

The transparent state aid scheme intended to finance the investment priorities 6/c - Conserving, protecting, promoting and developing natural and cultural heritage 8/b - Supporting employment-friendly growth through the development of endogenous potential as part of a territorial strategy for specific areas, including the conversion of declining industrial regions and enhancement of accessibility to, and development of, specific natural and cultural resources - published in the Official Journal of Romania no.865/02.11.2017, Part I

## **Art.1 General dispositions**

- (1) This procedure establishes a transparent state aid scheme intended to finance investment priorities 6/c - Conserving, protecting, promoting and developing natural and cultural heritage and 8/b - Supporting employment-friendly growth through the development of endogenous potential as part of a territorial strategy for specific areas, including the conversion of declining industrial regions and enhancement of accessibility to, and development of, specific natural and cultural resources, under Interreg V-A Romania-Hungary Programme, hereinafter referred to as *scheme*
- (2) The scheme is applicable in the eight eligible counties of the Interreg V-A Romania - Hungary Programme and will be implemented by 31.12.2020. Under Interreg V-A Romania-Hungary Program, the eligible counties are as follows:
  - four counties in Romania - Arad, Bihor, Satu Mare and Timiș
  - four counties in Hungary -Békés, Csongrád, Hajdú-Bihar and Szabolcs-Szatmár-Bereg
- (3) This aid scheme is not subject to requirement regarding the notification to the European Commission as per Article 108 (3) of the Treaty on the Functioning of the European Union (TFEU).
- (4) State aid under this scheme shall only be granted subject to compliance with the criteria for exempted aid categories, namely aid for culture and heritage conservation and aid for investment in local infrastructures, provided for in Articles 53 and 56 of Regulation (EU) no. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market pursuant to Articles 107 and 108 of the TFEU, as subsequently amended and supplemented by Commission Regulation (EU) 1084/ 2017 of June 14<sup>th</sup>, 2017 for amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs.

## **Art.2 Legal grounds**

This scheme is drawn up in accordance with:

- a) Regulation (EU) no. 651/2014 of the Commission of 17.06.2014 of declaring certain categories of aid compatible with the internal market pursuant to articles 107 and 108 of the TFEU, published in the Official Journal of the European Union series L no. 187 of June 26th, 2014;
- b) Regulation (EU) 2017/1084 amending Regulation (EU) no. 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs;
- c) Government Emergency Ordinance no. 77/2014 on national procedures in the field of state aid, as well as for amending and completing the Competition Law no. 21/1996, modified and completed by the effect of Law no. 20/2015, as amended;
- d) EC Decision no. 9112 / 09.12.2015 regarding the approval of the Interreg V-A Romania-Hungary Program.

### **Art.3 Scope and objectives of the scheme**

(1) The scope of this transparent state aid scheme is to finance projects that focus primarily on the sustainable use of historical, natural and cultural heritage in the eligible area and, respectively, the development of endogenous potential to support employment growth without affecting competition on the internal market and Intra-Community trade to an extent contrary to the common interest.

#### **(2) Specific objectives of the state aid scheme are:**

- a) supporting concerted actions to protect and rehabilitate the key natural, historical and cultural heritages values on both sides of the border as well as to improve their accessibility;
- b) supporting specific actions to facilitate the upgrading / financing of investments in local and related infrastructure, with an effect on increasing employment and creating new local products / services based on local potential.

(3) The fulfilment of the purpose and objectives is achieved within the eligible area of the Interreg V-A Romania-Hungary Program, as defined in Article 1.

### **Art.4 Definitions For the purpose of this scheme, the terms have the following meaning:**

- a) **Aid** - any support measure fulfilling all the criteria set out in Article 107 (1) of TFEU.
- b) **Beneficiary of the non-refundable financing** - an entity that falls into one of the following categories as defined in the Guide for Applicants to these investment priorities, participating in the implementation of a project funded under these investment priorities. In this respect, the beneficiaries of the funding can be:

- (i) Public institutions;

(ii) Public law bodies;

(iii) State-owned companies;

(iv) NGO;

(v) European Groupings of Territorial Cooperation.

c) **Lead beneficiary of the non-refundable financing** - the partner responsible for the general implementation of the joint project financed under the investment priorities of the Interreg V-A Romania-Hungary Programme. The lead beneficiary shall conclude the Partnership Agreement with the project beneficiaries and the ERDF subsidy contract with the MA. The lead beneficiary is responsible for the transfer to the project beneficiaries of the ERDF contributions corresponding to them.

d) **The national co- financing Beneficiary** - the Romanian partner in the joint project financed under Interreg V-A Romania-Hungary Programme (**the lead beneficiary of the non-refundable financing or the project beneficiaries**).

e) **Beneficiary of an exempted state aid** - the undertaking benefiting, directly or indirectly, as a result of a project financed under exempted State aid, for investment priorities 6/c and 8/b, on the basis of Articles 53 and 56 of EC Regulation no. 651/2014, with the subsequent modifications and amendments, according to the activities described below in this Scheme.

