

MEMORANDUM OF IMPLEMENTATION

Arrangements between Member States participating in the Interreg VI-A Romania-Bulgaria Programme

CHAPTER I PROGRAMME STRUCTURES/MAIN IMPLEMENTATION STRUCTURES

SECTION 1. MANAGING AUTHORITY

The Managing Authority (MA) is the body responsible for the implementation of the programme.

1. The Romanian Ministry of Development, Public Works and Administration acts as MA of the Programme and shall carry out the functions of the managing authority and the accounting function as per articles 72 and 76 from Regulation (EU) No. 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (i.e., CPR Regulation) and art. 46 and 47 from Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (i.e., INTERREG Regulation).
2. The MA shall perform the functions as provided for the articles 72-75 from CPR Regulation, as well as the accounting function as foreseen by the article 76 from CPR Regulation and by article 47 from Interreg Regulation.
3. The MA shall also be responsible for:
 - a) signing the subsidy contracts from the European Regional Development Fund (i.e., ERDF) with the lead partners;
 - b) signing the contracts regarding the Romanian national co-financing from the state budget;
 - c) ensuring the transfer of the ERDF funds to the lead partners;
 - d) paying the advance payments from the Romanian co-financing to the Romanian beneficiaries according to the contract provisions;
 - e) ensuring the transfer of the Romanian national co-financing from the state budget, as well as to the Romanian beneficiaries of the technical assistance priority;

- f) ensuring the availability of the amounts from the Romanian national co-financing for the Technical Assistance activities;
 - g) ensuring access to information for the National Authority (i.e., NA) and Audit Authority (i.e., AA) in order to fulfil their respective tasks;
 - h) ensuring the compliance of the expenditures with the Programme rules and EU rules and with the Programme's procedures; through an adequate control system;
 - i) ensuring the compliance with the Romanian national legislation or specific procedure regarding the procurement contracts assigned;
 - j) designating the controllers responsible for carrying out the national control for the beneficiaries located in Romania;
 - k) nominating the representatives of Romania in the Monitoring Committee;
 - l) ensuring an adequate audit trail for the whole system concerning the implementation of the Programme;
 - m) preventing, detecting and correcting the irregularities committed in Romania;
 - n) coordinating the activities regarding the implementation of the Programme delegated to the JS;
 - o) ensuring the transmission to the European Commission (i.e., EC) of the data regarding the implementation, in accordance with art. 42 of CPR Regulation;
 - p) performing the financial corrections as agreed at Programme level;
 - q) ensuring the fast record and update of the information into the electronic system, being responsible for the accuracy, integrity and completeness of the data concerning the Programme managed;
 - r) ensuring the necessary funds in case of difficulties in the Programme implementation at Programme level (funds de-commitment, interruption/suspension of payments, lack of funds at Programme level), as specifically agreed;
4. The MA shall ensure that effective arrangements for the examination of complaints concerning the funds allocated through the Programme are in place.
 5. The MA shall promote the principle of equal treatment is followed when the Romanian and Bulgarian partners are verified.
 6. The MA shall inform the Monitoring Committee about the activities and the reached results covered by the Technical Assistance (i.e., TA) funds based on the information received from all TA beneficiaries.

SECTION 2. NATIONAL AUTHORITY

1. The counterpart for the MA with the coordination role on the territory of Republic of Bulgaria is the Ministry of Regional Development and Public Works, acting as NA.

