



# **Hungary - Slovakia - Romania - Ukraine ENI CBC Programme 2014-2020**

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## **Project Implementation Manual**

APPROVED BY THE JOINT MONITORING COMMITTEE

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**PARTNERSHIP  
WITHOUT BORDERS**



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## Glossary

<b>Audit</b>	The term "Audit" describes the audit performed by the Audit Authority or by external auditors on its behalf. These audits cover system audits and audits on operation on sample basis of the already validated project expenditure.
<b>Auditor</b>	In case of Ukraine, the expenditure and revenue verifications will be carried out by external auditors who will be on the list set up by the Ukrainian Control Contact Point.
<b>Control</b>	The control activity means the verifications carried out by the National Controllers and Auditors at national level, covering administrative, financial, technical and physical aspects of the projects. Verifications shall ensure that the expenditure declared is real, that the products and services have been delivered, and that the projects and expenditure comply with relevant EU, Programme and national rules.
<b>National Controller</b>	The term "Controller" describes a body in charge of performing in line with the control system in the given Member State of the Programme.
<b>Day</b>	Calendar day unless otherwise specified
<b>Eligible area</b>	The counties and regions of the HUSKROUA ENI CBC 2014-2020 Programme as defined in the JOP and in each Call for Proposals.
<b>Expenditure and revenue verification</b>	The process of "checks" carried out by the National Controllers and Auditors for specific aspects of the project expenditure incurred and paid by the Beneficiaries.
<b>Lead Beneficiary</b>	After the signature of the Grant Contract, the "Lead Applicant" becomes the "Lead Beneficiary". The Lead Beneficiary takes financial and legal responsibility for the implementation of the entire project. The Partnership Agreement and the Grant Contract are references for an informed view on the responsibilities of the Lead Beneficiary. The Lead Beneficiary represents the project towards the management bodies of the Programme (MA, AA, JTS).
<b>National legislation</b>	The legislation of the state where the Lead Beneficiary / Beneficiary is established.
<b>State contribution</b>	For EU Member States, the term refers to the national contribution provided by the state at national level to Beneficiaries.
<b>State aid</b>	<p>The following terminology shall be observed in case of state aid:</p> <p><b>Undertaking</b> = entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking depends entirely on the nature of its activities. In this respect, an undertaking can be a public institution or a non-governmental organization too. Any activity consisting on offering goods and services on a market represents an economic activity.</p> <p><b>Transfer of state resources</b> = direct grants, loans, guarantees, direct investment.</p> <p><b>Granting an advantage</b> = any economic benefit which an undertaking could not have obtained under normal market conditions. Whenever the financial situation of an undertaking is improved as a result of state intervention, on terms different from normal market conditions, an advantage is present.</p> <p><b>Selectivity</b> = not all measures which favors economic operators fall under the notion of state aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.</p> <p><b>Distortion of competition</b> = A measure granted by the state is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear on the course of its day to day business operation.</p>



## Chapter 1 – General information

### 1.1. How to use the Implementation Manual

The Programme Implementation Manual (PIM) is intended to assist HUSKROUA ENI CBC 2014-2020 Lead Beneficiaries and Beneficiaries in project implementation, preparation and submission of reports as well as to provide hands-on information on the roles and responsibilities of the project's Lead Beneficiaries and Beneficiaries and Programme bodies. The PIM is elaborated for the use of the Lead Beneficiaries and Beneficiaries personnel responsible for the overall implementation of the project: project leaders, project managers, coordinators, financial managers, communication personnel and other staff.

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The PIM is a complimentary and mandatory document to the Grant Contract; it is not comprehensive in character, but rather a tool to address the main topics of project implementation. PIM is **not to replace** the legally binding requirements of the Grant Contract, the country specific regulations and legislation or any other Programme's specific requirements.

The manual contains Programme's rules as well as some practical specific guidelines throughout most of its sections.

In case the MA makes changes to the PIM, it shall be published in a new version on the Programme website and the JTS has to inform the Lead Beneficiaries via email accordingly. The Lead Beneficiary's contact person provided or updated in the Application Form, as well as the designated project manager for the LB shall be informed via e-mail.

### 1.2. Legal Framework and documents related to project implementation

The HUSKROUA ENI CBC Programme is co-financed by the European Union within the framework of the European Neighbourhood Instrument (ENI) and by each of the Member States of the Programme.

The following EU legal acts and working documents provide further detailed information about the management and implementation of the Programme:

Commission Implementing Decision of 8 October 2014	Commission Implementing Decision of 8 October 2014 adopting a programming document for European Union support to ENI Cross-Border Cooperation for the period 2014-2020
Regulation (EU) No 232/2014	Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (ENI Regulation)
Regulation (EU) No 236/2014	Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (hereinafter referred to as ENI CIR)
Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014	Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (ENI CBC IR);

Regulation (EU) No 1046/2018	Regulation (EU) No 1046/2018 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union and [...] repealing Council Regulation (EC, Euratom) No 966/2012;
Commission Implementing Decision of 17.12.2015	Commission Implementing Decision of 17.12.2015 on the Joint Operational Programme Hungary-Slovakia-Romania-Ukraine 2014-2020 for the ENI Cross-Border Cooperation programme for the years 2014-2020 to be financed from the general budget of the European Union
Joint Operational Programme	Hungary-Slovakia-Romania-Ukraine Cross-border Cooperation Programme 2014-2020, approved by the participating countries on 25 June 2015, revised on 14 October 2015 and on 13 November 2015
Application Package for the 1 <sup>st</sup> call for proposals of the Programme	Available at <a href="https://huskroua-cbc.eu/calls/1st-call-for-proposals">https://huskroua-cbc.eu/calls/1st-call-for-proposals</a> Corrigendum no 1 of the 1 <sup>st</sup> call for proposals
Application Package for the 2 <sup>nd</sup> call for proposals of the Programme	Available at <a href="https://huskroua-cbc.eu/calls/2nd-call-for-proposals">https://huskroua-cbc.eu/calls/2nd-call-for-proposals</a> Corrigendum no 1 of the second call of the Programme Corrigendum no 2 of the second call of the Programme Corrigendum no 3 of the second call of the Programme
Financing Agreement	ENI CBC Financing Agreement of 19 December 2016 concluded between the European Commission and Ukraine

Please also note that **all relevant national legislation** of the countries where the **Lead Beneficiary and Beneficiaries are located** is directly applicable.