f) **Undertaking** - any entity carrying on an economic activity, irrespective of its legal status, its mode of financing or the existence of a lucrative purpose; this category includes NGOs, associations, foundations, institutions, etc. self-employed persons, family businesses and partnerships or associations which regularly carry out an economic activity.

g) **Economic activity** - any activity consisting in the supply of goods, services or works on a market.

h) **Subsidy contract** - the legal document signed between the Managing Authority of the Interreg V-A Romania - Hungary Programme on the one hand and the lead beneficiary of the non-refundable financing on the other hand setting out the correlative rights and obligations of the parties for the implementation of the Interreg V-A Romania - Hungary Programme.

i) **Partnership Agreement** - the agreement signed by all partners in the project that regulates partners rights and obligations in relation to project activities and other issues that need to be regulated in order to properly implement the project.

j) **Co-financing contract** - the legal document signed between the Managing Authority of the Interreg V-A Romania - Hungary Programme on the one hand and the Romanian beneficiary of the national co-funding on the other hand setting out the correlative rights and obligations of the parties for the implementation of the operations within the Interreg V-A Romania - Hungary Programme.

k) **State aid awarding contract** - the administrative act for the transfer of the economic advantage to the state aid beneficiary, concluded either between the MA and the non-refundable financing beneficiary, when the beneficiary of non-refundable financing is also state aid beneficiary (in which case the State aid awarding contract takes the form of the Subsidy contract/co-financing contract), or between the beneficiary of the non-refundable financing and the state aid beneficiary, as the case may be.

l) **Agricultural products** means products listed in Annex I to TFUE, with the exception of common fishery and aquaculture products listed in annex I to Regulation (EU) no. 1379/2013 of the European Parliament and of the Council of December 11<sup>th</sup>, 2013.

m) **Processing of agricultural products** means any operation on an agricultural product resulting in a product, which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale.

n) **Marketing of agricultural products** means the holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

o) **Discount rate** - is the reference rate established by the European Commission for Romania based on objective criteria and published in the Official Journal of the European Union and on the web site [www.ajutordestat.ro](http://www.ajutordestat.ro).

p) **Aid granting date** - the date when the legal right of benefiting from such aid is granted to the beneficiary undertaking under the applicable national law irrespective of the date when the aid is paid to that undertaking or the date when the financing is granted to the applicant (which in some cases differs from the beneficiary of state aid).

q) **The reasonable profit** is determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered reasonable.

r) **"Operating profit"** means the difference between the discounted revenues and the discounted operating costs over the relevant lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration but exclude, for the purposes of this scheme, depreciation charges and the costs of financing costs if these have been covered by investment aid.

s) **Eligible costs** - expenditure considered eligible in accordance with the provisions of articles 53 and 56 of Regulation (EU) no. 651/2014 of June 17<sup>th</sup>, 2014 declaring certain categories of aid compatible with the internal market pursuant to articles 107 and 108 of the Treaty.

t) **"Specific infrastructure"** means an infrastructure that is built for an ex-ante identifiable undertaking(s) and adapted to its (their) needs.

u) **Undertaking in difficulty** - means an undertaking that is in at least one of the following situations:

(i) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and 'share capital' includes, where relevant, any share premium.

(ii) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(iii) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(iv) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(v) In the case of an undertaking that is not an SME, where, for the past two years:

- (1) the undertaking's book debt to equity ratio has been greater than 7,5 and
- (2) the undertaking's EBITDA interest coverage ratio has been below 1,0.

v) **The state aid provider** is the Managing Authority of the Interreg VA Romania - Hungary Programme (Managing Authority) for the ERDF funding granted to the beneficiaries in Romania and Hungary, respectively the Managing Authority and the central and local public institutions for the national co-financing (state and local budget) to beneficiaries in Romania. The Managing Authority is the structure that mainly manages the Programme on behalf of the two partner countries. The Managing Authority has competences and responsibilities in the selection of operations, financial management and control of the Programme, including the certification of payments. At Programme level, the Managing Authority is represented by the Ministry of Regional Development, Public Administration and European Funds.

w) **The Scheme Administrator** is Oradea Regional Office for Cross-Border Cooperation on Romania-Hungary Border (BRECO). BRECO contributes to the current implementation of the Programme and supports the Managing Authority in its coordination and implementation activities.

#### **Art.5 Scope of application**

**(1)** This scheme shall not apply to:

a) aid to export-related activities towards third countries or to other Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;

b) aid contingent upon the use of domestic over imported goods;

c) aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) 1379/2013 of the European Parliament and of the Council (\*), with the exception of training aid, aid for SMEs' access to finance, aid for research and development, innovation aid for SMEs, aid for disadvantaged and workers with disabilities, regional aid for investment in the outermost regions and the schemes for regional aid for operating;

d) aid granted in the primary agricultural production sector, with the exception of regional aid for investments in outermost regions, schemes for regional aid for operating, aid for consultancy in favour of SMEs, risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;

e) aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:

(i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;

(ii) where the aids is conditional on being partly or entirely passed on to primary producers;

f) aid to facilitate the closure of uncompetitive coal mines, as regulated by Decision no. 2010/787 of the Council.