2. The NA shall take due diligence so as the necessary staff will be permanently ensured in order to fulfil its competencies and responsibilities.
3. The competencies and responsibilities of the NA are:
 - a. supporting the MA in the implementation of the Programme;
 - b. signing the contracts with the beneficiaries from the Republic of Bulgaria for the national co-financing from the state budget;
 - c. ensuring the transfer of the Bulgarian national co-financing from the state budget to the project beneficiaries from the Republic of Bulgaria;
 - d. ensuring the availability of the amounts from the Bulgarian national co-financing for the budget of the Programme TA;
 - e. ensuring access to information for the MA and AA in order to fulfil their respective tasks;
 - f. ensuring the compliance of the expenditures with Programme rules and EU rules and with the Programme's procedures, through an adequate control system;
 - g. ensuring the compliance with the Bulgarian national legislation regarding public procurement through the national control system;
 - h. assigning controllers to carry out the national control for the partners located in the Republic of Bulgaria;
 - i. nominating the representatives of the Republic of Bulgaria in the Monitoring Committee;
 - j. ensuring an adequate audit trail for the system concerning the implementation of the Programme in the Republic of Bulgaria;
 - k. preventing, detecting and correcting the irregularities committed on the territory of the Republic of Bulgaria;
 - l. detailed rules and procedures for reporting and correction of irregularities and their follow-up will be provided in the Description of management and control (DMCS) system for Interreg VI-A Romania-Bulgaria Programme. The DMCS will consider the provisions of the EU Regulations, the national legislation and will indicate clear rules on every stage of the irregularities monitoring process;
 - m. observing the provisions of the irregularities, controlling and reporting system set at at Interreg VI-A Romania-Bulgaria Programme level, as detailed in the Description of management and control systems (i.e., DMCS);
 - n. uploading all documents in the electronic monitoring system (i.e., JEMS) in order to ensure the smooth communication and transparency in the irregularities management at Programme level.
 - o. accessing the electronic system of the Programme with due regard to connection's technical limitations;
 - p. ensuring the necessary funds in case of difficulties in the Programme implementation at Programme level (funds de-commitment, interruption/suspension of payments, lack of funds at Programme level), as specifically agreed;
 - q. putting in place effective and proportionate anti-fraud measures taking into account the risks identified;

- r. setting up procedures to ensure that all documents regarding expenditure and audits required for the audit trail as set out in Annex XIII are kept in accordance with the requirements set out in Article 82 from the CPR Regulation;
 - s. setting up and coordinating the activity of the Info point located on the Bulgarian side of the border;
 - t. providing the necessary information to be presented to the Monitoring Committee (i.e., MC) on the activities carried out with TA funds;
 - u. ensuring the financing of the Info point activities from its own technical assistance budget;
 - v. providing the necessary information to be included in the Programme strategic documents (e.g., DMCS, Programme and project implementation manuals, etc.).
4. The NA shall ensure that effective arrangements for the examination of complaints concerning the funds allocated through the Programme are in place, following the procedures under NA responsibility.

SECTION 3. JOINT SECRETARIAT AND INFO POINTS

1. The Joint Secretariat (JS) shall assist the MA, NA and the MC in carrying out their respective functions. The JS shall also provide information to potential beneficiaries about funding opportunities under the Programme and shall assist beneficiaries and partners in the implementation of operations.
2. A delegation and financing agreement will be signed/was signed between MA and Cross Border Cooperation Regional Office Călărași for Romania-Bulgaria Border delegating tasks to the JS. The fulfilment of tasks delegated to JS shall be verified by the MA according to the Delegation and financing agreement, MA internal procedure for supervising and monitoring JS delegated tasks and other relevant procedures.
3. JS is an independent body, guaranteeing the impartiality of the Programme implementation.
4. The JS is located in Romania, Chiciu area, part of the main building representing the Passengers and Goods Transport Public Service headquarter at CBCP Călărași (Romania) - Silistra (Republic of Bulgaria), Călărași County.
5. The JS will promote balanced staff with people speaking Romanian and Bulgarian.
6. The Info Point/s shall be established on the Bulgarian territory in Ruse, under the coordination of the NA, supporting the communication between the NA, project beneficiaries and other stakeholders. The Info Point/s shall perform tasks related to: assisting the Bulgarian stakeholders and beneficiaries during project preparation and implementation, carrying out information and communication activities, etc. All Info Point tasks shall be carried out in close cooperation with the JS, under NA responsibility. When performing its tasks, the principle of separation of functions between and within the Programme authorities will be ensured.

SECTION 4. MONITORING COMMITTEE

1. A MC will be set up to monitor the implementation of the Programme, as per art. 38 of the CPR Regulation. The MC shall be composed of representatives of the MA, NA and of the partners as determined in art. 39 of CPR Regulation and art. 29 of Interreg Regulation. Each member of the MC shall have a voting right according to the voting system set at the level of MC. Each observer of the MC shall have an exclusively consultative role, without decision-making power.
2. The MC is headed by a Chair (nominated by the MA) and a Co-Chair (nominated by the NA).
3. Representatives of the European Commission shall participate in the work of the MC in an advisory capacity.
4. The AA shall participate in the work of the MC as an observer.
5. The MC is composed of representatives of Romania and Bulgaria (the representatives of each country in the MC from the national delegations), delegated by respecting the principles of partnership and multi-level governance.
6. The MC shall fulfil the functions as provided for by art. 40 of the CPR Regulation and by art. 30 of the Interreg Regulation.
7. Without prejudice to the eligibility rules laid down in, or on the basis of, Articles 38 to 44 of Interreg Regulation, the participating Member States in the MC, may establish additional rules on eligibility of expenditure for the Interreg programme as a whole.
For matters not covered by such rules, the national law of the Member State in which the expenditure is incurred shall apply.
8. The Rules of procedure of the MC (including the Code of Conduct) will be adopted following 3 months as of the Programme adoption by the European Commission.
9. As related to the integrated territorial strategy of the border region, the MC and the Strategy Board shall cooperate closely for the benefit of the cross-border area and of the Programme;