### 1.3. Institutional Framework

The structure, roles and responsibilities of the Programme bodies are set according to the legal framework referred in the JOP and agreed jointly. The responsibilities, functions and roles of each body are presented in more details in the JOP and on the webpage of the Programme at <https://huskroua-cbc.eu/>.

#### JOINT MONITORING COMMITTEE (JMC)

The Joint Monitoring Committee (JMC) is the main decision-making body of the Programme. The JMC is responsible for monitoring the implementation of the Programme. The JMC is composed of one or more representatives appointed by each participating country. The JMC will meet at least once a year and it may take decisions through a written procedure. Decision-making follows the JMC's adopted rules of procedure by unanimity. The European Commission will participate in the work of the JMC as an observer.

**MANAGING AUTHORITY (MA).** The Managing Authority appointed by the countries participating in the Programme is the Ministry of Foreign Affairs and Trade of Hungary. The MA is responsible for the overall managing and implementing of the Programme, including technical assistance in line with the principle of sound financial management, that is, the principles of economy, efficiency and effectiveness.

**AUDIT AUTHORITY (AA)** – Directorate General for Audit of European Funds Hungary. The main responsibilities of the AA consist of ensuring that audits are carried out on the management and control system of the programme, on an appropriate sample of projects and on the annual accounts of the programme. The Audit Authority for the programme will be assisted by a Group of Auditors comprising of representative from each country participating in the programme.



**NATIONAL AUTHORITIES (NA)** in Hungary, Slovakia, Romania and Ukraine are the counterparts of the Managing Authority in Programme's implementation. NAs are responsible for the coordination of the programming process in their respective countries and they bear the ultimate responsibility for the implementation of the programme on their country's territory.

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**CONTROL CONTACT POINTS (CCP)** are to support the Managing Authority in its control of the Programme's obligations.

- In Hungary: *Széchenyi Programme Office Non-profit Lc.(SZPO)*
- In Slovakia: *Ministry of Agriculture and Rural Development of the Slovak Republic, Section of Cross-Border Cooperation Programmes, Department of Cross-Border Cooperation Programmes Implementation Control, Unit of Cross-Border Cooperation SK-HU, PL-SK and ENI Programmes Implementation Control*
- In Romania: *Ministry of Regional Development and Public Administration, General Directorate of Territorial Activity Coordination, General Directorate for European Territorial Programmes, First Level Control Directorate (DFLC)*
- in Ukraine: *Ministry of Finance, Department of International Financial Projects, NCCP Unit*

National Controllers in Member States have the role of examining the expenditure declared by the beneficiaries in their respective country. In Ukraine, the examining of the expenditure declared by the beneficiaries is implemented by external auditors who will be on the list set up by the Ukrainian Control Contact Point.

**JOINT TECHNICAL SECRETARIAT (JTS)** - is located in Budapest and hosted by SZPO. The JTS is responsible for the day-to-day implementation of the Programme and support of the MA, the Joint Monitoring Committee and the Audit Authority in operational management tasks as well as operational follow-up and financial management of the projects.

**BRANCH OFFICES** in Hungary, Ukraine, Slovakia and Romania have the purpose of informing potential beneficiaries of activities planned under the Programme. The responsibility of the branch offices of the JTS is to publicize activities under the joint operational Programme to provide anyone who may be interested with information and may provide assistance to the MA/JTS in the project evaluation and implementation follow-up.

**Széchenyi Programme Office (SZPO)** is the intermediary body, hosting the JTS and the department providing management services ensuring horizontal tasks for all ETC Programmes with participation of Hungary managed by the Ministry of Foreign Affairs and Trade as Managing Authority. Such tasks are related to INTERREG+ system, payments transfers, process management tasks, public procurement, employment etc.



### ***Specific guidelines for beneficiaries:***

For further questions and clarifications contained in the PIM, Beneficiaries are advised to contact the JTS and Branch Offices/ Control Contact Points and National Authorities in each respective country.

Please note that the JTS may be referred mainly on issues related to general project implementation issues. The Control Contact Point will be addressed for aspects related to audit and expenditure verification and on issues related to public procurement. If the involvement of the National Authorities is needed regarding specific national legislation or public procurement, the above-mentioned bodies can forward request for clarification at any time.

## **1.4. The Lead Beneficiary Principle**

The implementation of Projects is based on the Lead Beneficiary principle. This means that each project shall designate one Lead Beneficiary for representing the partnership during the application phase. All beneficiaries shall actively cooperate in the development and implementation of projects. In addition, they shall cooperate in the staffing and/or financing of projects. Each beneficiary shall be legally and financially responsible for the activities that it is implementing and for the share of the grant that it receives. The specific obligations as well as the financial responsibilities of the beneficiaries shall be laid down in the Partnership agreement

### **Main responsibilities of the Lead Beneficiary**

The Lead Beneficiary shall receive the financial contribution from the Managing Authority for the implementation of project activities; ensure that the beneficiaries receive the total amount of the grant as quickly as possible and in full in accordance with the Partnership agreement. No amount shall be deducted or withheld and no specific charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries; lay down the partnership agreement with the beneficiaries in an agreement comprising, provisions that, inter alia, guarantee the sound financial management of the funds allocated to the project including the arrangements for recovery of funds unduly paid; assume responsibility for ensuring implementation of the entire project; ensure that the expenditure presented by the beneficiaries has been incurred for the purpose of implementing the project and corresponds to activities set in the contract and agreed between all beneficiaries; verify that the expenditure presented by the beneficiaries has been examined.

The Lead Beneficiary concludes the Grant Contract with the MA and launches the project's implementation. During the implementation phase, the main task of the Lead Beneficiary is to coordinate and manage the whole project, including ensuring the sound financial management of the project's budget. The Lead Beneficiary needs to make sure all beneficiaries are "in the loop" and communicate with each other. Good exchange of information enables successful delivery of project's outputs and its implementation.