(2) Where an undertaking carries on its activities both in the excluded sectors referred to in points (c)-(e) as well as in the sectors falling within the scope of this scheme, this scheme shall apply to the aid granted to the latter sectors or activities, provided that the beneficiaries ensure, by appropriate means, such as the separation of activities or a distinction of costs, that the activities carried out in the excluded sectors do not benefit from the aid granted under this scheme.

**(3)** This Scheme shall not apply to:

a) undertakings which are subject of a recovery order which has not been executed following a previous Commission decision, a state aid grantor or other entity requesting recovery

whereby an aid is declared unlawful and incompatible with the internal market, with the exception of aid schemes for the repair of the damage caused by certain natural disasters;

b) undertakings in difficulty.

(4) This scheme **shall not apply** to state aid measures that by their very nature, by their associated conditions or their financing method, entail an indisputable breach of Union law, in particular:

a) aid measures where the granting of aid is conditional upon the beneficiary having its headquarters in Romania or being established predominantly in Romania; however, the requirement to have a registered office or branch in Romania at the time of payment of the aid is allowed.

b) aid measures where the granting of aid is conditional upon the beneficiary having to use nationally produced goods or domestic services.

(5) This scheme **shall not apply** to aid exceeding the following thresholds:

a) aid for investment in culture and heritage conservation: EUR 150 million per project; operating aid for culture and heritage conservation: EUR 75 million per undertaking per year;

b) aid for investment in local infrastructure: EUR 10 million or total costs exceeding EUR 20 million for the same infrastructure.

#### **Art.6 Transparency of aid**

This scheme applies only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment ("transparent aid").

#### **Art.7 Incentive effect**

(1) This scheme applies only to aid which has an incentive effect.

(2) This condition shall be deemed to be fulfilled if the beneficiary has submitted to the authority granting the concerned aid a request for aid written before the conclusion of the contract granting the aid. The application for aid will contain at least the following information:

- a) undertaking's name and size;
- b) description of the project, including its start and end dates;
- c) location of the project;
- d) list of project costs;
- e) type of aid (grant) and the amount of public funding required for the project.

(3) Ad-hoc aid granted to large undertakings is considered to have an incentive effect if, in addition to ensuring that the condition referred to in the previous paragraph is met, the Member State has verified, before granting the aid concerned, that the documentation drawn up by the beneficiary sets that the aid will result in one or more of the following:

- a) a substantial increase in the scope of the project / activity due to the aid; or

- b) a substantial increase in the total amount spent by the beneficiary on the project / activity due to the aid; or
- c) a material increase in the speed of completion of the project / activity concerned.

#### **Art.8 Publication and information**

(1) Both the Managing Authority and Oradea Regional Office for Cross-Border Cooperation for Romania-Hungary Border (BRECO) ensure the publication on a comprehensive internet site on state aid at national or regional level of:

- a) a summary information referred to in article 11 of Regulation no. 651/2014 in the standard format set out in Annex II to Regulation (EU) no. 651/2014 or a URL to them;
- b) the entire text of the aid measure, as referred to in article 11 of Regulation (EU) no. 651/2014, or a URL giving access to the entire text;
- c) the information referred to in annex III to Regulation (EU) no. 651/2014 on individual aid exceeding EUR 500 000.

(2) Such information shall be published within 6 months of the date when the aid was granted and shall be available for at least 10 years from the date when the aid was granted.

#### **Art.9 Duration of the State aid scheme**

(1) The validity period of the scheme, when state aid will be granted, is from the date of publication in the Official Journal of Romania Part I of this scheme, , until 31.12.2020.

(2) Payments for the aid granted under this scheme will be made no later than 31.12.2023.

#### **Art. 10 Eligibility conditions for State aid beneficiaries**

(1) Beneficiaries of the facilities provided for in this Scheme may be undertakings that meet the following conditions:

a) are not insolvent, do not have business administered by a syndic judge, have no restrictions on commercial activity, are not the subject of arrangements between creditors or are not in a situation similar to the above, regulated by law;

b) do not register public debts and have paid in due time their taxes, obligations and other contributions to the state budget, special budgets and local budgets provided by the legislation in force;

c) the legal representative of the undertaking has not been convicted of res judicata for fraud, corruption, involvement in criminal organizations or other illegal activities to the detriment of the financial interests of the European Community;

d) the legal representative of the undertaking has not been the subject of res judicata in the last 3 years by any court for professional or ethical reasons;

e) the legal representative of the undertaking does not provide false information;

f) are directly responsible for the drawing up and implementation of the project and/or act as state aid beneficiary for the project to be financed;



g) have not been the subject of a decision to recover state aid or *de minimis aid*, or, if such a decision has been taken, the latter has already been executed and wholly recovered.

(2) Given that the beneficiary of the non-refundable financing can be different from the beneficiary of the state aid, the beneficiary of the non-refundable financing is bound to verify these eligibility conditions at the level of the final beneficiary of state aid (if the non-refundable financing beneficiary is the one who transfers the economic advantage to the final beneficiary of state aid), unless the beneficiary of financing is itself a beneficiary of state aid, in which case the obligation to verify these conditions is the responsibility of the MA.

