requirements for the service provider.
- The JS presented briefly the main instruments and methodologies that have been identified and included in the ToR in order to be used by the service provider in designing the next Programme. Also, JS presented the main lessons learned from the current programming period that should be taken into account when drafting the next Programme, namely: the results of the Intermediary Assessment Report for 2019, the Ips with the highest demand and the need to focus on the priorities where there are no dedicated Programmes at national level.
- NA mentioned that NA has comments for the draft ToR, and outlined as general remark to use unified wording for the next programme section neutrally e.g. “next programme for the border section between Romania and Hungary”. Besides that, there is no need for ex-ante and ToR should be revised. Other obligatory element should be taken into account, such as Simplified Cost Option annex of the CP template, which should be ready by the submission of the CP.
- NA emphasized Hungary’s commitment for the involvement of the programming exercise, offered free expert support for regional analyses. It can be carried out immediately with the involvement of the region or other stakeholder and until the Task force is set up and the procurement is ended. We can save a lot of time and keep time schedule.
- The MA also mentioned that, as the ex-ante analysis is no longer needed/compulsory for Programming, the ToR has already been updated accordingly. The latest version of the ToR Summary will be sent to MA and NA, in order to agree upon its content, next week.
- MA raised also the issue of accreditation of the experts performing the Strategic Environment Assessment from the Hungarian Minister of Environment. In Romania there is a special register that contains the name of experts that have the accreditation to do Environmental Assessment. It should be checked if it is the same case for Hungary. The Head of NA confirmed that it will be checked in order to include the specification in ToR if it is the case.
- The revised Summary of ToR and the proposed calendar of activities will be sent to MA and NA.
- In conclusion, the MA mentioned that the public procurement will be launched before setting up the JWG for Programming in order to have a snapshot analysis done by the time



the JWG for Programming meets for the first time and to know which relevant institutions should be invited to join JWG.

- The JS will provide statistics from the current Programme, to survey the level of interest on different priority Axis, based on number of projects submitted under each Priority Axis, the points of view shared by the local actors, etc.
- In order to identify relevant Ministries to be involved in the JWG for Programming, the main objectives of the next Programme should be chosen.
- Also, in what concerns the new programming period, the NA expressed Hungary's intention to keep the FLC function which runs well and contributes to keeping the low level of irregularity and error rate, nevertheless such decision has not been taken officially yet
- The MA representative stated that in Romania these decisions are taken at national level.

III. Eligibility and other FLC related issues

1. Co-financing contracts:

- The MA expressed its concern regarding the considerable delays in signing the HU co-financing contracts, mentioning that there are many complaints from Hungarian beneficiaries, that cannot implement their activities within projects, and ask for extensions in the implementation periods, which, according to NA are caused in most cases by the fact that documents asked in the pre-contracting phase were submitted by the beneficiaries with delay as the statistics show. Nevertheless, there is another reason since the beneficiaries have to report every week and if nothing concrete happens (e.g. public procurement takes months), there is no other excuse but saying national co-financing issue as excuse. NA confirmed that other border section's implementation runs smoothly, no complaint about national co-financing.
- The NA assured the MA on the possibility to sign the co-financing contract even after the implementation period of a Concept Note ended. It is obligatory to provide national co-financing. The process started already at the stage of NA informing the FLC about MC decision, to start the contracting process. Once the SC is signed, then the financial commitment and the signatory process can be finalized.
- The MA stressed the importance of ensuring the liquidities for the implementation of projects parts by HU beneficiaries, in order to ensure the implementation of the entire project. In this respect, MA proposed to modify OG 29 in order to provide funds to all beneficiaries with insufficient funds to implement the activities within the projects.



- Concerning the subsidy contracts concluded under over-contracting conditions, the NA explained that, according to HU legislation, no advance payment from ERDF can be awarded to such contracts, even if, in some cases the contracts would be amended so that the Hungarian partner no longer has an over-contracted budget (e.g. ROHU 126). The solution can be that the contract amount could be decreased with the over-contracting amount (or to increase own contribution) that it will no longer fall under over-contracting condition, the HU partner can have its pre-financing according to gov. decree.

2. Other FLC issues:

- *Budget flexibility* – in the validation process, the total amount provided in the Application form for a budget line will be taken into account, irrespective of the amount foreseen for a specific reporting period.

- The total amount of the budget line will be considered when validating an expenditure under such budget line.