## Main responsibilities of the Beneficiaries

The Partnership Agreement (PA) regulates the relationships between the project's beneficiaries and it is part of the Application package of the respective call for proposals. More information on the Partnership Agreement is to be found below and shall reflect the main responsibilities of the Beneficiaries, as follows:

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- Delivering the project outputs stipulated in the Application Form and specified in the PA;
- Fulfil all Programme requirements regarding monitoring and reporting in relation to the implemented part of the project;
- Ensure good cooperation and communication with the Lead Beneficiary regarding the realization of the project's activities;
- Assume responsibilities of any irregularity of the expenditure which they had declared;
- Repay the Lead Beneficiary any amounts unduly paid in accordance with the PA;
- Carry out information and communication activities concerning the project activities;
- Ensure durability of the outputs of the project;
- Keep all documents related to the project available for a period of five years from the date of payment of the balance for the Programme (estimated date for the end of the record keeping period is 2029).

## Chapter 2. Contracting

### 2.1. Pre-contracting phase

The Managing Authority will inform the Lead Applicants in writing of the Joint Monitoring Committee's decision concerning the award of their application and, in case of rejections, about the reasons for the negative decision. The contracting process starts subsequently.

JTS may visit Lead Applicant and Applicants and check the project content on spot, especially when investment component within the project is planned.

Successful Lead Applicants are notified by the Award letter, to which the List of conditions and requirements is annexed and contains questions aiming to clarify project content and budget related topics. After receiving the original Award Letter signed by the Head of Managing Authority, Lead Applicant has to submit the response letter – Lead Beneficiary statement on conditions, containing detailed and satisfactory answers to all questions in concern within 15 calendar days to the JTS. In case the answers received are not deemed detailed and satisfactory, the JTS requires further clarification which must be answered within 10 calendar days. During this stage Lead Applicant may request personal and phone conversations with the JTS programme manager in charge.

After clarification received from the Lead Applicants comply all the expectation to meet all requirements and setting for implementation process, the JTS submits the Declaration on fulfilment of conditions to the Managing Authority giving precise description of all changes and modifications to the Application form and Budget of the Project (and any other relevant document) stating that the project is ready to begin implementation and MA may instruct JTS to prepare the grant contract.

After the grant contract is prepared and checked, the Managing Authority sends the signed originals of the Grant Contract to the Lead Beneficiary, who must countersign them within 30 days of receipt from the Managing Authority/Joint Technical Secretariat.



## 2.2 The Grant Contract

The **Grant Contract** is concluded between the MA and the Lead Beneficiary as only parties to the contract. It constitutes the legal framework for the implementation of the project, defining the responsibilities and obligations of both parties and stipulating the maximum grant for the project, as well as the payment installments and the reporting obligations for the project.

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Lead Beneficiary receives the EU contribution from the Managing Authority and ensures that it is managed and distributed in accordance with the agreements drawn up with Beneficiaries (Project Description and Partnership Agreement). The Lead Beneficiary is directly accountable for the Managing Authority concerning the operational and financial progress of activities. The Lead Beneficiary is also responsible for the proper reporting of progress during project implementation to the Joint Technical Secretariat as stipulated in the Grant Contract.

The reports inform the JTS on the progress of the project, delivered outputs, achieved results, faced challenges and spent resources, and help to monitor the implementation of actions and the Programme, as well.

**All Beneficiaries must give their input to project reporting.** The reports inform the MA on the progress of the project, delivered outputs, achieved results, faced challenges and spent resources, and help it monitor the implementation of actions and the Programme.

Further instructions on the content of the reports and their submission deadlines are provided in Chapter 6.

For details on how to make modifications on the Grant Contract, please refer to Chapter 7.

### ***Specific Guidelines for Beneficiaries:***

The Grant Contract contains an implementation and an execution period.

The **implementation period** of the Project begins on the date mentioned in the AF and in the contract (number of months). It can be between 12 and 36 months.

The **execution period** of the Project shall end at the moment when final payment is paid by the MA and, at the latest 12 months after the end of the implementation period as stipulated in the Grant contract.

Before signing the Grant Contract, the Lead Beneficiary and the Beneficiaries shall be asked to adjust the implementation periods of the project and the respective deadline of the outputs and results accordingly.

Also, Beneficiaries shall be aware of the fact that obvious errors (arithmetical, typographical etc.) occurred in documents submitted by the Lead Beneficiary (Project reports, requests for payments, etc.) can be corrected by the MA/ JTS after prior consultations with the Lead Beneficiary without any amendment to the GC.

After the Grant Contract is concluded, the state co-financing contract with the relevant National Authority shall be prepared (see section 3.5).



## 2.3. Partnership Agreement

While the Grant Contract establishes the legal bases between the Managing Authority (MA) and the Lead Beneficiary, the Partnership Agreement (PA) sets the legal framework between the Lead Beneficiary and the rest of project Beneficiaries. At the same time, the Partnership Agreement cannot be contradictory to the provisions of the Grant Contract. Before the signature of the Grant Contract, a Partnership Agreement has to be signed by the Lead Beneficiary and Beneficiary(s).

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### ***Specific Guidelines for Beneficiaries:***

The JTS/ MA reserves the right to verify the PA to check its compliance with the Programme's requirements.

The PA shall be prepared in English.

The template of the PA regulating the relationship between project Participants is part of the Application Package for the respective call for proposals.

The PA shall set the responsibilities of each party in order to ensure proper technical and financial management and joint effective implementation of the project.

## Chapter 3: Project implementation

### 3.1. Implementation tools

In order to fully comply with the Programme's requirements, the Lead Beneficiary must use, in addition to the Grant Contract and the PIM, the Communication and Visibility Manual as well as the INTERREG+ guidelines.

The Communications and Visibility Manual contains the guidelines on meeting the Programme's requirements from the communication and visibility point of view.

The following documents are also to be observed by the Lead Beneficiary in order to get an exhaustive view on its responsibilities towards communication:

### ***Specific Guidelines for Beneficiaries:***

According to:

- The Grant Contract: The Lead Beneficiary is the intermediary for all communications between the Beneficiaries and the Managing Authority/Joint Technical Secretariat. Responsibilities to identify the European Union as financier or co-financed throughout the project;
- Interim and final reports: responsibilities to include any update on the communication plan;
- Communication and Visibility Manual:  
Responsibilities derived from Project management:
  - Visual identification and editable logos;



- Minimum requirements on how to use the logos of the Programme, of the EU, the project logo, disclaimer on the identification of the financiers for publications, websites, promotional materials;
- Process of the data gathered in events and through communication;
- Various tools for facilitating communication.
- The Partnership Agreement: responsibilities deriving from internal communication within the project team.