(3) The obligation of the non-refundable financing beneficiary to verify the eligibility conditions of the state aid beneficiary is provided in the Subsidy contract/co-financing contract concluded between the MA and the beneficiary of the non-refundable financing. Also, the Subsidy contract specifies the conditions to be verified and the mechanism by which the beneficiary of the non-refundable financing will ensure that it can recover from the final beneficiary of the state aid the aid granted, if the case.

(4) The obligations and conditions that the final beneficiary of state aid must comply with, including the eligibility conditions mentioned in this Scheme, are listed as contract terms in the State aid awarding contract concluded between the beneficiary of the non-refundable financing and the final beneficiary of the state aid, in order to be verified. These obligations of verifying the eligibility conditions, undertaken by the beneficiary of the non-refundable financing include the verification of the existence of the Declaration regarding the undertaking in difficulty, at the level of state aid beneficiary.

(5) If the beneficiary of the non-refundable financing is itself a beneficiary of state aid, its obligations as a state aid beneficiary must be entered in the Subsidy contract/co-financing contract concluded with the MA.

(6) If the undertaking is not eligible to receive a specific allocation under this exempted aid scheme, the administrator of the scheme / beneficiary of the non-refundable financing, depending on the situation, shall notify undertaking, in writing.

(7) If the applicant undertaking is eligible to receive state aid under this scheme, the provider/ administrator/ non-refundable financing beneficiary must notify the state aid beneficiary on the amount awarded to it and state aid nature of the amount, with clear reference to Regulation no. 651/2014.

#### **Art.11 How the state aid is awarded**

(1) The Managing Authority launches a call for proposals.

(2) Under this scheme, projects that have undergone the assessment and selection process related to investment priorities 6/c and 8/b may be financed in accordance with the evaluation grids, both from qualitative and state aid point of view, as defined in the relevant documents, in the framework of Interreg V-A Romania - Hungary Programme.

(3) The financed projects will consider the general principles to be complied with:  
a) sustainability;

- b) cost efficiency;
- c) to justify the contribution to specific objective;
- d) to have added value, cross-border impact;
- e) to comply with horizontal principles.

(4) The lead beneficiary of the non-refundable financing must submit to the MA a project proposal, according to the call for proposals requirements, in order to be selected by the Monitoring Committee of the Interreg V-A Romania-Hungary Programme, in accordance with the Guide for Applicants for Investment priorities mentioned in this Scheme.

(5) Project proposals are assessed from the administrative and eligibility point of view by the scheme administrator. The quality assessment and the assessment of the state aid are carried out by external assessors, on the basis of assessment criteria approved by the Programme's Monitoring Committee.

(6) The Monitoring Committee approves the list of projects proposed for financing and the Managing Authority signs subsidy contracts with the lead beneficiaries of non-refundable financing for ERDF funds and national co-financing contracts with the Romanian co-financing beneficiaries.

(7) From the state aid viewpoint, under the Interreg V-A Romania-Hungary Programme, the beneficiary of a non-refundable financing can be in one of the following situations:

- a) the beneficiary of the non-refundable financing is also the final beneficiary of state aid;
- b) the beneficiary of the non-refundable financing is beneficiary of state aid for part of the financing but also transfers part of the aid / advantage, in a transparent way, to another state aid beneficiary, taking into account the procedure outlined below;
- c) the beneficiary of the non-refundable financing is only an intermediary and transfers all aid/advantage, in a transparent way, to another beneficiary of state aid, taking into account the procedure described below.

(8) In each of the cases referred to in the previous paragraph, the method of granting state aid is as follows:

- a) for the situation described in paragraph (7), letter a) of this article, state aid is granted on the basis of the Subsidy contract/co-financing contract defined in this state aid scheme. This contract includes the provisions of this scheme;
- b) for the situation described in paragraph (7) letter b) of this article, state aid is granted on the basis of the Subsidy contract/co-financing contract, in the case where the non-refundable financing beneficiary is a beneficiary of state aid for a part of the financing, and respectively on the basis of the state aid awarding contract, if part of the aid/ advantage is transferred to another beneficiary of state aid, different from the beneficiary of non- refundable financing;
- c) for the situation described in paragraph (7) c) of this article, state aid is granted on the basis of the state aid awarding contract described in this Scheme.

