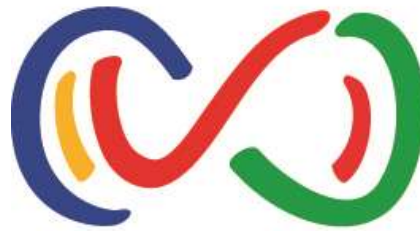


INTERREG V-A ROMANIA-HUNGARY PROGRAMME



Methodology of over-contracting¹ for projects within the Open Call for Proposals

"Partnership for a better future"

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Version 2

¹ Annex to official letters to be exchanged between MA and NA regarding the over-contracting, after MoI signature

1. Preamble

The previous experience related to 2007-2013 programming period revealed that no project actually reached the 100% planned eligible expenditure and the gap between allocated funds and effectively paid amounts needed to be covered later on in the Programme's implementation cycle, through running additional calls. For the sake of the present Programme fast start and smooth implementation, and in order to target the maximum absorption of the funds and act in a preventive manner, the two Member States accepted to set a percentage for over-contracting to be used from the very beginning, after projects' selection.

In this respect, the Memorandum of Implementation (Mol) signed by the Member States (MSs) on 9th of October 2017, provides that, in principle², funds may be over-contracted for projects under an Open Call for Proposals (CfP), up to 110%, from the beginning of the Programme's implementation, based on the Monitoring Committee decision for selection of operations, under each Open Call for Proposals.

According with the signed Mol, the Joint Secretariat is mandated to propose to MA and NA the exact percentage (including relevant amount for this), that is to be over-contracted in relation to each Open Call for Proposals, based on a specific methodology³ (currently presented), after being previously agreed by the MSs.

The contracting of projects from the reserve list, as they were approved by the Monitoring Committee, is conditioned by the Member States' agreement on the exact associated over-contracted amount, up to the percentage above-mentioned. Afterwards, the MA shall proceed with the signature of the specific subsidy contracts, accordingly.

2. Scope

The aim of this methodology is to set up a list of actions in order to effectively over-commit ERDF (consequently, the national funding will need then to be aligned to ERDF), to determine the appropriate over-contracted amount and percentage, with details on the chronological procedural steps to be followed⁴.

² While Mol is ensuring the framework that allows the possibility of over-contracting the current Methodology, after approval between Member States (MPWDA in Romania and MFA in Hungary), details any step needed in order to implement the over-contracting process and it can be modified if needed.

³ The Methodology for over-contracting will be sent for information to the MC when convening the meeting regarding the selection of projects, in line with the provisions of *MC Rules of Procedure, rule no. 5(5)*

⁴ TA funds shall not be subject to over-contracting as stipulated in Mol.

3. Procedural steps

The proposed steps of the over-contracting process are as follows:

3.1 Calculation of the amount and the percentage proposed to be over-contracted per each Investment Priority

A percentage of maximum 10% will be applied to the total allocation launched under the relevant Open Call for proposals, in order to be over-contracted. As a general rule, such percentage will be applied to each Ip within the Call and within the PA.

Depending on the number or total value of the projects' budgets on the reserve list related to each Ip, the exact over-contracting percentage may differ from one Ip to another but keeping the general rule of up to 10% within the PA. Any exception is conditioned by ex-ante approval of both MS but only in a way that total 10% at programme level (associated to the allocation for the open calls and excluding TA) cannot be exceeded. In case there are no projects on the reserve list within a certain Ip or the overall value of the projects' budgets on the reserve list associated to an Ip is smaller than the amount to be over-contracted under the respective Ip, the remaining amounts will be transferred to the other Ips under the same Call, or to another Open Call, within the same or other PA, as decided by the Member States. The same rule will apply in case the over-contracting amount available at Call level cannot be entirely over-contracted under respective Call. Basic rule is that projects will be contracted under over-contracting conditions, based on ranking order and up to 10% at programme level.

However, as a general rule⁵, the average over-contracting percentage per each Call for proposals may not exceed 10% of the total allocation launched under the Call and per PA. By taking this aspect into account the Member States' decision on reserve list with over-contracting shall be made in order to ensure the highest absorption of ERDF funds and safeguard national budget.

For financial information, please refer to the Annex as an example of calculation of maximum over-contracting percentage and relevant amounts, per each Ip within the same PA under the First Open Call for Proposals.

3.2 Selection of projects proposed for over-contracting

Step 0: Following the assessment process, the list of projects proposed for financing, per Ips, shall be submitted for approval to the Monitoring Committee.

⁵ Exceptions are permitted, with respect to the efficiency of use of the public funds and based on the most effective approach to ensure the best absorption rate.