## Using INTERREG+

INTERREG+ is the monitoring and information system used for the Programme in order to support project submission, implementation and monitoring, modification and closure. Additionally, it collects data on the progress of projects at Programme and Beneficiary level. INTERREG+ shall be used, but it shall not be the exclusive means of communication between the Programme bodies and the Beneficiaries.

INTERREG+ Users Manual will be available at the Programme's website. The INTERREG+ Manual includes a technical description of registration, updating basic information and Beneficiaries' rights, and filling in and submitting different sections necessary for reporting and communication.

Should its use be technically hindered, alternative measures will be introduced.

### 3.2. Dedicated bank account and conversion rate

The payments made by the MA to the LB will be transferred only in Euros to the bank account indicated in the Financial Identification Form to be signed and attached to the Grant Contract during contracting process.

All costs incurred in any other currency will be converted into Euros by using the exchange rates of the Commission of the month during which the expenditure was submitted for verification (GC Article 6.6).

The official rates are available at the following internet address:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm)

#### *Example:*

If an expense in HUF has been incurred in January 2019 and submitted for verification in October 2019, the exchange rate used will be the one from October 2019.

All project/ beneficiary reports shall be submitted in Euro through the INTERREG+ system. As a general rule, if a cost is incurred in other currency than euro, the conversion will be done by INTERREG+ system.

The Lead Beneficiary and the Beneficiaries have to have dedicated bank accounts opened specifically for the implementation of the Project, in order to allow for the identifications of the funds received. However, the Lead Beneficiary and the Beneficiaries may have a different bank account opened in their national currency for transfers dedicated to co-financing and for other operations related exclusively to project implementation, if necessary.



Change in the bank account of the Lead Beneficiary or of the project Beneficiaries must be notified by the Lead Beneficiary.

The Lead Beneficiaries' accounts will be credited with:

- the EU contribution transferred by the MA
- the amounts representing Lead Beneficiary's own co-financing, if applicable and
- state co-financing, if applicable.

The Beneficiaries accounts will be credited with:

- the EU amounts that the Lead Beneficiary will transfer according to the Project's Budget and PA;
- the amounts of the Beneficiaries' own co-financing, if applicable
- and state contribution, if applicable.

#### *Guidelines for beneficiaries:*

The LB shall take note of article 7.5 of the GC which sets a deadline for the LB's transfers to the project beneficiaries and delivery of the proof of payment to the JTS of 10 days.

### 3.3. Accounting system

All Beneficiaries shall keep accurate and regular accounts on the implementation of the Project, by using appropriate accounting and double-entry book keeping systems. All accounts, irrespective of the currency used, shall be up-to-date, reliable and easily identifiable and verifiable. There must be a clear audit trail between the original invoice, accounting system and financial report of the project.

**Article 11.1 of the GC** mentions that the Beneficiaries' accounts:

- may be an integrated part of or an adjunct to the Beneficiary's regular system;
- shall comply with the accounting and bookkeeping policies and rules that apply in the country concerned;
- shall enable income and expenditure relating to the Project to be easily traced, identified and verified.

The Project accounts are the main source of information for the Lead Beneficiary for:

- The preparation of the financial reporting;
- The expenditure and revenue verification that accompanies the payment requests;
- Follow up of the project budget and activities implementation;
- Any financial control by MA/JTS, EC or other authorized bodies.

The accounting records from the LB and Beneficiaries must include among other things<sup>1</sup>: the general ledger, sub-ledger and payroll accounts, fixed assets register plus other relevant documents such as:

- Procurements documents: bids from tenders and evaluation reports;

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<sup>1</sup> paraphrasing GC Article 11.9



- Contracts and/or order forms;
- Proof of delivery of service;
- Proof of delivery of goods;
- Proof of completion of works;
- Invoices and/or receipts;
- Proof of payment: bank statement, debit notes;
- Proof of travel;
- Fuel and travel related expenses: distance covered, average consumption, fuel costs and maintenance.

The LB and Beneficiaries shall grant full and free access to the above documents to auditors/ national controllers.

### 3.4. State and own co-financing

The Grant Contract states the amount of the Grant: **maximum 90%** of the total value of the project. However, the whole Project's budget is covering all eligible costs of the Project, not just the EU contribution, and it is annexed to the contract, thus the contractual terms apply to the overall project value.

**Minimum 10%** of the total eligible costs of the project must be ensured through the LB and the Beneficiaries co-financing (own contribution+ state contribution, if applicable). Their co-financing must be financed from sources other than the EU budget of the Programme. In case of Member States, the state contribution will be provided according to the relevant national legislation. The percentage of state contribution depends on the type of organization:

- Hungarian beneficiaries (maximum 10% or maximum 5%) - depending on the type of the organization: organizations financed from the central budget, as well as directly or indirectly state-owned organizations (universities, national parks, etc.) receive a maximum of 10% co-financing, while all other types of organizations receive a maximum of 5% co-financing;
- Slovak Beneficiaries: state organizations receive 10% of state co-financing; private institutions receive a maximum of 5%;
- Romanian Beneficiaries: state organizations receive maximum 10% of state co-financing; private institutions receive a maximum of 5%;

Taking into account that in case of **Ukrainian** Beneficiaries, state contribution is not provided, therefore **minimum 10%** of the total eligible costs of the their project part needs to come from own sources (other than EU).

### 3.5. Concluding the National State Co-financing Contract for Member States Beneficiaries

**As the national contribution of each project is comprising of the state contribution (depending on the type of Beneficiary institution) and own contribution, Member States' Beneficiaries will have to conclude a separate contract for the respective state contribution.**



The main preconditions for the conclusion of state co-financing contracts is that the Grant Contract is signed as well as the Partnership agreements are concluded and signed.

- **For Hungarian Beneficiaries:**

In case of Hungarian Beneficiaries, the state contribution is provided automatically by the Ministry of Foreign Affairs and Trade, acting as National Authority in the HUSKROUA ENI 2014-2020 Programme.