(9) In accordance with the situations described in paragraph (8), letters a), b) and c), verification of the conditions for granting state aid under this scheme shall take place as follows:

a) for the situation described in point a): verification that the eligibility conditions are met is carried out during the applications assessment and selection process, as described;

b) for the situation described in point b): verification that the eligibility conditions are met, is carried out during the applications assessment and selection process for the part that represents the state aid granted to the beneficiary of the non-refundable financing. For the remaining part of the state aid, transferred by the beneficiary of the non-refundable financing to the beneficiary of state aid, based on the state aid awarding contract, the verification of the fulfilment of the conditions for granting the state aid is made by the beneficiary of the non-refundable financing. Further, compliance with the conditions for granting state aid under the state aid awarding contract, concluded between the beneficiary of the non-refundable financing and the state aid beneficiary will be subject to verification by the Managing Authority during the implementation of project and reimbursement of the expenditure. If deviations are found, they will be analyzed from the perspective of the irregularity and / or fraud point of view and the recovery of such state aid shall be ordered. The signing of the state aid awarding contract between the state aid beneficiary and the non-refundable financing beneficiary will be a mandatory condition stipulated in the financing contract concluded between the beneficiary of the non-refundable financing and the Managing Authority, being a mandatory condition for the reimbursement of the validated expenditure related to the project. The signing of the state aid awarding contract will be conditional on the state aid beneficiary providing the Declaration regarding the undertaking in difficulty;

c) for the situation described in point c): verification of the fulfilment of the conditions for granting the state aid is made by the beneficiary of the non-refundable financing. Further, compliance with the conditions for granting state aid under the state aid awarding contract, concluded between the beneficiary of the non-refundable financing and the state aid beneficiary will be subject to verification by the Managing Authority during the implementation of project and reimbursement of the expenditure. If deviations are found, they will be analyzed from the perspective of the irregularity and/or fraud point of view and the recovery of such state aid shall be ordered. The signing of the state aid awarding contract between the state aid beneficiary and the non-refundable financing beneficiary will be a mandatory condition stipulated in the financing contract, concluded between the beneficiary of the non-refundable financing and the Managing Authority, being a mandatory condition for the reimbursement of the validated expenditure related to the project. The signing of the state aid awarding contract will be conditional on the state aid beneficiary providing the Declaration regarding the undertaking in difficulty.

(10) The relations between the state aid beneficiary and the Managing Authority regarding the obligations for granting, monitoring and recovery of the state aid are regulated by the state aid awarding contracts concluded between:

a) The Managing Authority and the beneficiary of the non-refundable financing, if the beneficiary of the state aid is also beneficiary of the non-refundable financing, and in

this case the state aid awarding contract takes the form of the Subsidy Contract (including the Partnership Agreement)/co-financing contract,

and between

b) The beneficiary of the non-refundable financing and the state aid beneficiary, if the beneficiary of the non-refundable financing transfers part or all of the aid obtained through the Subsidy/co-financing contract.

(11) The State aid awarding contract, concluded either between the MA and the beneficiary of the non-refundable financing, or between the beneficiary of the non-refundable financing and each beneficiary of exempted state aid, under this scheme, according to the aforementioned situations, will include clauses to ensure that state aid monitoring functions are carried out properly by the scheme provider/administrator, including cases of transfer of aid or indirect aid.

(12) The aid is granted in the form of a non-refundable financing from the ERDF Community funds and national funds. Where the aid is granted in instalments, the instalments shall be adjusted to the value at the time the aid is granted. The discount rate will be the reference rate applied when granting the aid.

(13) The eligible activities covered by this exemption scheme will be funded only if they have been initiated after the approval of the project proposals in accordance with the Guide for Applicants related to the investment priorities identified in this scheme.

(14) The envisaged state aid is granted under the scheme only for projects that are not and were not previously financed from other national or Community public funds, including *de minimis/state* support measures (in line with the declarations of the beneficiaries).

## **Art. 12 Budget of the State Aid Scheme**

(1) The allocated budget is made up of ERDF funds and national co-funding from the state budget and the local budget, as the case may be.

(2) The estimated value of the scheme budget, for the entire period of its implementation, is EUR 22.783.590, broken down as follows:

a) Priority Axis 1 (Investment priority 6/c): ERDF funds: EUR 6.893.225, national co-financing: EUR 608.226

b) Priority Axis 3 (Investment priority 8/b): ERDF funds: EUR 14.043.047, national co-financing: EUR 1.239.092

(3) The estimated annual value of the planned budget under the scheme is EUR 5,695,897.50

(4) The estimated budget of the exempted state aid can be modified according to the project proposals within the Interreg V-A Romania-Hungary Program, under the provisions of art. 15

of Government Emergency Ordinance no. 77/2014 approved with modifications and completions by Law no.20/2015, with subsequent modifications.

(5) The breakdown of the budget by categories of expenditure according to the categories of state aid may be modified according to the project proposals, under the provisions of article 15 of Government Emergency Ordinance no. 77/2014 approved with modifications and completions by Law no.20/2015, with subsequent modifications.

**Art.13 Number of beneficiaries**

The maximum estimated number of beneficiaries is 600 eligible beneficiaries.

**Art.14 Eligible costs and ineligible costs**

This scheme concerns the following: aid for culture, according to article 53 and aid for local infrastructure, in accordance with article 56 of EU Regulation no. 651/2014 on exempted state aid categories.

**Art. 15 Aid for culture:**

Aid for culture can be granted for the following cultural objectives and activities:

- a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, other live performance organizations, film heritage institutions and other similar artistic and cultural infrastructures organizations and institutions;
- b) tangible heritage, including all forms of movable or immovable cultural heritage, as well as archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as a cultural or natural heritage by the competent authorities of a Member State;
- c) intangible heritage in any form, including folklorist customs and crafts;
- d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
- e) cultural and artistic education activities, as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- f) writing, editing, production, distribution, digitization and publishing of musical and literature works, including translations.

