

ORDER nr. 4213 of 03.12.2020

for the amendment and completion of the Order of the Minister Delegated for European Funds no. 6.510/2017 on the establishment of a transparent State aid scheme 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 through the Interreg V-A Romania-Hungary Programme

ISSUER:

Ministry of Public Works, Development and Administration

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-having regard to the provisions of the Government Emergency Ordinance No. 77/2014 on national procedures in the field of State aid, as well as on the amendment and completion of the Competition Law. 21/1996, approved with amendments and completions by Law no. 20/2015, with subsequent amendments and completions,

-the opinion of the Competition Council communicated with Address no. 14165 of 17.11.2020,

- Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) no. 1407/2013 as regards the extension of its application and amending Regulation (EU) no. 651/2014 as regards its extension and the relevant adjustments,

-under Article 12(6) of Government Decision no.477/2020 on the organization and functioning of the Ministry of Public Works, Development and Administration,

The Minister of Public Works, Development, and Administration issues the following

ORDER:

ARTICLE I

Order of the delegated Minister for European Funds no. 6.510/2017 on the establishment of a transparent State aid scheme to finance investment priorities 6/c - Conservation, 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 through the Interreg V-A Romania-Hungary Programme, published in the Official Journal of Romania, Part I, no. 865 of 2 November 2017, shall be amended and supplemented as follows:

1. Article 1, paragraph (2), and paragraph (4) shall be amended to read as follows:

“(2) The scheme is applicable in the 8 eligible counties of the Interreg V-A Romania - Hungary Programme and will be implemented by 31.12.2023. Under Interreg V-A Romania-Hungary Programme, the eligible counties are as follows:

a) four counties in Romania - Arad, Bihor, Satu Mare and Timiș

- b) four counties in Hungary - Békés, Csongrád--Csanád, Hajdú-Bihar and Szabolcs-Szatmár-Bereg

(4) State aid under this scheme shall be granted only in compliance with the awarding criteria for exempted categories of aid, namely aid for culture and heritage conservation and aid for investments in local infrastructures, as 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 under Articles 107 and 108 of the Treaty on the Functioning of the European Union, as subsequently amended and supplemented by Commission Regulation (EU) no. 1.084/2017 of 14 June 2017 amending Regulation (EU) no. 651/2014 as regards aid for port and airport infrastructures, notification thresholds for aid for culture and heritage conservation, aid for sports infrastructures and multifunctional recreational infrastructures, and regional operating aid schemes for the outermost regions and amending Regulation (EU) no. 702/2014 as regards the calculation of eligible costs.”

2. In Article 4, after letter w) three new letters x) to z) shall be included:

“x) unlawful aid - aid granted without complying with national and Union procedures in the field of state aid;

y) indirect aid - is when a third party (not included in the project partnership) gets an economic advantage from the project, this advantage being State aid;

z) misused aid - aid used by the beneficiary without complying with the conditions for granting such aid”

3. Article 8, paragraph (1), letter c) shall be amended to read as follows:

“c) the information referred to in Annex III on each individual aid award exceeding EUR 500 000.

As regards aid granted to European Territorial Cooperation projects, the information referred to in this paragraph shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 21 of Regulation (EC) No 1299/2013 of the European Parliament and of the Council, is located. Alternatively, the participating Member States may also decide that each of them shall provide the information relating to the aid measures within their territory on the respective websites.”

4. Article 9, paragraphs (1) and (2) shall be amended to read as follows:

“ARTICLE 9

Duration of the State aid scheme

(1) The period of validity of the scheme in which State aid is granted shall be from the date of its publication in the Official Journal of Romania, Part I, until 31 December 2023.

(2) Payments reimbursed by the aid provider to the beneficiaries in respect of aid granted under this scheme shall be made by 31 December 2024, the latest.

5. In Article 10, paragraph (1), after letter g), a new letter h) shall be inserted with the following content:

“h) is not resident for tax purposes in, or incorporated under the laws of, jurisdictions that feature on the EU list¹ of non-cooperative jurisdictions;”

6. Article 10, paragraphs (3) and (5) shall be amended to read as follows:

¹ EC recommendation no 4885, final on 14.07.2020

“(3) The obligation of the non-refundable financing beneficiary to verify the eligibility conditions of the state aid beneficiary is laid down in the Subsidy contract/co-financing contract concluded between the Managing Authority and the beneficiary of the non-refundable financing and in the contract between the non-refundable financing beneficiary and the beneficiary of the aid. The methodological norms referred to in Article 20 paragraph (9) regulates the mechanism for ensuring the recovery of State aid from the final beneficiary of State aid, if the case.

5. Where the beneficiary of the non-refundable financing is himself a beneficiary of State aid, his obligations as a beneficiary of State aid shall be entered in the Subsidy contract/co-financing contract concluded with the Managing Authority.”