SECTION 5. AUDIT AUTHORITY

1. According to art.45 of Interreg Regulation, the Member States participating in an Interreg programme shall identify a single MA and a single AA, which shall be located in the same Member State.
2. The AA of the Programme is the AA besides the Romanian Court of Accounts.
3. The main competencies and responsibilities of the Audit Authority are provided for in the art. 48 and 49 of Interreg Regulation. As provided for in art. 49, para. 2, the information necessary for the selection of a common sample shall be provided to the European Commission by 1 August following the end of each accounting year by the programme authorities.
4. Provisions of Interreg Regulation, art. 48, para. 1 in respect of audits carried out in the whole of the territory covered by the Programme shall also be observed.
5. The AA shall be assisted by a Group of Auditors comprising representatives of Romania and Bulgaria. The Executive Agency "Audit of European Union Funds", Directorate "Audits of

Territorial Cooperation Funds and other Programmes" at the Ministry of finance of the Republic of Bulgaria nominates the Bulgarian representatives in the Group of Auditors.

SECTION 6. Controllers

1. According to the provisions of Interreg Regulation, art. 46, paras. 3, 4 and 5, in order to perform the verifications as provided for under art. 74, para. 1 (a) of CPR Regulation, the Member States participating in programme shall establish a body or person responsible for this verification on its territory (i.e., 'controller').
2. The National Control for Romanian beneficiaries shall be set up within the Cross Border Cooperation Regional Office Călărași for Romania-Bulgaria Border, Chiciu Area, Călărași County. The National Control system for Bulgarian beneficiaries shall be set up within Bulgarian Ministry of Regional Development and Public Works.
3. The main competencies and responsibilities of the controllers are to carry out management verification as provided for under art. 74, para. 1 (a) of CPR Regulation. According to art. 74, para. 2 the management verifications shall include administrative verifications in respect of payment claims by beneficiaries and on-the-spot verifications of operations.
4. The coverage of the management verification shall be detailed in the relevant documents of the programme, but this verification referred to in point 3 above shall be risk-based and proportionate to the risks identified *ex-ante* and in writing as defined in a risk management strategy/methodology. In order to ensure equal treatment and considering the cooperation goal of the Programme, risk management strategy/methodology should be prepared/reviewed and approved by the MA in close cooperation with NA.

CHAPTER II ARRANGEMENTS ON MAIN IMPLEMENTATION PROCEDURES

SECTION 1. Evaluation and selection of operations / applicants

The evaluation and selection process of the operations / applicants shall be made according to the Methodology for the assessment of applications and the rules established at Programme level.

1. The evaluation of the operations/applicants shall be made by an assessment working group, which includes assessors from JS or Romanian assessors provided by MDPWA, if necessary, and Bulgarian external assessors provided by the MRDPW.
2. If necessary, in case of projects that require additional expertise, NA can provide external technical experts for specific issues related to the Bulgarian partners, in supporting the assessors.
3. For the Romanian partners, in case specific technical expertise is needed, JS shall contract the external technical experts to provide qualified support to the assessors.

4. The external technical experts are responsible for conduction of overall technical/quality analysis of project proposals and providing a document with their opinion.
5. In order to check the correctness of the evaluation procedure, MA and NA will ensure further verifications based on the risk level.
6. For each call for proposals detailed rules for evaluation and criteria for selection of project proposals to be financed shall be established in the Applicant's Guide and approved by the MC.
7. Following the technical and financial evaluation, the applications shall be ranked and submitted for selection to the MC. The MC is approving the operations for financing based on the reports of the assessment working group.
8. The applicants shall be informed on the approval/rejection of their projects and on the possibility of appealing the MC selection/rejection decision, within a set deadline. The complaint/appeals against MC decision will be analysed by the nominated assessors and the results shall be presented to the MC for a decision. The detailed complaint procedure is part of the applicant's guide.
9. As related to the integrated territorial strategy of the Romania-Bulgaria cross border area, to be financed under PO 5 within Interreg VI-A Romania-Bulgaria Programme, the list of operations proposed to be supported by the Programme has to comply with the legal provisions set by the EU regulations, the rules of the Programme, and the assessment criteria for the proposed operations, approved beforehand by the MC of the Programme and the Regulations in force.

