

ORDER nr. 4214 of 03.12.2020

To amend and supplement the order of the Minister of European Funds no. 6.509/2017 establishing a *de minimis* aid scheme for activities under the investment priorities 6/c - Conserving, protecting, promoting and developing natural and cultural heritage, 7/c Developing and improving environmentally-friendly (including low noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility 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 Government Emergency Ordinance no. 77/2014 on national procedures in the field of State aid, and to amend and supplement Competition Law no. 21/1996, approved with modifications and completions by Law no. 20/2015, as further amended and supplemented,

-the opinion of the competition Council delivered 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 the extension of its application 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 for Public Works, Development and Administration issues the following

ORDER:

ARTICLE I

Order of the delegated Minister for European Funds no. 6.509/2017 on the establishment of a *de minimis* aid scheme for activities under investment priorities 6/c - Conserving, protecting, promoting and developing natural and cultural heritage, 7/c Developing and improving environmentally-friendly (including low noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility 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. 861 of November 1st 2017, shall be amended and supplemented as follows:

1. Article 1, paragraphs (2), and (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 December 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) The granting of *de minimis* aid under this scheme will only be made subject to complying with the *de minimis* awarding criteria laid down in Regulation (EU) no 1407/2013.”

2. In Article 4, after letter r) three new letters s) to u) shall be included:

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

t) 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;

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

3. Article 6, paragraphs (1) and (2) shall be amended to read as follows:

“(1) the period of validity of the scheme, during which *de minimis* aid is granted, is 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.

”

4. In Article 8, paragraph (1), a new letter j) is inserted after letter i) to read as follows:

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

5. Article 10 is amended and will read as follows:

“ARTICLE 10

Eligible expenditure

The eligible expenditure under the scheme shall be that indicated in the related Guide for Applicants for the investment priorities mentioned under the scheme, namely: preparation costs, staff costs, office and administrative expenditures; travel and accommodation costs; external expertise and services costs; equipment expenditure, infrastructure and works.”;

6. In Article 11, paragraph (3), the introductory wording of paragraph (5), paragraph (6), letter a) point (ii), paragraph (6), letter b) point (I), paragraph (7), the introductory wording of paragraph (8), paragraphs (9) and (12) shall be amended to read as follows:

“(3) project proposals are assessed from administrative and eligibility point of view by the administrator of the *de minimis* scheme. The assessment of project proposals in terms of

¹EC recommendation no 4885, final on 14.07.2020

quality and *de minimis* aid is carried out by external assessors based on assessment criteria approved by the Programme's Monitoring Committee.

.....

(5) from the point of view of the *de minimis* aid, under the Interreg V-A Romania-Hungary Programme, the beneficiary of the grant may be in one of the following situations:

.....

(ii) the non-refundable financing beneficiary under the *de minimis* aid awarding contract, where the non-refundable beneficiary transfers part or all of the aid/advantage to a *de minimis* aid beneficiary that cannot be identified in the implementation phase. Further, the compliance with the conditions for awarding *de minimis* aid under the *de minimis* aid awarding contract between the non-refundable financing beneficiary and the beneficiary of the *de minimis* aid is subject to verification by the Managing Authority during the implementation and reimbursement of the expenditure. The signature of the *de minimis* aid awarding contract between the *de minimis* aid beneficiary and the non-refundable financing beneficiary shall be a mandatory condition laid down in the financing contract between the non-refundable financing beneficiary and the Managing Authority, and shall be monitored during the implementation and sustainability of the project. The signature of the aid awarding contract will be conditional on the *de minimis* aid beneficiary providing the *de minimis* Declaration;

.....

(i) the Managing Authority and the non-refundable financing beneficiary, where the *de minimis* aid beneficiary is also a beneficiary of non-refundable financing, in which case the aid award contract shall take the form of the Subsidy contract (including the Partnership Agreement)/co-financing contract;

.....

(7) The *de minimis* aid awarding contract concluded either between MA and the non-refundable financing beneficiary or between the non-refundable financing beneficiary and each final beneficiary of *de minimis* aid under this scheme, as described above, contains clauses ensuring that the monitoring functions of the *de minimis* aid, performed by the scheme provider/administrator, can be complied with, including for cases of transfer of *de minimis* aid or indirect aid.

(8) The declaration on own responsibility of the final beneficiary of the *de minimis* aid (*de minimis Declaration*) covers the following aspects:

.....

(9) If the final beneficiaries of the *de minimis* aid cannot be identified at the time of submission of the project proposal, due to the specificity of the activities described, the lead beneficiary/beneficiary of the non-refundable financing is required to collect the *de minimis* Declarations, according to the contract concluded with the MA/Partnership Agreement. The the *de minimis* scheme administrator will verify this requirement is complied with, through first level control and monitoring activity.

.....

(12) The beneficiary of the non-refundable financing will grant the *de minimis* aid after verifying, based on the undertaking's own declaration (*de minimis Declaration*), that the total amount of *de minimis* aid received by the single undertaking for three consecutive fiscal years (the last two fiscal years and the current fiscal year), either from state or local authorities sources or from community sources, combined with the amount of the financial allocation granted under the provisions of this scheme, shall not exceed the threshold of

EUR 200.000 (EUR 100.000 in the case of single undertakings engaged in the carriage of goods by road for hire or reward), equivalent value in RON.”