**Art. 16 Eligible costs:**

(1) Aid for culture may be granted in the form of:

- a) investment aid, including aid for the construction or upgrade of culture infrastructure;

b) operating aids.

(2) In the case of investment aid, the eligible costs are investment costs in tangible and intangible assets, including:

a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure if at least 80% of either the time or the space capacity per year is used for cultural purposes;

b) costs for the acquisition or physical relocation of cultural heritage;

c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;

d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;

e) costs for cultural projects and activities, cooperation and exchange programmes, promotion costs.

(3) Costs for the acquisition of buildings and land are not eligible, except for the costs of acquiring / expropriating land needed for road construction, costs limited to 5% of the estimated ERDF costs for the investment objective. Second-hand equipment are excluded.

(4) In the case of operating aid, the eligible costs are the following:

a) the cultural institution's or heritage site's costs linked to continuous or periodic activities (included in the application form), including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;

b) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

c) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitization and of use of new technologies as well as costs of improving accessibility for people with disabilities;

d) operating costs directly relating to the cultural project or activity, such as rent of real estate and cultural venues, travel expenses (for the staff nominated in the project team), materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a

result of the project or activity; costs of financing are only eligible if they have not been covered by investment aid;

e) costs for the personnel nominated in the project team;

f) costs for advisory and support services provided by external consultants and service providers incurred directly as a result of the project (only for activities implemented during the project period).

(5) Eligible costs are the costs for publishing of music and literatures, including authors' fees (copyright related costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing) layout and pre- press costs, and printing or e-publication costs.

Aid to press and magazines, whether they are published in print or electronically, shall not be eligible under this article.

**Art. 17. Description of thresholds and intensity:**

(1) For aids which do not exceed EUR 2 million, the maximum amount of aid shall be fixed, depending on the choice of the state aid beneficiary, either to:

a) 80% of the eligible costs;

or:

b) for investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit is deducted from the eligible costs ex-ante, based on reasonable projections, or through a claw-back mechanism. The operator of the infrastructure has the right to keep a reasonable profit over the relevant period;

c) for operating aid, the aid amount shall not exceed what is necessary to cover operating losses and a reasonable profit over the relevant period. This is ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

(2) The beneficiary's option must be expressed at the time of submitting the application for state aid.

(3) For aids exceeding EUR 2 million, the maximum aid amount shall be determined according to the following methods:

a) In the case of investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit is deducted from the eligible costs ex-ante, based on reasonable projections, or through a claw-back mechanism. The operator of the infrastructure manager has the right to keep a reasonable profit over the relevant period.

b) In the case of operating aid, the aid amount shall not exceed what is necessary to cover operating losses and a reasonable profit over the relevant period. This is ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

(4) In the case of the publication of musical and literary works, the maximum aid amount shall not exceed either the difference between the eligible costs and the actual income of

the project, nor 70% of the eligible costs. Revenues are deducted from eligible costs either *ex ante* or through a claw-back mechanism.

#### **Art. 18. Aid for the local infrastructure**

(1) Eligible activities are as follows:

a) Financing for the construction or upgrade of local infrastructures linked to infrastructures that contribute locally to improving the business and consumer environment and modernizing and developing the industrial base are compatible with the internal market according to article 107 paragraph (3) of the Treaty on the Functioning of the European Union (TFEU) and are exempted from the notification requirement of article 108 paragraph (3) of the TFEU, provided that the requirements laid down in this article and in Chapter I of Commission Reg. (EU) no.651 / 2014 of are met.

b) This article shall not apply to aid for infrastructures that is covered by other sections of Chapter III of the Commission Regulation(EU) 651/2014, except for Section 1 - Regional aid. This article shall not apply to airport infrastructures or port infrastructures.

c) The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use of the infrastructure shall correspond to the market price.

d) Any concession or other type of contract under which a third party is entrusted with infrastructure operation is awarded in an open, transparent and non-discriminatory manner, with due regard for the applicable procurement rules.

(2) Eligible costs are as follows:

a) eligible costs are investment costs in tangible and intangible assets.

b) costs for the acquisition of buildings and land are not eligible, except for the costs of acquiring / expropriating land needed for road construction, costs limited to 5% of the estimated ERDF costs for the investment objective. Second-hand equipment are excluded.

c) no aid shall be granted for local infrastructure in the case of infrastructure aid covered by other sections of Commission Regulation (EU) no. 651/2014, except for Section 1 - Regional aid. This type of state aid does not apply either to airport infrastructure or to port infrastructure.

(3) Thresholds, intensity: the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit is deducted from the eligible costs *ex-ante*, based on reasonable projections, or through a claw-back mechanism.

(4) This scheme does not apply to specific infrastructures.

#### **Art.19 Cumulation**



(1) In order to determine whether the notification thresholds established under Commission Regulation (EU) no. 651/2014 and the maximum aid intensities laid down in Chapter III of said regulation are complied with, the total amount of the state aid granted for the aided activity or project must be taken into account.