Step 1: Projects that comply with all requirements of the Call and obtain at least the minimum scores, but cannot be financed due to lack of available financial allocation, are to be put forth for the Monitoring Committee's approval under a reserve list. These projects are prioritized according to their ranking, just as the ones that fit into the available financial allocation and are listed on the core list of projects selected for financing in the first place.

Step 1.1: In case two or more projects to be over-contracted under the same Ip, obtain equal scores, but their budgets exceed the allocated amount for the Ip, the project to be over-contracted will be proposed by the JS to the MC by taking into account the following criteria, in the mentioned order:

- a. the scores obtained for criterion referring to the project's contribution to the programme's outputs indicators;
- b. the value of the budget in relation to available allocation.

Step 2: After the approval of the projects on reserve list by the MC and following the approval (in Hungary) /information (in Romania) of the exact afferent over-contracted amount by the Member States (by the responsible Ministries), the JS, after finalisation of selected projects contracting process, can invite projects on the reserve list to enter the over-contracting phase and, consequently, will prepare the specific subsidy contracts.

3.3 Contracting phase of projects affected by over-contracting

Step 3: According to MoI and in line with MSs decision, the over-contracting of projects from the reserve lists approved by the MC is conditioned by the Member States' agreement on the exact associated over-contracted amount, up to the percentage above-mentioned. In this respect, the JS, after the MC approval of the projects on reserve lists, shall submit⁶ officially (through a signed letter) to MA/NA the exact over-contracting amounts and related percentages, national budgets included per partners, in order to be consulted (in Romania) and/or approved (in Hungary) by the relevant ministries⁷.

Step 4: Therefore, contracting as such is conditioned to the approval of the Ministry of Finance in Hungary, of the amount made available for over-contracting. Projects on the reserve lists shall benefit from the amount and the related percentage of over-contracting (basically up to 10%

⁶ The amounts and the related percentages may suffer modifications during pre-contracting process, conditioned by acceptance / rejection of the financing offer under over-contracting conditions , by the projects. In such case, info will be updated and communicated accordingly to the MA/NA.

⁷ The JS prepares the ranking showing the RO and HU amount needed up to 10 % with the projects. The MSs approve it and the JS can go further with contracting. If the project does not want this condition, JS goes further down the list.

per PA, but with exception mentioned above and up to 10% at programme level, related to open calls and excluding TA) defined in point 3.1 hereinabove.

Step 5: In maximum 5 working days after⁸ the contracting of selected projects is completed, based on MSs previous decision, the projects can be over-contracted. But until then the JS can parallelly notify the Lead Beneficiaries on the possibility to conclude subsidy contracts under over-contracting conditions, (Indicative template of specific subsidy contract is Annex to the Guide for Applicants, but the exact format will be sent at that time to them).

Step 5.1: In case a Lead Beneficiary (after consultation with the partners) does not agree to sign a subsidy contract under over-contracting conditions, it shall notify the JS on its refusal, in maximum 3⁹ working days after being notified. In such case, the JS shall address the invitation to the next project on the approved reserve list, for the relevant Ip and continue with the rest in the same way as presented above in step 5.

For faster procedure, the MC can decide and authorize (in the selection meeting) the MA/JS¹⁰ to go further with the reserve list projects to be provided with the special over-contracting conditions if the one fails to accept it.

Step 5.2: In case the exact amount which was agreed by the MSs is not exceeded in case of the next project, the contracting phase can start. If the next project exceeds the agreed exact amount but still within the general 10% rule, the MSs shall agree on the new exact amount and related percentage.

Step 5.3: Even if the budget of the project to be over-contracted is much higher than the available over-contracting amount for the Ip under which the Lead Beneficiary applied, the LB will be given the right to decide on concluding a specific subsidy contract, in case it decides to support from own resources the resulted difference.

Step 6: The finalisation of the process of over-contracting shall follow the contracting procedure¹¹. The JS will prepare the specific subsidy contracts.

⁸ Subject to Member States' decision, the over-contracting process may go in parallel with the contracting of selected projects, but can be finalised only after signing of subsidy contracts of all selected applications (based on the available financial allocation) under each relevant Open Call

⁹ In case the LB needs more time to take a decision, the deadline can be extended, if proper justification is provided by the LB through notification letter send to the JS, within 3 working days from the date of being notified, However the extension should not exceed 15 working days

¹⁰ If the next project fits in the amount, the over-contracted process can continue, if not, another approval letter is needed. In optimal case, it can be one letter with all IPs and projects and RO/HU share

¹¹ Ideally, the contracting process takes maximum 3 months. This timeframe might be exceeded due to external causes (e.g. Programme modifications, special requests of the projects, etc)

Step 7: Signing of specific subsidy contracts by both parties (MA and LB), according to JS/MA contracting procedures.