SECTION 2. Payment procedure

1. The allocations from ERDF shall observe the following financial flow:
 - a) the project beneficiaries make expenditures and send requests for the national control via the programme's electronic system. Both the Romanian and Bulgarian partners upload/submit their requests, supporting documents and fill in information for review by the Romanian or Bulgarian controllers respectively.
 - b) the controllers verify the legality and regularity of the expenditures declared by each beneficiary participating in the operation, respectively the delivery of the products and services co-financed, the soundness of the expenditure declared for projects implemented on its territory and the compliance of such expenditure and of related projects with EU rules and national rules. The controller verification shall be finalized with a verification report submitted to the beneficiary through the electronic system. The controllers shall verify the documents and send to the partners the control reports within a deadline set up at programme level.
 - c) the lead partner aggregates all expenditures controlled by the related controllers at project level from all beneficiaries and sends the consolidated projects report, according to the programme rules, to the JS.
 - d) the JS, after performing an administrative verification of the project report, sends the consolidated reimbursement claim to the MA for processing.
 - e) The MA performs the payments, according to the procedures in force.
 - f) The lead partner transfers the corresponding ERDF amount to the project beneficiaries within the deadline set up at programme level.

2. The National co-financing financial flow for Romanian beneficiaries shall follow the same steps as for ERDF.
3. The national co-financing of Bulgarian beneficiaries shall be contracted by NA following the signature of the subsidy contracts from ERDF between MA and the lead partners and the submission to NA of required documents. The NA shall transfer the national co-financing directly to Bulgarian beneficiaries.

SECTION 3. Monitoring

1. The electronic monitoring system (JeMS) of the Interreg VI-A Romania-Bulgaria Programme shall ensure the monitoring at programme level according to the relevant regulations.
2. The monitoring at project level is performed by JS and by MA staff. Relevant information on project monitoring shall be available in the programme's JeMS.

SECTION 4. Over-contracting

1. The JS, after consultation with the MA and NA, shall propose to the MC the percent for over-contracting. After agreement on the percentage, MA shall proceed to the signature of the ERDF financing contracts.
2. The Beneficiaries shall bear the financial responsibility of over-contracting. In case the MA cannot recover the debts resulted from over-contracting in accordance with the provisions of the subsidy contracts, the NA shall repay to MA the respective amounts related to Bulgarian beneficiaries.

CHAPTER III ARRANGEMENTS IN CASE OF IMPLEMENTATION DIFFICULTIES

SECTION 1. Reimbursement of funds from EC

Bearing in mind that, according to Article 93 of CPR Regulation, the intermediate payments from the EC are only partially reimbursed to the Programme, and also taking into account the reduced amount of pre-financing, which might hamper the Programme cash-flow, the MA and NA commit to ensure at the beginning of each year 5% of the value of foreseen/estimated applications for payment, in a proportionate manner with regard to the approved projects budget and activities performed by the Romanian or Bulgarian partners, in the way this is provided in the contracts, until the payment of the annual balance of accounts when the EC is able to conclude that the accounts (of the accounting year in which the funds have been transferred) are complete, accurate and true.

SECTION 2. Financial corrections

- 1. Financial corrections by Member States - shall be done as per art.103, paras. 1 to 3 of CPR Regulation**
- 2. Financial corrections by the EC - shall be done as per art.104 of CPR Regulation**

The type (flat rate or extrapolated) and level of financial corrections is determined in accordance with Annex XXV of CPR Regulation.

In case of financial corrections applied by the EC for irregularities due to deficiencies of the management and control system, the two Member States commit to divide the amount between the two Member States proportionally with the ERDF payments and the approved projects budget and performed activities by the Bulgarian and Romanian beneficiaries as affected by the financial correction.

In case of financial corrections by the EC, due to random or anomalous irregularities, the two Member States commit to investigate on a case-by-case basis. The financial correction by the Commission shall not prejudice the Member States' obligation to pursue recoveries under the provisions of the applicable European Regulations.