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The maximum amount of the national co-financing is defined in the national co-financing contract in euro. The rate of co-financing (max 10% and min 5%) depends on the type of the organization: organizations financed from the central budget, as well as directly or indirectly state-owned organizations receive maximum 10% of the total eligible amount of their budget as co-financing, while all other types of organizations receive maximum 5% of the total eligible amount of their budget as co-financing.

Subsidy contracts for state contribution with Hungarian beneficiaries are concluded by SZPO, on behalf of the NA. The preparation of contracts is the task of the Control Department of SZPO. Responsible organizational units are the same as the ones implementing CCP activities.

Based on the list of projects sent by the NA, SZPO notifies Hungarian beneficiaries on the availability of the state co-financing and the documents to be submitted for the conclusion of contracts. After the submission of the necessary documents by the beneficiary, SZPO may ask for completion (if needed – in case the documentation is not complete). When all documents are available at SZPO, the contract template is filled in and the necessary annexes are added to the contract. The draft contract is then sent to the beneficiary for signature. The beneficiary returns the signed contracts to SZPO, where it is also signed by the responsible persons. Once the contract is signed by both parties the transfer of the state co-financing to the beneficiary is initiated – as 100% pre-financing.

- **For Slovak Beneficiaries:**

Slovak Beneficiaries (SB) are entitled to state co-financing paid by the Ministry of Agriculture and Rural Development of the Slovak Republic (MOARD) acting as the National Authority in frame of the Programme.

In case the project partnership consist of two or more SB, they shall appoint one organization among themselves as a Main Cross-Border Beneficiary (MCBB) who concludes the state co-financing contract on behalf of SB. In this case MCBB receives the state co-financing to his bank account and is obliged to transfer the share of state co-financing to other SB. The rate of co-financing (max 10% and min 5%) depends on the type of the organization: organizations financed from the central budget, as well as directly or indirectly state-owned organizations receive 10% of co-financing, while all other types of organizations receive 5% of co-financing.

Transfer of state co-financing is made after the approval of the final report and transfer of the balance payment to SB. The contract on state co-financing is concluded after the signature of the ENI grant contract. MOARD is informed and provided with Grand Contract and PA via JTS. In order to sign the state co-financing contract the MCBB is requested to submit relevant documentation by the programme manager at the MOARD. **The MCBB will be informed via letter, where all necessities will be listed.**



Preparation of the state co-financing contract is in charge of the relevant programme manager at the MOARD.

- **For Romanian Beneficiaries:**

The legal background for state co-financing is Government Ordinance No. 29/2015[1]. According to the cited regulation, the payment of the co-finance from the state budget is carried out according to the provisions of the co-financing contracts signed with every Lead Beneficiary/ Beneficiary located in Romania.

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The conditions for signing the state co-financing contract:

- Having signed the Grant Contract between the LB/ Beneficiary and the MA;
- Having signed the PA between the Beneficiaries from Romania and the LB.

According to article 6 of the state co-financing Contract, the Beneficiary has the right to request reimbursement of the state co-financing as follows:

Option 1 – in two instalments – after approval of the first year report and receiving the payment following the approval of the first year report, respectively after the approval of the final project report (deriving from the GC) and receiving the final payment of the ENI;

Option 2 – one-time instalment: after approval of the final project report (deriving from the GC) and receiving the final tranche of ENI.

The Beneficiary has to choose the reimbursement option of the state co-finance once the contract is signed with the NA. In case the Beneficiary does not send the reimbursement request in 60 days from the date he/she has received the ENI payment, it is considered that he/she has revoked the right for state co-financing reimbursement. The Beneficiary can also announce in the 60 days that he/she may delay the request for reimbursement of the state co-financing.

The NA shall check and pay the respective state co-financing in maximum 90 days from the date of the receipt of the complete documentation from the Beneficiary, under the condition of availability of funds.

### 3.6. Revenue and interest

**Revenue** is defined as gross inflows during the reporting period directly paid by users for the goods or services provided by a project, such as charges borne directly by users for the use of infrastructure, products or services, such as fairs, exhibitions, etc., or generated by payments for services (i.e. for participation in trainings, tickets or other charges). The planned revenue of the project shall be indicated in the Annex II “Budget” to the Grant Contract.

According to the Article 6 “Narrative and Financial reporting” of the Grant Contract (point 6.7) all Beneficiaries must declare in the expenditure and revenue verification report that the revenue of the project are real, accurately recorded in relevant accounts, eligible in accordance with Grant contract and related instructions and provisions and not covered by any previous expenditure and revenue verification reports.



Each Beneficiary is responsible for keeping account and documenting all revenues generated during and after (within the sustainability period) the project's implementation for control purposes.

Revenue generated within the project implementation **may constitute the co-financing part** of the Beneficiaries.

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Revenues generated by the project are monitored throughout the whole project life cycle in narrative and financial reports. The revenues to be potentially generated within the project implementation **may constitute** the Lead Beneficiary's or the Beneficiaries co-financing part (at least 10% of the project) if they have been predicted in the project budget. Any revenues above the threshold of the Lead Beneficiary's and Beneficiaries' co-financing shall be deducted from the reported eligible expenditures in the final payment claim submitted by the Lead Beneficiary.

Other specific cases and definitions are set in the Article 10 "Financial provisions" of the Grant Contract.

At the same time, a grant **may not produce profit** for the Beneficiary from neither revenue generated by the project (see above), nor financial contribution of the eligible expenditure or interest from pre-financing. A profit shall be defined as a surplus, calculated at the payment of the balance, of receipts over the eligible costs of the project, where receipts are limited to the Union grant and the revenue generated by project.

With regards to **interest generating from pre-finance** and other interim payments, any interest or equivalent benefits accruing from the pre-financing paid by the Managing Authority to the Beneficiaries shall be mentioned in the interim and final report.

Any interest or equivalent benefits from the pre-financing paid by the MA to the Lead Beneficiary and transferred to the project Beneficiaries will not be due to the MA and **shall be used by each Beneficiary for the project activities**. However, for the purpose of monitoring, the interest obtained will need to be stated and listed in the Beneficiary and Project Reports.