- *In case the unit cost of staff exceeds the planned unit cost* – for validation of expenditures, the FLC will take into account the unit costs specified in budget detail, if such information has been provided.

- *Reduce number of interim reports by imposing a minimum threshold for reported expenditure value* – such limitation is not necessary and according to PIM, the beneficiaries have the possibility to submit maximum 3 interim partner reports in a given period.

- At present, there is no need for minimum threshold for a partner report.

- *Opening a new partner report for costs paid in a previous period* – for clarity purposes, the costs paid within a period should be reported under the same reporting period, therefore, the expenditure is not eligible.

- *Retroactive character of modifications* (MA Instruction no 5) – the FLC HU and NA proposed to apply the same approach as in the HURO Programme. According to art. 4 of the above-mentioned instruction „*The beneficiary may request verification of the related expenditures (from the FLC) only after the moment the addendum entries into force (by signature from the last party – MA) or verification of the notification*”. Also, another aspect in favor of this approach, in eMS the partner report is linked with the approved Application Form (the latest version of the application approved by JS/MA).

- FLC HU will send a written clarification request concerning the MA's Instruction no. 5

- *Modification of the eMS handbook concerning the documents attached to Partner Reports*



- The info is provided on the occasion of the trainings for beneficiaries. Changing the e-MS Manual also implies changing PIM and FLC guide and this might further confuse the beneficiaries.

- It should be made clear for the Beneficiaries, which documents are to be uploaded in the Personal data Attachments section. It's recommended that all supporting documents of staff costs to be attached in the Personal Data Attachments section, as all of them contain private personal data.

- This section should be uploaded by the partners with all the documents that contains personal data defined according to the GDPR Regulation (EU) 2016/679 (e.g. first and last name, address, e-mail address, phone, Personal identification number, bank information, background data etc.)

- All the documents supporting one specific invoice are to be attached in the Upload section of the expenditure item, and only the documents belonging to the entire report are to be attached to the (general) Attachments section of a partner report. Documents proving the delivery of goods /services/infrastructure works are also to be uploaded to the specific expenditure item instead of project procurements section, because the procurements section can be modified by the Beneficiary after approval of a partner report.

- This category of the documents "proving the delivery of goods /services/infrastructure works", the eMS system has specific sections in the partner report like „Add deliverables” mentioned at the level of each activity of the report or "Output evidence" located in the Project Main Outputs Delivered, where the Beneficiary can upload the respective attachments and no one can change them after submission to FLC. The procurement upload section should be kept only for procurement documentation not for deliverables of the activities!

- It should be made clear for the Beneficiaries, which document is to be uploaded in the Personal data Attachments section. It is recommended that all supporting documents of staff costs are to be attached in the Personal Data Attachments section, as all of them contain private data.

- Documents attached in the invoice section for the budget line „Staff” are not visible for normal eMS users, only those users who have the privilege to see GDPR sections (FLC, AM – authorization unit, CA) can see the uploads in this sections. So, both sections "personal data section" and documents attached to the invoices on the staff budget line are hidden due to GDPR.

IV. Others:



- *Submission of Full Application (FA) in due time:* according to GfA provisions, the FA has to be submitted in one month after the CN implementing period. That means 2 projects (ROHU343 and ROHU344) have to submit the FA by the end of February. The issue regarding the compliance with the settled deadline was highlighted by MA and confirmed as a concern by NA.

- *The final project report for CNs:* to be submitted in maximum 1 or 2 months after the CN finalization. In this respect, the PIM shall be up-dated.

- *Savings related options:* NA proposed to keep the savings at least till the end of each year, in order to be able to cover possible losses, while MA proposed to use them for covering the over-contracted amounts, taking into account that the MA's proposal is already a commitment of the Programme approved by the Monitoring Committee through the list of projects.

Also, the MA takes into account to increase the ERDF percentage in case of over-contracted projects (meaning that over-contracting percentage will be lower because of savings), conditioned by occurrence of available funds at the end of the calls / Programme. The NA supports such approach as well.

- HU FLC asked JS to inform them on the signing of Subsidy contracts, even if the LB is Romanian, so that the corresponding part of the ERDF advance payment be reimbursed by HU beneficiary to NA, back. MA mentioned that the lead beneficiaries have an obligation to pay the ERDF (within maximum of 5 days) to the partners, therefore, the number of days could be calculated this way. Nevertheless, MA added that will communicate this request to the Authorization Department.