SECTION 3. Recoveries

- Each Member State shall be responsible for investigating irregularities committed by the beneficiaries located on its territory. In the case of a systematic irregularity, the Member State shall extend its investigation to cover all operations potentially affected. The Member State shall make the financial corrections in connection with individual or systemic irregularities detected in operations or operational programme. Financial correction shall consist of cancelling all or part of the public contribution to an operation or to the operational programme. Financial corrections shall be recorded in the annual accounts by the MA for the accounting year in which the cancellation is decided.
- The MA shall ensure that any amount paid as a result of an irregularity is recovered from the lead/sole partner. Beneficiaries shall repay the lead partner any amounts unduly paid. Special provisions regarding the repayment of amounts subject to an irregularity shall be included both in the contract to be signed with the lead partner and in the partnership agreement to be signed between the beneficiaries.
- The programme's MA is not obliged to recover an amount unduly paid that does not exceed EUR 250, not including interest, in contribution from any of the Interreg funds to an operation in an accounting year, under the conditions of a Decision of the Monitoring Committee. No information needs to be provided to the EC beyond the information about a decision being taken on the non-recovery of irregularities below EUR 250.
- If the lead partner does not succeed in securing repayment from other partners or if the MA does not succeed in securing repayment from the lead or sole partner, the Member State on whose territory the partner concerned is located shall reimburse the MA the amount unduly paid to that partner. The MA shall be responsible for reimbursing the amounts concerned to the general budget of the EU, in accordance with the apportionment of liabilities among the participating Member States as laid down in the programme.

5. Once the Member State has reimbursed the MA any amounts unduly paid to a beneficiary, it may continue or start a recovery procedure against that beneficiary under its national law. In the event of successful recovery, the Member State, may use those amounts for the national co-financing of the Interreg programme concerned. The Member State shall not have any reporting obligations towards the programme authorities, the MC or the EC with regard to such national recoveries.
6. Where a Member State has not reimbursed the MA any amounts unduly paid to a partner pursuant to the previous paragraph, those amounts shall be subject to a recovery order issued by the EC which shall be executed, where possible, by offsetting to the respective Member State. Such recovery shall not constitute a financial correction and shall not reduce the support from the ERDF to the Interreg programme. The amount recovered shall constitute assigned revenue in accordance with art.21, para.3 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) 1303/2014, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (i.e., Financial Regulation).
7. With regard to amounts not reimbursed to the MA by a Member State, the offsetting shall concern subsequent payments to the same Interreg programme. The MA shall then offset with regard to that Member State in accordance with the apportionment of liabilities among the participating Member States set out in the present Memorandum of Implementation in the event of financial corrections imposed by the MA or the EC.

Aspects related to the *de minimis* aid / recovery of the *de minimis* aid/State aid/

1. If *de minimis* aid is granted to European Territorial Cooperation projects, the Member State on whose territory the MA is located, as defined in art. 45 of Interreg Regulation is considered to be the *de minimis* aid provider for ERDF financing part, thus the MA shall comply with the relevant provisions accordingly.
2. The Member State where the MA is located shall be responsible for setting up the *de minimis* scheme for ERDF funds.

To this end, the *de minimis* aid scheme provider shall launch a call for proposals.

The lead partner must submit to the Programme a project proposal in accordance with the call for proposals under the *de minimis* aid scheme.

Project proposals are assessed from the administrative and eligibility point of view by the *de minimis* scheme Administrator. The quality assessment and the assessment of the state aid are also carried out by the *de minimis* scheme Administrator (JS of Interreg VI-A Romania-Bulgaria) or if the case by external assessors, on the basis of assessment criteria approved by the Programme's MC.

Meeting all the eligibility conditions set out in the *de minimis* scheme for obtaining the *de minimis* aid is also being checked based on the *de minimis* declaration attached to the application form and provided by the beneficiaries of the *de minimis* aid. When appropriate, the information provided within the beneficiaries' own declarations are verified by the *de minimis* scheme Administrator (for the Romanian Beneficiaries) and by the NA (for the Bulgarian

Beneficiaries), in this case, the NA shall submit the verification result to the *de minimis* scheme Administrator.

The MC approves the list of projects proposed for financing and the *de minimis* aid scheme provider (Managing Authority) signs the *de minimis* aid awarding contract which takes the form of the subsidy contracts with the lead partners of ERDF financing.