### 3.7. Value added tax

In the Project Application Form, in Annex 1, respectively in Annex 2, the Lead Beneficiary and Beneficiaries had to declare their VAT status as being one of the following:

- Either recoverable;
- General recoverable that could not be reclaimed for the given project or
- Non-recoverable from other sources.

According to the IR 897/2014 only non-recoverable VAT is eligible (see section 3.1. Eligible costs). As such only the Lead Beneficiary and Beneficiaries that have declared it can include and declare VAT in their financial reports. Recoverable VAT is not considered eligible (see section 3.2. Non-eligible costs).

The Lead Beneficiaries and Beneficiaries should be aware of their VAT status in relation to the planned project as well as the national rules and procedures. If the VAT status of the Lead Beneficiaries or Beneficiaries changes during the course of the project implementation, or if the national rules do change



implying changes in the mentioned status, the Beneficiaries are obliged to inform the JTS and relevant National Controller/ Auditor about such a change.

VAT is not eligible in Ukraine, as according to the Financial Agreement, all costs are tax exempted.

### 3.8. Project savings

As economy and efficiency are principles to be used throughout the whole project implementation, cost savings at the project level – if occurred – can be used upon the prior approval of the MA/ JTS. A request for modification shall be initiated by the Lead Beneficiary for such an approval (see Chapter 7).

In case a Lead Beneficiary identifies cost savings, it can use the amount for additional activities within the project without affecting its nature and purpose. It is good practice that new activities proposed need to generate further added value for the project or an increase in certain indicators (result or output) attached to the specific activity.

### 3.9. Financial Planning

The Financial Planning of the project shall be updated during the contracting phase and with every submitted report and request for modification that has budgetary implications.

The Financial Planning is useful in internal project management as well as it allows the Beneficiaries to estimate the cash flow, the surplus or deficit in each moment of the implementation. From this point of view, it is highly recommended at all times to link the payments forecast with the pre-financing and request for payment installments.

The project Beneficiaries need to take into account:

- The pre-financing arrangements according to Article 7 of the Grant contract and the estimation on when it will be received. The first instalment of pre-financing payment shall be made within 30 days from the reception by the Managing Authority of the signed Contract.
- The estimations of the yearly request for payments, payments and transfers (being aware of the time gaps between the two) and payment of the final balance.

Further pre-financing payments and payments of the balance shall be made within 30 days dated from the acceptance of the report by the JTS.

According to the Grant Contract (Article 7.3): With the exception of the first instalment and of the second instalment in case of projects with infrastructure component or works requiring building permission, pre-financing may only be given if the part of the expenditure actually incurred which is financed by the Managing



Authority (by applying the percentage set out in Article 3.2 of the Contract) stands at 100% of the previous payment as supported by the corresponding interim report and by an expenditure and revenue verification report.

**Where the consumption of the previous pre-financing is less than 100%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment.**

**After the first 12 month reporting period** second instalment and third instalment in case of projects with infrastructure component or works requiring building permission, pre-financing may be given without reduction as laid down in Article 7.2 if the part of the expenditure actually incurred which is financed by the Managing Authority (by applying the percentage set out in Article 3.2 of the Contract) stands at 50% of the previous payment as supported by the corresponding interim report and by an expenditure and revenue verification report.

Where the consumption of the first pre-financing and of the second instalment in case of projects with infrastructure component or works requiring building permission is less than 50%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the 50% of the previous pre-financing payment.

Beneficiaries also need to correlate the financial plan with the deliverables of the project as well as with the procurement plan.

The Lead Beneficiary shall also pay attention to correlate, as much as possible, the receipts of funds to the payments of the Project. The closer the two flows are, the better for the Project's cash flow. Two extreme cases may result from a big difference between the receipts and the payments of the project:

1. Running the project on own resources while waiting for the following pre-finance installment after reporting (Project payments are significantly higher than the Project receipts);
2. Not consuming enough from the pre-financing installment and, as a consequence, postpone certain activities towards the end of the Project (Project receipts are significantly higher than the Project payments).

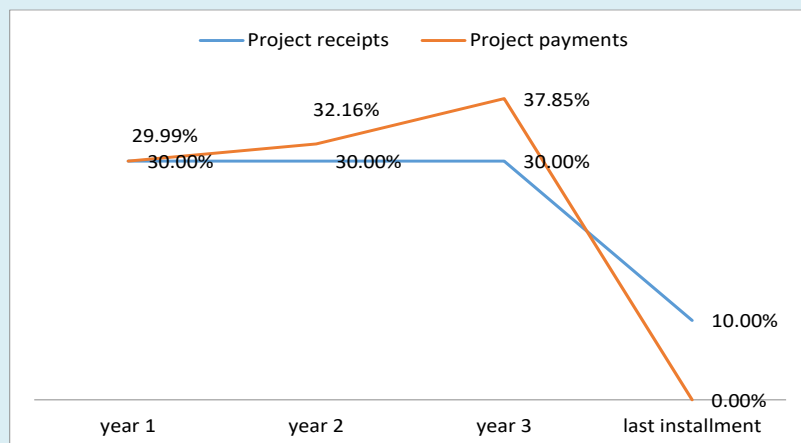
### Example

Project “X” contains an infrastructure component and makes the following financial planning for its 36 months implementation:

	Project receipts	Project payments
year 1	30.00%	29.99%
year 2	30.00%	32.16%
year 3	30.00%	37.85%
last installment	10.00%	0.00%

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As a consequence, the following graphic (simplified) of its payments and receipts can be observed:



The Lead Beneficiary can observe “the big picture” on when are the times in which it has to fund the project from own sources or when it needs to speed up the spending and plan accordingly.

**Figure 1 – Simplified example for financial planning**

The pre-financing instalments can be summed up as in the table below:

Pre-financing installment	< 12 months project	12<24 months regular project	12<24 months infrastructure or works requiring building permit project	24<-36 months regular project	24<-36 months infrastructure or works requiring building permit project
1 <sup>st</sup> installment % of total ENI contribution	80%	40%	10%	30%	10%
2 <sup>nd</sup> installment % of total ENI contribution	X	40%*	40%**	25%*	20%**
3 <sup>rd</sup> installment % of total ENI contribution	X	X	40*	25%*	30%*



4 <sup>th</sup> installment % of total ENI contribution	X	X	X	X	30%*
Final payment % of total ENI contribution	20%*	20%*	10%*	20%*	10%*

\*Deducting EU contribution corresponding to pre-financing unspent and/or ineligible at the approval of the relevant 12 months or final report

\*\* The projects with infrastructure component automatically receive the first 10% as pre-financing and the second installment will be made only after the contract of the works are submitted to the JTS.