7. Article 11, paragraphs (8), letter a), (9), letters b) and c) and (11) shall be amended to read as follows:

“(8) a) in the case of the situation described in paragraph (7) letter a), the State aid shall be granted based on the Subsidy contract/co-financing contract defined in this state aid scheme.”

„ (9) b) in the case of the situation described in paragraph (8) letter 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 is subject to verification by the Managing Authority during the implementation of project and reimbursement of the expenditure. 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 and is monitored during the implementation and sustainability period of 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 paragraph (8), letter 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. 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, and is monitored during the implementation and sustainability period of 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.”

(11) The contract to award the state aid, concluded either between the Managing Authority 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.”

8. Article 12, paragraphs (2) and (3) shall be amended to read as follows:

"(2) The estimated value of the scheme budget, for its entire duration, shall be EUR 22.089.292,30, broken down as follows:

- a) Priority Axis 1 (Investment priority 6/c): ERDF funds: EUR 3.446.612,50, national co-financing: EUR 304.113,
- b) B) Priority Axis 3 (Investment priority 8/b): ERDF funds: EUR 16.851.656,40, national co-financing: EUR 1.486.910,40.”;

The estimated annual value of the budget shall be as follows:

- for the year 2017 - EUR 0,00 (no aid was granted under the scheme);
- for the year 2018 to EUR 0,00 (no aid was granted under the scheme);
- for the year 2019 - EUR 130.876,01;
- for the year 2020 - EUR 14.500.000,01;
- for the year 2021 - EUR 2.486.138,76;
- for the year 2022 - EUR 2.486.138,76;
- for the year 2023 - EUR 2.486.138,76.

For the RON equivalent value of the scheme budget, the InforEuro exchange rate valid on the date of launching the calls for proposals, i.e. 03.11.2017, is used.”

9. Article 13 is amended and reads as follows:

“ARTICLE 13

Number of beneficiaries

The maximum estimated number of beneficiaries is 50 eligible beneficiaries.”

10. Article 20, paragraphs (1), (2), (6), (8), and (9) shall be amended and shall read as follows:

“ARTICLE 20

Monitoring and reporting

(1) The administrator of the State aid scheme informs 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) The reporting and monitoring of State aid granted under this scheme shall be carried out by the administrator of the State aid scheme under the provisions of Government Emergency Ordinance no. 77/2014, approved with amendments and completions by Law no. 20/2015, as amended, the Regulation on state aid monitoring procedures, approved by Order of the President of the Competition Council no. 175/2007, as well as the provisions of the methodological norms referred to in paragraph (9).

(6) The beneficiary of the State aid is required to report to the beneficiary of the non-refundable financing all the data and information necessary for the monitoring of State aid in the format provided by the scheme provider. The beneficiary of the non-refundable financing shall make that data and information available to the scheme administrator, in order to fulfil the reporting and monitoring obligations referred to in paragraph (2).

(8) The State aid provider has the obligation to 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) The State aid to be reimbursed or recovered shall also include interest due from the date of its payment until the date of its recovery or full repayment. The provider/administrator of the State aid scheme shall develop methodological norms, approved by regulatory administrative acts, to stop/recover the aid. The interest shall be calculated under the provisions of Article 33 of Government Emergency Ordinance no. 77/2014, approved with further amendments and completions by Law no. 20/2015, as amended and supplemented, and under Article 11 of Commission Regulation (EC) no. 794/2004 of 21 April 2004 implementing Regulation (EC) no. 659/1999.”

11. Paragraphs (10), (17) - (18) of Article 20 are repealed.

12. Article 21 is repealed.

13. Article 22, paragraph (2) shall be amended to read as follows:

“(2) The financing contracts, aid awarding acts, payments, recovery obligations and actual reimbursement of such obligations shall be registered in the RegAS by the scheme administrator, no later than 7 (seven) days after the date of signature of the contract/act or their publication in the Official Journal of Romania, as applicable, respectively from the date of establishment of payments, recovery obligations or actual reimbursement of such obligations.”

14. Article 23 shall be amended to read as follows:

ARTICLE 23

Recovery of state aid

(1) Where it is established that the criteria for granting the aid under this scheme have not been complied with, all necessary steps shall be taken to recover the aid granted, including interest calculated under the Community provisions in force. Recovery of state aid from Romanian beneficiaries shall be carried out by the state aid provider based on monitoring carried out by the scheme administrator, according to the provisions of Government Emergency Ordinance no. 77/2014, approved with amendments and completions by Law no. 20/2015, as amended and supplemented, the methodological norms referred to in article 20(9) and the other legal provisions applicable to the financing contract. State aid recovery from the beneficiaries of the partner state shall be carried out by the state aid provider, based on the provisions of the *Memorandum of Implementation* – arrangements between the Member States involved in the Interreg V-A Romania-Hungary Programme (hereinafter the *Memorandum of Implementation*) and the other legal provisions applicable to the financing contract. The interest rate to be applied shall be that established by Commission Regulation (EC) no. 794/2004 of 21 April 2004 implementing 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 L series no. 140 of 30 April 2004, as amended and supplemented and under Council Regulation (EU) 2015/1.589 of 13 July 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 L series no. 248 of 24 September 2015.