3. Each Member State shall provide the MA the necessary information to comply with the relevant provisions at national level (including any cases of irregularities or frauds). In this respect, the recording of the awarded *de minimis* aid will be operated via AID DATA BASE, a supporting tool in the monitoring process (for submitting to the Romanian Competition Council, in the format and within the timeframe foreseen by the Regulation on state aid monitoring procedures, all data and information necessary for the monitoring of the *de minimis* aid at Romanian national level). The AID DATA BASE contains all relevant data in terms of amounts awarded, aid beneficiaries, implementation and reporting information, recovery decisions, etc. The information will be registered by the Administrator of the *de minimis* scheme, namely the JS of Interreg VI-A Romania-Bulgaria.
4. Each Member State is considered to be the *de minimis* provider for the national co-financing related to European Territorial Cooperation projects and shall be responsible for complying with such procedures;

Each provider (Managing Authority vs. Member State) shall be responsible for monitoring projects under the *de minimis* aid, in accordance with their national law;

5. The MA shall ensure the recovery of unlawful/misused *de minimis* aid awarded in the context of Interreg VI-A Romania-Romania Programme, as follows:

- I. Recovery of misused *de minimis* aid resulting in an irregularity

- 1) In case, following the monitoring process, the MA identifies a situation that entails the suspension of the aid granted, the MA issues a suspension decision.
- 2) In case, following the monitoring process, the MA identifies a situation that entails the recovery of the aid, the MA shall ensure the recovery as follows:

- a) State aid/*de minimis* aid awarded to Bulgarian beneficiaries

- i. In case of Bulgarian direct aid beneficiaries, the recovery of misused *de minimis* aid (misused aid - aid used by the beneficiary without complying with the conditions for granting such aid) shall be ensured through the NA, upon Managing Authority's notification. The MA shall notify the NA on the misused aid (supporting documents included) awarded to Bulgarian aid beneficiaries. In maximum 5 days after reaching a conclusion following own verifications¹, the NA shall inform the MA on the result. In case of a recovery decision, the NA shall reimburse to the MA the amounts to be recovered - the aid granted from ERDF and related interests calculated according to the methodology provided by the 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, respectively Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), in maximum two months from the date of the recovery decision. Furthermore, the NA shall provide justifying documents proving the aid has been recovered from the *de minimis* aid beneficiary, according to State aid regulations in force.

¹ The verification process should be performed within the deadlines provided for in the relevant national legislation, but as soon as possible, considering also that the applicable interest in case the irregularity is confirmed, shall be calculated from the date when the aid was made available

ii. In case of misused indirect aid granted by a Bulgarian beneficiary of the programme to a third party (not included in the project partnership), the NA shall initiate the recovery of the misused aid from the aid recipient through the relevant Bulgarian national state aid authorities. In such case, the recovery of the ERDF funding and the respective national co-financing that financed the related activities of the beneficiary (i.e. the funds that covered the costs of the beneficiary providing the indirect aid) shall be recovered as result of an irregularity procedure parallel to the aid recovery.

In case, based on the result of verifications, the NA reaches the conclusion that no unlawful / misused aid has been awarded, and thus no state aid/*de minimis* aid recovery is necessary, the NA shall properly justify such decision by providing relevant documents to the MA.

b) State aid/*de minimis* aid awarded to Romanian beneficiaries

i) The recovery of unlawful/misused state aid/*de minimis* aid awarded to Romanian direct/indirect aid beneficiaries shall be made through recovery decision, respectively recovery order issued by the MA to state aid/*de minimis* aid beneficiary, based on national legislation in force.

- 3) The recovered amounts shall include the related interests calculated according to the methodology provided for in EU and national legislation² (the calculation of interest in case of aid recovery shall be established in the programme's relevant documents).
- 4) The state aid/*de minimis* aid beneficiary is entitled to fill in a complaint against a recovery decision, according to relevant legislation in force.

II. In case of a recovery decision issued by the EC pursuant to art.107 and 108 of the TFEU regarding the recovery of an unlawful and incompatible aid/misused state aid/*de minimis* aid, the service of recovery order shall be the attribute of the Member State on whose territory the aid beneficiary is located, as follows:

- a) In order to recover the state aid/ *de minimis* from Romanian beneficiaries, the procedure provided by the Government Emergency Ordinance no. 77/2014 with subsequent amendments and completions will be followed;
- b) In order to recover the state aid / *de minimis* from Bulgarian beneficiaries, the decision of the EC addressed to Bulgaria to recover the illegal or incompatible aid will be implemented by the competent bodies of Bulgaria, within the terms and conditions provided by the legislation of the Bulgarian state, respectively the State Aid Act (prom.SG No 85 of 24 October 2017).