**Table 1 – Pre-financing instalments (different project types and duration)**

### **Specific Guidelines for the Beneficiaries (SK):**

Slovak beneficiaries that have received financial support directly from the EU (**ENI contribution, not the State Budget**) are obliged to submit a notification to the Ministry of Finance of the Slovak Republic within **30 days** of its receipt. More on: <https://www.finance.gov.sk/sk/financne-vztahy-eu/oznamenie-prijati-financnej-pomoci-z-eu/elektronicke-podavanie-oznameni-prijati-pomoci-priamo-z-eu/>.

## **3.10 Risk Management**

During the application phase, the project Beneficiaries developed a detailed risk analysis and contingency plan for each proposed activity. During the implementation phase, the risk analysis and contingency plan will have to be updated and reviewed with every reporting period.

Beneficiaries need to be aware of the fact that the risk management plans shall also be part of the Grant Contract and need to duly fill it in during the internal Project management as well as during reporting, making sure the risk assessment is not just a formal requirement that needs to be carry out.

Risk assessment and management is also a task of the MA and JTS when carrying out site visits.

## **Chapter 4. Procurement: which rules apply for HUSKROUA Programme countries<sup>2</sup>**

### **4.1. General rules:**

**As a general and overarching rule, procurement procedures and thresholds shall follow the national legislation of the country where the Beneficiary is located (Hungary or Slovakia or Romania or Ukraine). This provision is mandatory for all types of beneficiaries, irrespective of their statute (either public or private).**

<sup>2</sup> Section elaborated by TESIM and adapted to this manual

The following chapter describes the rules applicable in ENI CBC IR, irrespective of the legislation followed. Beneficiaries need to observe these rules and apply them in case their legislation is lacking for certain types of beneficiaries. However, in case stricter rules are applied in national legislation than in IR, national legislation should be followed.

Beneficiaries shall take note of the fact that the national guides on expenditure and revenue verification developed for each country shall contain details on all the European and national applicable rules as well as on the Programme's rules.

## 4.2. Basic rules irrespective of the national legislation applied:

### Key horizontal principles

There are five basic principles to be respected in any procurement procedure, regardless of the value and applicable legislation:

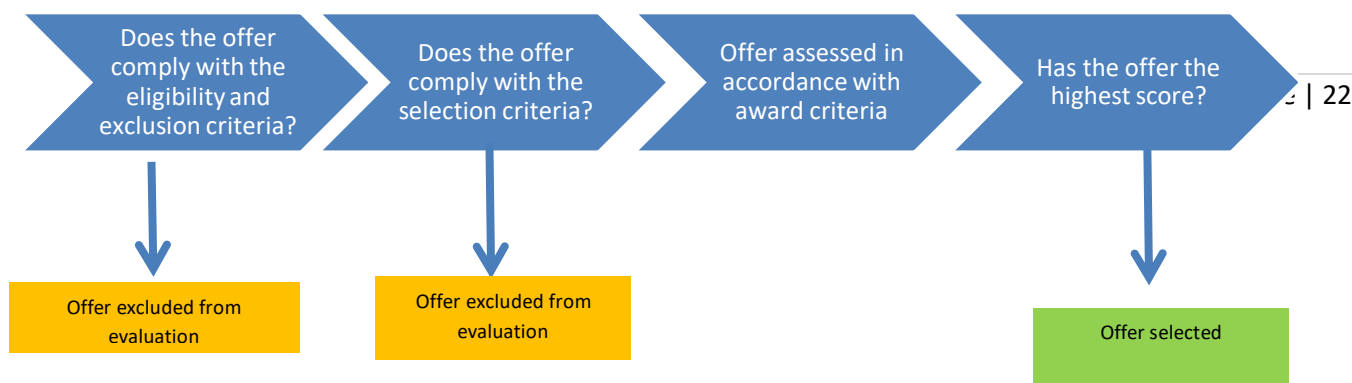


**Figure 2 – General principles to follow in case of procurement procedures**

Principle	Description
Transparency	The beneficiaries have to work as openly as possible in the implementation of the budget, so that stakeholders and citizens are able to know where, and for what purpose, funds are spent. This principle should be achieved by the <b>publication</b> , preferably using modern communication tools, <b>of relevant information concerning contractors</b> , while considering such contractors' legitimate interests of confidentiality and security and, as far as natural persons are concerned, their right for privacy and the protection of their personal data.
Fair competition	Publication of certain information after the contract has been awarded would hinder application of the law, would be contrary to the public interest, would harm the legitimate business interests of public or private undertakings and, therefore, might distort fair competition between them. The Contracting Authority needs to ensure <b>adequate ex-ante publicity</b> , that is, adequate publication, in reasonable time, of the prior information notices, contract notices and award.
Equal treatment	All participants in a procurement procedure need to have equal rights and obligations.
Proportionality	The complexity of the procedure and the measures taken to ensure the compliance with all the principles has to respect the proportionality between the importance of the amount to be awarded and the need to control the best use of the funds.
Non-discrimination	Removal of any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons.

### Eligibility, exclusion, selection and award criteria

The procurement procedures need to draw up clear eligibility (for formal submission), exclusion, selection and award criteria, following the above-mentioned principles.



### **Eligibility and exclusion criteria**

There are three types of eligibility and exclusion criteria:

- **Exclusion criteria** for the participation in **any** procurement procedure;
- **Exclusion criteria** for the participation in a **given** procurement procedure;
- **Formal requirements** for eligibility in a given procurement procedure.

The formal eligibility requirements for participation have to be clearly detailed in the tender dossier or the invitation to submit a tender.

#### **Specific guidelines for beneficiaries:**

Examples of potential formal criteria for eligibility:

- Deadline for submission respected;
- Amount offered below the maximum amount indicated in tender dossier or invitation;
- Original signature by duly authorized legal representative;
- Submission of all requested documents;
- Documents submitted in the requested language.