(2) If the State aid beneficiary is similar to the beneficiary of the non-refundable financing, the recovery of the State aid provided for in this scheme shall be carried out by the Ministry of Public Works, Development and Administration as Managing Authority for the Interreg V-A Romania-Hungary Programme, according to the provisions of Government Emergency Ordinance no. 77/2014, approved with amendments and completions by Law No 20/2015, as further amended and supplemented, and the methodological norms provided for in Article 20(9), respectively under the provisions of the Memorandum of implementation for the Hungarian partners. Recovery shall be carried out based on the financing contract concluded between the managing authority for the Interreg V-A Romania-Hungary Programme and the

beneficiary of the non-reimbursable financing, under the program rules and the methodological norms referred to in Article 20(9).

(3) Where the beneficiary of the non-refundable financing is different from the State aid beneficiary, it is the beneficiary of the non-refundable financing who will ensure such recovery from the beneficiary of the state aid under the state aid awarding contract. The recovery shall be carried out under the rules of the Programme and in line with the methodological norms provided for in Article 20(9), as well as the provisions of the Memorandum of Implementation, depending on the Member State in which the beneficiary of state aid is located.

(4) Where the beneficiary of the non-refundable financing is a beneficiary of state aid for part of the financing but also transfers part of the aid/advantage to another beneficiary of State aid, it is the responsibility of the non-refundable financing beneficiary to ensure such recovery from the state aid beneficiary, based on the state aid awarding contract provisions. Recovery of the state aid/advantage transferred shall be carried out according to the rules of the Programme and in line with the methodological norms provided for in Article 20(9) and the provisions of the Memorandum of Implementation, depending on the Member State in which the beneficiary of State aid is located.

(5) In all cases referred to in paragraphs (1) to (4), the recovery of state aid and related interest shall be pursued in order to ensure that the previously existing situation is restored.”

15. After Article 23, a new Article 23¹ is inserted as follows:

‘Irregularities and reimbursement of financing not falling under state aid rules

(1) Where irregularities are found in projects relating to investment priorities 6/c and 8/b financed under this State aid scheme, they shall be analysed in the light of the irregularity and/or fraud regime and recovery of unduly paid amounts shall be ordered.

(2) In the event of suspicion of irregularities or fraud, after the signature of the Subsidy contract/national co-financing/state aid awarding contract, the Managing Authority shall verify the eligibility of expenditure incurred by Romanian beneficiaries of the state aid scheme during the technical and financial implementation of the projects (use of the approved state aid scheme budget), according to the provisions of Government Emergency Ordinance no. 66/2011 on prevention, detection and sanctioning of irregularities in obtaining and using European funds and/or national public funds related thereto, approved with modifications and additions by Law no. 142/2012, as amended and supplemented.

(3) The procedure to identify irregularities or fraud and to establish budgetary debts/financial corrections resulting from irregularities identified during the implementation of the projects or after the completion of their implementation, shall be carried out under the provisions of Government Emergency Ordinance no. 66/2011, approved with amendments and completions by Law no. 142/2012, as amended and supplemented.

(4) Recovery of budgetary debts resulting from irregularities from Romanian beneficiaries of the State aid scheme shall be carried out under the provisions of Government Emergency Ordinance no. 66/2011, approved with amendments and completions by Law no. 142/2012, as amended and supplemented, and from Hungarian beneficiaries, In line with the provisions of the Memorandum of Implementation.”

16. Article 24 is amended and reads as follows:

“ARTICLE 24

Final provisions

(1) Having regard to the fact that this State aid is granted for European Territorial Cooperation projects, Romania, as the Member State on whose territory the Managing Authority is located, as defined in Article 21 of Regulation (EU) no. 1.299/2013 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 provider of state aid for the ERDF part of the funding, and as a result, the Managing Authority complies with these provisions.

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

(3) Each Member State shall be considered as a provider of State aid concerning national co-financing related to European Territorial Cooperation projects and shall be responsible for complying with those procedures.

(4) Each provider (Managing Authority, respectively Member State) shall be responsible for monitoring the projects or parts of projects financed by the state aid scheme, according to their national rules, established in line with the provisions of this Article.

(5) The text of this scheme, the *Guides for Applicants* and other relevant Programme documents are published, entirely, on the Interreg V-A Romania-Hungary Programme website at <http://interreg-rohu.eu/ro/home/>.”

17. Throughout the Order content, the name "Ministry of Regional Development, Public Administration and European Funds" is replaced by the name "Ministry of Public Works, Development and Administration".

ARTICLE II.

This order shall be published in the Official Journal of Romania, Part I.

For the Minister of public works, development and administration

Florin Nicolae Creț

State secretary

**Bucharest, 3rd of December 2020
No 4.213**