(2) Where European Union financing centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly controlled by the Member State is combined with state aid, only the latter is analysed in order to establish whether the notification thresholds and the maximum aid intensities or maximum aid amounts are complied with, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favorable funding rate provided for in the applicable rules of Union law.

(3) Aid with identifiable exempted eligible costs may be cumulated with:

a) any other state aid, as long as those measures cover different identifiable eligible costs;

b) any other state aid in respect of the same eligible costs overlapping in whole or in part only if the cumulation in question does not result in exceeding the highest aid intensity or the highest aid amount applicable to that aid respectively under Commission Regulation (EU) No 651/2014.

(4) State aid exempted under this scheme shall not be cumulated with any *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity/aid amount exceeding those set out in this scheme.

#### **Art.20 Monitoring and reporting**

(1) The Managing Authority (i.e. the exempted aid provider under this scheme) will inform the European Commission via electronic notification system, State Aid Notification Interactive (SANI), set up by the European Commission, within 20 working days of the entry into force of this scheme, according to art. 9 of Regulation (EU) no. 651/2014, respectively of Government Emergency Ordinance no. 77/2014, approved with subsequent amendments and completions by Law 20/2015, as amended. This information will be published in the Official Journal of the European Union and on the website of the European Commission.

(2) Reporting and monitoring of exempted aid granted under this scheme shall be in accordance with the provisions of the Government Emergency Ordinance no. 77/2014, approved with subsequent amendments and completions by Law 20/2015, as amended, respectively of the Regulation on state aid monitoring procedures, approved by Order of the President of the Competition Council no. 175/2007.

(3) The State aid provider shall keep detailed records of the aid granted under this scheme for a period of 10 years from the date on which the last specific allocation has been granted under the scheme. This record must contain all the information necessary to demonstrate compliance with the conditions imposed by the Community law on State aid.

(4) The beneficiary of the non-refundable financing and the beneficiary of the state aid shall keep detailed records of the state aid granted for a period of at least 10 years from the date on which the last specific allocation was granted under the State aid scheme. Such records

must contain all the information necessary to demonstrate compliance with the conditions imposed by Community State aid law.

(5) The beneficiary shall respond, within the deadline set by the Competition Council, to any request for information regarding the state aid or *de minimis* aid received. The deadline set by the Competition Council may not be less than 5 working days.

(6) The state aid beneficiary shall report to the beneficiary of the non-refundable financing all data and information necessary for the monitoring of the state aid in the format provided by the scheme provider.

(7) The state aid beneficiary shall repay the full amount of the state aid received in case of non-compliance with the conditions for granting the aid, including the related interest. The beneficiary of the non-refundable financing shall notify the scheme provider / administrator on the need to recover the state aid.

(8) State aid providers shall constantly monitor the ongoing state aids and to order the necessary measures in case of breach of the conditions imposed by this scheme or by the national or European legislation in force. This shall be done in accordance with the provisions of the contract concluded under the conditions described in art. 11, paragraph (10).

(9) State aid to be repaid or recovered shall also include the related interest payable from the date of payment to the date of recovery or full repayment. The state aid scheme provider / administrator will develop methodological rules approved by administrative acts for stopping / recovering the aid, which will be forwarded to the Competition Council within 5 working days from the date of approval.

(10) The applicable interest rate is the one established under Article 14 (2) of Regulation (EC) no. 659/1999 laying down detailed rules for the application of art. 93 of the Treaty establishing the European Community.

(11) Decisions of the state aid provider for recovery of state aid shall be sent to the Competition Council for information within 5 days from the date of being adopted.

(12) Based on a written request, the state aid provider shall send to the European Commission, through the Competition Council, within 20 working days or within the time limit set in the request, any information that the European Commission considers necessary for the assessment of compliance with the conditions of this state aid scheme.

(13) The administrator of this Scheme shall make available to the state aid provider, in the format and within the timeframe requested by the latter, all the data and information necessary to carry out the reporting and monitoring procedures that are the responsibility of the provider.

(14) The state aid provider shall submit to the Competition Council, in the format and within the timeframe foreseen by the Regulation on state aid monitoring procedures, implemented by Order of Competition Council President no 175/2007, published in the Official Journal of Romania, Part I, no. 436 dated 28<sup>th</sup> of June 2007, all data and information necessary for the monitoring of state aids at national level.

(15) If the State aid provider does not have definitive data on the amount of state aid, it will provide estimates.

(16) Errors found by the state aid provider and legal corrections, cancellations, recalculations, recoveries, repayments shall be reported by March 31<sup>st</sup> of the year following the reporting year.

(17) If there are serious doubts on the data submitted by the state aid providers, the Competition Council may request additional data and information and, if necessary, carry out a control action to the beneficiary of the state aid. The control team of the Competition Council will be accompanied by the representatives of the state aid provider.

(18) If the state aid provider does not implement the measures required to comply with the state aid law, the Competition Council issues decisions to stop or recover the state aids. The decisions issued by the Competition Council are enforceable.