7. A new paragraph (16) is inserted after paragraph (15) of Article 11, to read as follows:

“(16) the obligation of the beneficiary non-refundable financing to verify the eligibility conditions of the beneficiary of the *de minimis* aid is laid down in the Subsidy contract/co-financing contract between the Managing Authority and the non-refundable financing beneficiary and in the *de minimis* aid awarding contract between the beneficiary of the *de minimis* aid and that of non-refundable financing. The Methodological norms referred to in Article 16(8) regulates the mechanism to ensure the recovery of the *de minimis* aid from the final beneficiary.”

8. In Article 13, the title of the Article and paragraph (3) are amended to read as follows:

“ARTICLE 13

The budget of the *de minimis* aid scheme

(...)

(3) The estimated value of the *de minimis* scheme budget, for its entire duration, is of EUR 6.779.058,75, broken down as follows:

- a) Priority Axis 1 (investment priority 6/c): ERDF funds: EUR 1.723.306,25, national co-financing: EUR 152.056,50;
- b) Priority Axis 2 (Investment priority 7/c): ERDF funds: EUR 995.337,50, national co-financing: EUR 87.823,75;
- c) Priority Axis 3 (Investment priority 8/b): ERDF funds: EUR 3.510.761,75, national co-financing: EUR 309.773,00.

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 14 shall be amended to read as follows:

“ARTICLE 14

Number of beneficiaries

The estimated maximum number of *de minimis* aid beneficiaries is 200 eligible beneficiaries.”;

10. Article 16, paragraphs (1), (5) and (8) shall be amended to read as follows:

“(1) The reporting and monitoring of the *de minimis* aid granted under this scheme shall be carried out by the scheme administrator under the provisions of Government Emergency Ordinance no. 77/2014, approved with amendments and completions by Law no. 20/2015, as further amended and supplemented, respectively under the Regulation on procedures for monitoring State aid, implemented 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 (8).

(...)

(5) The beneficiary of the *de minimis* aid is required to report to the beneficiary of the non-refoundable financing all the data and information necessary for the monitoring of the *de minimis* aid, in the format provided by the scheme provider. The beneficiary of the non-refoundable 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 (1).

(...)

(8) The *de minimis* 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 *de minimis* 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 amendments and completions by Law no. 20/2015, as further 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 (9) and (16)-(17) of Article 16 are repealed.

12. Article 18, paragraphs (1) and (2) shall be amended to read as follows:

(1) The *de minimis* aid provider or, as the case may be, the administrator of the *de minimis* scheme, in this case, BRECO, has the obligation, under Article 29 of the State aid Register Regulation, implemented by order of the President of the Competition Council no. 437/2016, to upload to the Electronic Register of State aid granted in Romania (RegAS), the data and information relating to this *de minimis* scheme within a maximum period of 5 (five) days from the date of its entry into force.

(2) The financing contracts, the awarding acts, payments, obligations to recover aid and actual reimbursement of the obligations arising from this measure, are entered in the RegAS by the *de minimis* aid scheme administrator within 7 (seven) days from the date of signature of the contract/act or their publication in the Official Journal of Romania, as applicable, respectively from the date of payment, the obligation to recover or to effectively repay those obligations.”

13. Article 19 shall be amended to read as follows:

“ARTICLE 19

Recovery of the *de minimis* 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 *de minimis* 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 further amended and supplemented, the Methodological norms referred to in article 16(8) 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 *de minimis* 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 beneficiary of the *de minimis* aid is similar to the beneficiary of the non-refundable financing, the recovery of the *de minimis* aid provided for in the current 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 16(8), respectively under the provisions of the Memorandum of Implementation for beneficiaries in Hungary. 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-refoundable financing, according to the Programme rules and the Methodological norms referred to in Article 16(8).

(3) Where the beneficiary of the non-refoundable financing is different from that of *de minimis* aid, it is the for beneficiary of the non-refoundable financing to ensure such recovery from the beneficiary of the *de minimis* aid under the *de minimis* aid awarding contract. Recovery shall be carried out according to the Programme rules and in line with the Methodological norms referred to in Article 16(8) and the provisions of the Memorandum of Implementation, depending on the Member State in which the beneficiary of the *de minimis* aid is located.

(4) Where the beneficiary of the non-refoundable financing is a beneficiary of *de minimis* aid for part of the financing but also transfers part of the aid/advantage to another *de minimis* beneficiary, it is for the beneficiary of the non-repayable aid to ensure such recovery from the *de minimis* aid beneficiary, based on the *de minimis* aid awarding contract. Recovery of the *de minimis* aid/transferred advantage shall be carried out in accordance with the Programme rules and in line with the Methodological norms laid down in Article 16(8) and the provisions of the Memorandum of implementation, depending on the Member State in which the beneficiary of the *de minimis* aid is located.

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

14. After Article 19, a new Article 19¹ is inserted as follows:

“Irregularities and reimbursement of financing not falling under the *de minimis* aid rules

(1) Where irregularities are found in projects relating to investment priorities 6/c, 7/c and 8/b financed under this *de minimis* 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 contract/*de minimis* aid awarding contract, the Managing Authority shall carry out checks on the eligibility of expenditure incurred by Romanian beneficiaries of the *de minimis* aid scheme during the technical and financial implementation of the projects (use of the approved *de minimis* aid scheme budget), in accordance with 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 completions by Law no. 142/2012, as further 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 *de minimis* 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.”

15. Article 20 shall be amended as follows:

“ARTICLE 20

Final provisions

(1) Having regard to the fact that this *de minimis* 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 *de minimis* 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 *de minimis* 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 *de minimis* 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/>.”

16. 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 4.214