In order to carry out a sound financial management at Programme level, the NA sends all documents and information regarding the state of recovery of the state / *de minimis* aid from the Bulgarian beneficiaries to the MA.

The amounts recovered from the beneficiaries of state aid / *de minimis* from Bulgaria shall be transferred to the accounts of the MA indicated in its communications.

- 6 The MA shall be responsible for reimbursing the amounts concerned to the general budget of the EU in accordance with the apportionment of liabilities among the participating Member States as laid down in the programming document and this Memorandum of Implementation, after repayment of the amounts by the Member State.

² Emergency Government Decision no. 77/2014 regarding national procedures in relation to State aid in RO and Government Decree 37/2011. (III. 22.)

SECTION 4. Interruption/suspension of payments

1. According to Articles 96 and 97 of CPR Regulation the EC may interrupt/suspend all or part of the payments, except for pre-financing, in case of evidence of serious deficiencies or irregularities related to expenditure included in a payment application are detected/suspected.

The Member States participating in the Programme shall take appropriate measures to remedy the situation. In case of failure to remedy, the EC may suspend all or part of the payments, except for pre-financing.

2. In order to prevent the disturbance of projects' implementation in case of interruption/suspension of payments, the two Member States decide to set up a temporary financial availability mechanism in order to ensure the reimbursement of projects' expenditures until the interruption/suspension is lifted. The Member States shall contribute with funds for the payments towards the beneficiaries proportionally with ERDF payments made towards Romanian and Bulgarian beneficiaries and on basis of a prognosis of the expenditures planned by the beneficiaries on 3 months basis. The temporary financial availability mechanism shall be ensured for the entire period covered by the two cases mentioned below.
3. The temporary financial availability mechanism shall also be used in the following cases:
 - a) **non-availability of funds from the EC.** As soon as the funds become available from the EC, the buffer shall no longer be necessary;
 - b) **temporary lack of funds in the Programme's account**
 - o mainly at the beginning of programming period or
 - o for cases when important amounts are taken out of the Programme accounts - at the annual closure of accounts, when the offset with the pre-financing is made or when the recovery orders towards the EC does not ensure the necessary cash-flow.

SECTION 5. Decommitment of Programme funds

In case of decommitment at Programme level according with CPR Regulation, art. 105, the amounts shall be decommitted from the funds available at programme level. In case no funds are available at Programme level, then the amount decommitted shall be ensured from national funds by the Member States, proportionally with the ERDF payments towards Romanian and Bulgarian beneficiaries.

CHAPTER IV TECHNICAL ASSISTANCE AT PROGRAMME LEVEL

1. According to the art.27, paras. 2 and 3 of Interreg Regulation, the technical assistance to the Programme shall be reimbursed by applying a 7% flat rate to the eligible expenditure included in each payment application.