#### **Art. 21**

The state aid provider will submit, for information purposes, to the Competition Council this scheme within 15 days from the date of its adoption, according to art. 17 of Government Emergency Ordinance no. 77/2014, approved with subsequent amendments and completions by Law 20/2015, as amended.

#### **Art. 22 Aspects regarding the Electronic Register of state aid granted in Romania (RegAS)**

(1) The state aid provider or, as the case may be, the administrator of the state aid scheme, shall, according to the provisions of art. 29 of the Regulation on the State Aid Register, implemented by the Order of the President of the Competition Council no. 437/2016, to upload in the Electronic State Register of State Aid granted in Romania (RegAS) the data and information related to this state aid scheme within a maximum of 5 (five) days from the date of its entry into force.

(2) Financing contracts, aid awarding acts, payments, recovery obligations and effective repayment of such obligations will be charged to the Registry within 7 (seven) days after signing the contract / act, or of their publication in the Official Journal of Romania, as the case may be, respectively, from the date of the establishment of payments, the recovery obligations or the effective repayment of such obligations.

#### **Art. 23 Recovery of State Aid**

(1) If it is found that the criteria set out in this Scheme are not met, all necessary steps shall be taken to recover the aid granted, including related interests, calculated in accordance with the Community provisions in force. The recovery of state aid from Romanian beneficiaries is carried out by the state aid provider based on the provisions of Government Emergency Ordinance no. 66/2011 regarding the ascertaining and sanctioning of irregularities occurred in the obtainment and usage of European funds and/or related national public funds, approved with subsequent amendments and completions by Law 142/2012, as amended and completed, and other legal provisions applicable to the financing contract. The state aid recovery from the beneficiaries of the partner state shall be carried out by the state aid

provider, based on Memorandum of Implementation provisions - agreements between Members States involved in Interreg V-A Romania-Hungary Programme, and other legal provisions applicable to the financing contract. The applicable interest rate shall be that laid down in Regulation (EC) no. 794/2004 of 21 April 2004 implementing the Council Regulation (EC) no. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, published in the Official Journal of the European Union series L no. 140 Of April 30<sup>th</sup> 2004, as subsequently amended and supplemented, and in compliance with the provisions of the Council Regulation (EU) 2015/1589 of July 13<sup>th</sup>, 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, published in the Official Journal of the European Union series L no. 248 of September 24<sup>th</sup> 2015.

(2) If the state aid beneficiary is similar to the beneficiary of the non-refundable financing, the recovery of the state aid provided in the current scheme is carried out by Ministry of Regional Development Public Administration and European Funds as Managing Authority for the Interreg V-A Romania - Hungary Program, according to the provisions of the Government Emergency Ordinance no. 77/2014, approved with the amendments and completions by Law no. 20/2015, as amended, and the Government Emergency Ordinance no. 66/2011, approved with the amendments and completions by Law no. 142/2012, as amended and supplemented. This recovery is made on the basis of the financing contract concluded between the Managing Authority for the Interreg V-A Romania - Hungary Program and the beneficiary of the non-refundable financing under the conditions of paragraph (1) and according to the methodological norms provided in art. 20 paragraph (9).

(3) Where the beneficiary of the non-refundable financing is different from that of the state aid, it is the non-refundable financing beneficiary's obligation to ensure this recovery from the beneficiary of the state aid on the basis of the state aid awarding contract. Recovery shall be made under the conditions of paragraph (1) and according to the methodological norms provided in art. 20 paragraph (9).

(4) If the beneficiary of the non-refundable financing is a beneficiary of state aid for a part of the financing but also transfers a part of the aid / advantage to another state aid beneficiary, the beneficiary of the non-refundable financing shall ensure this recovery from the beneficiary of state aid, on the basis of the state aid awarding contract. The recovery shall be made under the conditions of paragraph (1) and according to the methodological norms provided in art. 20 paragraph (9).

(5) In all the situations described above, recovery of state aid and the related interest will be pursued in order to ensure that the situation existing beforehand is restored.

(6) Given that this state aid is granted for European Territorial Cooperation projects, Romania, as the Member State in whose territory the Managing Authority is located, as defined in Art. 21 of Regulation (EU) no. 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal, is considered to be the state aid provider for the ERDF funding part, and as a result the Managing Authority will comply with these provisions.

(7) Each Member State shall provide the Managing Authority with the necessary information to comply with the relevant provisions at national level.

(8) Each Member State is considered as a state aid provider for national co-financing of European territorial cooperation projects and shall be responsible for complying with such procedures.

(9) Each provider (Managing Authority vs. Member State) shall be responsible for monitoring projects or project parts under the state aid, in accordance with their national rules established in accordance with the provisions of this Article.

#### **Art. 24 Final provisions**

(1) The text of this scheme and the Guide for Applicants will be published, entirely, on the Interreg V-A Romania-Hungary Programme website at [http://interreg-rohu.eu/ro/home /](http://interreg-rohu.eu/ro/home/).

(2) This order is published in the Official Journal of Romania, Part I.