Contracting obligation

The Beneficiaries shall bear the financial responsibility of over-contracting. In case the Programme exceeds the 100% absorption or the maximum absorption level in case of a decommitment¹², the Lead Beneficiary and its partners commit to support from their own budget the funds necessary for the implementation of the project, according to the approved Application Form and observing the provisions of the specific subsidy contract, its annexes and the European and national legislation in force. The MA has the right to request the LB to repay all or part of the financing already reimbursed to him, according to the provisions of the specific subsidy contract.

Recovery process:

The MA will recover the debts resulted from over-contracting in accordance with the provisions of the subsidy contract, the Regulation (EU) No. 1303/2013 and the provisions of the Memorandum of Implementation, as well as the relevant national legislation in force.

In the case of a decision concerning recovery of expenses, the (lead) beneficiaries will be notified on the owed amounts, through a Notification of recovery issued by the Managing Authority.

The Notification of recovery will specify the exact amounts to be repaid to the Programme and a due date for repayment (30 calendar days from the date of the confirmation that the beneficiary received the notification issued by the Managing Authority). After the due date, an interest is calculated according to the contractual provisions, i.e. an interest rate 1.5 points above the rate applied by the European Central Bank on the first working day of the month of the due date, and shall be applied to the owed amounts. The period for which the interest is calculated is between the first day after the due date and the date of actual payment.

In case the recovery needs to be done not at the end of the programme implementation but even before due to lack of liquidity of the Programme account, the JS prepares analysis for up-to-date over-contracting situation and proposal on recovery based on reverse principle of the selection and contracting mechanism.

¹² If there is a decommitment at programme level, the maximum allocation is an amount which was decreased by the decommitted amount.

3.4 Special measures to be implemented in case unused over-contracting amounts are available under different Calls, PAs and Ips

The over-contracting strategy at Programme level must be implemented with respect to the efficient use of the public funds. The over-contracting instrument was designed so that it would enhance the financial performance of the Programme and the agreed rules for over-contracting were decided on call level principle, so that a simple, transparent allocation of funds is ensured.

However, after exploiting possibilities under general rule, special circumstances may occur, special measures need to be implemented. Therefore, in case (1) there are no available projects to be over-contracted on the reserve lists of certain Open Calls/PAs/Ips, or (2) if available projects have budgets significantly exceeding the existent over-contracting amount, or (3) in case the projects on reserve lists refuse the over-contracting conditions, the Member States may agree on using the remaining over-contracting amounts considering the most effective approach to ensure the best absorption rate.

Immediate solution is to collect all available over-contracting ERDF at Programme level and to use it for a certain PA/Ip/project, thus increasing the effectiveness of the public funding by following the rule.

Selection of the project(s) to be supported under such circumstances will be based on total score in quality assessment. If total scores are equal, then the following scores shall be taken into account: (a) the scores obtained for criterion referring to the project's contribution to the programme's output indicators and if still equal, then (b) the project's budget closeness to available allocation.

3.5 Special measures to be implemented in case unused ERDF becomes available

Step 1

In case unused ERDF becomes available, it will be prevalently used in the framework of each Ip, respectively PA, in the ranking order of the over-contracted projects.

Step 2

After exploiting possibilities in step 1 and there are insufficient/no savings under a certain Ip/PA for covering the related over-contracted projects, but unused ERDF becomes available under others, reallocation will be possible, following Cooperation Programme modification¹³. The

¹³ According to relevant provisions in force

ranking order shall be the basis for awarding the reallocated ERDF, meaning that best scored over-contracted projects will be funded/covered first. A dedicated sole ranking list shall be drafted in this regard, gathering all over-contracted projects that haven't been already covered under Step 1 hereinabove. In case of equal total scores, the algorithm provided by the methodology (please see Step 1.1, point 3.2) will be applied.

3.6. Closure measures for aligning the CP budget

In case of need, a revised version of the Cooperation Programme, regarding reallocation of unused ERDF between Priority Axis shall be submitted to the European Commission for approval¹⁴, at least 6 months before December 31st 2023, or as provided by the relevant legislation in force. Following such approval, unused ERDF will be awarded to over-contracted projects, as stipulated in Step 2 under point 3.5.