2. The TA funds received from the EC shall represent 65% of the funds necessary for financing TA activities. The remaining 35% will be financing from the national budgets of the Member States participating in the Interreg programme.
3. The TA funds shall be distributed to the Programme structures (managing authority, national authority, joint secretariat, audit authority and controllers). Thus, for each application of payment, the additional 7% received will be divided between the Programme TA beneficiaries based on the pre-established subsequent flat rates.
4. Considering the low level of the annual pre-financing for 2021 and 2022 (1%) as well as the obligation to clear the amount paid as pre-financing for the years 2021 and 2022 from the EC accounts each year (as per Art. 90, para. 5 of CPR Regulation), the Programme will lack financial resources for ensuring a proper starting of the programming period 2021-2027 in terms of activities developed at JS level to be financed by the Programme. Thus, the MA and NA commit themselves to ensure, from the beginning of the programming period, the national co-financing amount from their national budgets corresponding to a financial execution of 80% at Programme level, based on past experience, and representing the amount of the national co-financing from RO and BG budget for the JS necessary to sustain its activity. The Bulgarian national contribution to the JS co-financing shall be transferred in two tranches, respectively in 2024 and 2025, on a given date set jointly by the MA and NA.
5. After the finalization of evaluation, selection and contracting phases, when the projects are under implementation and could ensure a normal cash-flow to the Programme account from the funds reimbursed by the EC, the JS activity will be financed by ERDF on basis on the percentage allocated to JS and the amounts to be requested to EC to which the 7% flat rate applies.
6. During the Programme implementation, in case the programme budgetary execution is higher than 80%, MA will pay the national co-financing, including the Bulgarian co-financing contribution, towards JS. MA shall recover from the NA the amounts the NA owes for co-financing the TA budget (the necessary BG contribution to the JS co-financing) by offsetting the ERDF payments to the NA.
7. In case the programme budgetary execution is lower than 80%, MA will reimburse to NA the BG corresponding national co-financing paid when the final balance is determined at Programme closure.
8. The national co-financing will be ensured in the following manner:
 - a. 100% from Romania's state budget for the TA activities of the MA as well as for the Romanian National Controllers;
 - b. 100% from Romania's state budget for the TA activities for the Romanian Audit Authority
 - c. 100% from Bulgarian state budget for the TA activities of the Executive Agency "Audit of European Union Funds", Directorate "Audits of funds under Territorial Cooperation Funds and other Programmes" at the Ministry of finance of the Republic of Bulgaria, as part of GoA
 - d. 100% from Bulgaria's state budget for the TA activities of the NA as well as for the Bulgarian National Controllers;
 - e. Equally (50%:50%) from both Romania's and Bulgaria's state budget for the JS.
9. In order to ensure the predictability of TA funds, the MA and NA commit to ensure at the end of the eligibility period of the Programme the potential negative difference from the TA amounts actually spend and the TA funds actually reimbursed by the EC, according to the percentages as foreseen at paragraph 8 above.

CHAPTER V

PROGRAMME CLOSURE AND OTHER PROVISIONS

SECTION 1. Programme Closure

The arrangements for the closure of the Programme will be in line with the provisions of art.43 of the CPR Regulation and considering the annual closure of accounts. Other EC guidelines to be issued on closure of 2021-2027 programming period shall apply.

SECTION 2. Other provisions

1. Changes in the implementation structures

- a) In case of changes incurred with the programme structures which affect the Programme implementation, the new structures shall undertake the functions and responsibilities as mentioned in the present Memorandum and shall be reflected in the DMCS; the EC and all involved parties (including the AA and GoA) shall be informed in writing within 3 months in relation with the changes incurred.
- b) In case of major changes within the Programme's implementation structure, with impact on Programme's implementation, the EC and/or MC approval must be obtained.
- c) Major changes refer to cases when structures different of those mentioned in the present document undertake all or part of the tasks and responsibilities of the MA, NA and/or JS.

2. Non respect of the agreed provisions and deadlines - sanctions

- a) In case of conflicts regarding the implementation of the Memorandum, the parties agree to find an amicable and mutually acceptable solution.
- b) The parties shall undertake their utmost to support each other in their efforts to comply with the tasks pursuant to this Memorandum.

3. Changes in the provisions of this Memorandum

Any signing Party can propose the modification of the present Memorandum. The modification shall be approved following the procedure of the entry into force of the Memorandum described at point 4 below: Duration.

4. Duration

The present Memorandum shall enter into force on the date of receiving the communications in which the Parties, by diplomatic way, are informing each other that all the necessary national legal procedures for the entering into force are fulfilled.

It is valid until the Interreg VI-A Romania-Bulgaria Programme is entirely closed by the European Commission. The present Mol has been signed in three uniform originals in English language for each of the parties.

5. Communication

All form of communication between the MA, AA, NA and the JS including within the MC must be carried out in English.

The Managing Authority and Accounting body, represented by the Romanian Ministry of Development, Public Works and Administration

Place, Date:

Name and function of the person entitled to represent the Managing Authority:

Adrian-Ioan VEȘTEA - Minister of Development, Public Works and Administration

Signature:

The Audit Authority, represented by the Romanian Audit Authority (associated to the Romanian Court of Accounts)

Place, Date:

Name and function of the person entitled to represent the Audit Authority:

Lucian Dan VLĂDESCU - President of the Romanian Audit Authority

Signature:

18.10.2023

The National Authority, represented by the Ministry of Regional Development and Public Works of the Republic of Bulgaria

Place, Date: *Sofia, 07.03.2024*

Name and function of the person entitled to represent the National Authority:

- Minister of Regional Development and Public Works