4. Audit trail and the flow of documents

No.	Step / Activity	Document	Responsible	Days (working days)
1.	Calculation of the percentage and amounts proposed for over-contracting (per MSs per Ip/PA), according to the approved methodology	Proposal of the exact percentage and amount to be over-contracted per Ip/PA sent to MC together with the list of selected projects and on the reserve, proposed by the Assessment Working Group	Contracting expert / Head of JS	4 days
2.	MC approval of the list of selected projects and projects on reserve which is subject to MSs decision on the exact percentage and amount to be over-contracted	MC, MSs decision	MC, MS	According to relevant procedures

¹⁴ In accordance with Art. 30 of REGULATION (EU) No 1303/2013 and art. 8 of REGULATION (EU) No 1299/2013 provisions

3.	Notifying MA and NA on the projects proposed to be over-contracted and sending the related final figures (in order to be consulted – in Romania – and approved – in Hungary - by the relevant Ministries in both countries)	Notification letters to MA/NA	Head of JS	1 day after MC Decision approving the minutes of the MC selection meeting
4.	Exchange of approval letters between the 2 Member States and notification of JS on the approval to start the over-contracting	Approval letters	MA, NA	According to internal procedures
5.	Notifying the LB of the projects proposed for over-contracting and inviting them to enter a specific subsidy contract	Notification letter to LB	Contracting expert/Head of JS	5 ¹⁵ days after the contracting of selected projects
5.'	Receiving LB answer regarding the conclusion of a specific subsidy contract	LB response	Contracting expert	3 ¹⁶ days/
5.1	Notifying the LB of the next project on the reserve list ¹⁷ , in case of refusal	Notification letter to LB of the next project on reserve list	Contracting expert/Head of JS	2 days after receiving the answer of the previously notified LB
5.2	Notifying the MA/NA on the necessity of approving the new exact amount and related percentage, if the case ¹⁸	Notification letter to MA/NA	Head of JS	2 days

¹⁵The over-contracting process starts after finalisation of selected projects contracting process. Nevertheless, upon Member States' decision, the over-contracting process may go in parallel with the contracting of selected projects, but can be finalised only after signing of subsidy contracts of all selected applications (based on the available financial allocation)

¹⁶In case the LB needs more time to take a decision, the deadline can be extended, if proper justification is provided by the LB through notification letter send to the JS/ MA, within 3 working days after being notified, However the extension should not exceed 15 working days.

¹⁷ If available projects have budgets significantly exceeding the existent over-contracting amount, or in case the available projects on reserve lists refuse the over-contracting conditions, the Member States may agree on using the remaining over-contracting amounts considering the most effective approach to ensure the best absorption rate

¹⁸ If the next project exceeds the agreed exact amount but still within the general 10% rule, the MSs shall agree on the new exact amount and related percentage.

5.3	Notifying the LB of the next project on the reserve list ¹⁹ on the possibility to conclude specific subsidy contract subject to supporting from own resources the resulted difference ²⁰	Notification letter to LB of the next project on reserve list	Contracting expert/Head of JS	2 days after receiving the answer of the previously notified LB
6.	Proceeding with the specific subsidy contract conclusion according to JS/MA contracting procedures	Specific subsidy contract elaborated	Contracting expert	According to JS contracting procedure ²¹
7.	Signature of specific subsidy contract	Specific subsidy contract signed by both parties	MA, LB	According to JS/MA contracting procedures
8.	In case any recovery should take place, the JS prepares an analysis for state-of-play of over-contracting mechanism for MSs	Analysis of the current situation	MA/JS	According to MA/JS procedure or MSs request
9.	Notifying the LB on the amounts to be repaid to the Programme, if the case ²²	Notification of recovery to LB	MA/JS	According to internal procedures
10.	Notifying the MC on available ERDF at Ip/PA level, in order to approve the allocation of available amounts to over-contracted projects ²³	Launching MC WP for allocation of available ERDF	MA/JS	According to procedures
11.	Modifying the CP for reallocation of funds between PAs, if the case	Modified CP submitted to the COM for approval	MA	According to procedures
12.	Notifying the MC on available ERDF at Programme level, in order to approve the allocation of available amounts to over-contracted projects ²⁴	Launching MC WP for allocation of available ERDF	MA/JS	According to procedures

¹⁹ If the budget of the project to be over-contracted is much higher (exceeding the 10% rule) than the available over-contracting amount for the Ip under which the Lead Beneficiary applied

²⁰ In case of more available funds, subject to MC decision, the initial own contribution may be diminished through an addendum to the over-contracting subsidy contract

²¹ Contracting process takes maximum 3 months .

²² In case the Programme exceeds the 100% absorption or the maximum absorption level in case of a decommitment and/or in case ERDF funds are needed to reimburse projects that have been contracted under normal conditions. The recovery process will follow the same steps as in case of an irregularity

²³ Based on related ranking list(s) of the over-contracted projects at Ip/PA level

²⁴ Based on sole ranking list of over-contracted projects