### **Selection criteria**

Regardless of the type of procurement procedure used, the capacity of the tenderer to implement the contract is always assessed on the basis of objective selection criteria.

The contracting authority needs to check that the tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen criteria shall be proportionate and may not go beyond the scope of the contract.



Examples of selection criteria **NOT** to use:

- Disproportionate annual turnover, number of staff, number of previous projects etc. as regards the amount of the contract;
- Imprecise terms such as “sufficient”, 'major', 'relevant' as it is not absolutely clear what these words mean in the context, or whether a proposed experience fulfils the criterion;
- A percentage of the staff working in specific fields, as this may be discriminatory for large companies;
- Technical experience relating to EU-funded projects only, as this may in general be regarded as discriminatory;
- Prior experience in the country, region or town, unless specific justification is provided, as this could in general be regarded as discriminatory;
- Technical experience in an overly prescriptive manner which effectively restricts the number

**Specific guidelines for beneficiaries:**

Examples of **potential selection criteria**:

- Minimum average annual turnover of the bidder during the last 3 years;
- Minimum average number of technical staff in the last 3 years;
- Minimum number of previous contracts of similar nature and size during a period of time;
- Specific educational and professional qualifications of the team proposed by the service provider or contractor.

**Award criteria**

The contract is awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, that is:

- under the best price-quality ratio, the contracting authority takes into account the price and other quality criteria linked to the subject matter of the contract and apply a weighting formula. The European Commission (EC) usually applies 20% to price and 80% to technical quality;
- under the lowest price, provided the tender satisfies the minimum requirements laid down, that is, the tender is technically compliant. It is often used for supplies and works.

**Procedures with a suspension clause**

- In duly justified cases, tender procedures may be published with a suspension clause. Article 48.2(a)(iv) of ENI CBC IR stipulates that:
- “procedures to award contracts [...] may have been initiated and contracts may be concluded by the beneficiary(ies) before the start of the implementation period of the project [...]”.
- Because of its implications, the contract notice or invitation to tender must explicitly state that there is a suspension clause.



### **Specific guidelines for beneficiaries:**

Implementation periods usually run faster than expected when writing the project proposals and delays occur very often. Use the time between the notification of the award of the grant and the actual signature of the grant contract (**contracting period**) to start the most urgent procurement procedures, as well as the recruitment ones. That way, you will be ready for a timely project launching at the beginning of the implementation period.

We **do not recommend** to launch any procurement procedure **before the notification** of the award of the grant.

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### **Basic recommendations for low-value procurement**

Depending on the type of organization a Beneficiary is, and the national legislation that is applicable in his/her country of residence, any procurement has to either demonstrate the best value for money, or as appropriate, the lowest price (article 52.2(a) of ENI CBC IR). Even in cases of low value procurement where direct award applies, it is **highly recommended** that the Beneficiary asks and stores more **than one offer**, even if only by e-mail.

Even in case of direct award (payment against invoice), if you have only one offer or even no offer at all, please provide an explanation of the reasons for the choice and how 'best value for money' or 'the lowest price' principles were observed.

Each organization has its **own procedure** for acquisition of services/supplies/works, even for very low value ones. Keep the documents describing this procedure.

**Ensure the compliance with internationally accepted standard for internal control**, such as adequate segregation of functions (request of procurement, authorization of acquisition, accounting and payment by different persons); code of ethics known and formally accepted by employees, written procedures, organizational chart and job description of concerned persons (even for volunteers), etc.

Sometimes, the **description of low-value invoices may not be project-specific** (e.g. the acquisition of a computer). In such cases, attach a short memo describing the relationship with the project (e.g. acquisition of a computer for the project manager recruited for the project).

### **4.3. Applicable national legislation for procurement for Beneficiaries**

#### **4.3.1. Applicable legislation for procurement in case of Hungarian beneficiaries**

Hungarian Beneficiaries shall apply Act CXLIII of 2015 on public procurement (if the procurement falls under the scope of the above-mentioned legislation). In case of public procurement, all documents of the public procurement procedure have to be submitted to the CCP.

For expenditures where no public procurement procedure is required by the national law (below national threshold) the following rules has to be respected:

- **Below 1 000 € (excl. VAT):** the principles of sound financial management must be applied, but no specific proof of the market price is required. Nevertheless, please note that the CCP will check it during the



validation of expenditures. Note that procurement must not be split artificially to circumvent the 1 000 € threshold.

- **Equal or above 1000 € and below 5000 € (excl. VAT):** beneficiaries must perform and document the execution of the proof of market price with at least one independent price presentation of similar product/service (e.g. through internet portal, indicative price offer, or comparison of a price offer of an already implemented project). It means in practice that total 2 price offer shall be provided (one regarding the selected tenderer and another one, which was not selected)

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Beneficiaries shall also avoid conflict of interest when performing the proof of market price. Note that procurement must not be split artificially to circumvent the 1 000 € - 5 000 € threshold.

- **Equal or above 5 000 € (excl. VAT):** beneficiaries must perform and document the execution of the proof of adequate market price through request of at least three independent price presentations of product or service by direct price offer requested or through using centralized e-procurement services.

#### 4.3.2. Applicable legislation for procurement for **Slovak beneficiaries.**

Slovak beneficiaries shall apply Act no. 343/2015 Coll. Beneficiaries are required to conclude low-value contracts in accordance with the rules set in the **Public Procurement Manual** issued by the National Authority. If the procurement of goods, works or services is not covered by the Act on Public Procurement (No. 343/2015 Coll.), the beneficiaries will be required to proceed in accordance with the relevant provisions in the Public Procurement Manual and other binding documents to which the Manual refers (e.g. Methodic instructions of Central Coordination Authority no. 12 and no. 14).

#### 4.3.3. Applicable legislation for procurement for **Romanian beneficiaries.**

Public institutions acting as contracting authorities according to national law, will apply the provision of Law 98/2016 on public procurement.

Romanian private beneficiaries shall use their own institutional practices and templates on procurement that shall follow the best international practice in European Territorial Cooperation (See Annex 3 of the PIM). The principles of equal treatment, proportionality and non-discrimination shall be ensured, as well as sufficient transparency, fair competition and adequate ex-ante publicity.

Where in the subsidies/multiannual agreements implemented for a period longer than one calendar year, the private beneficiary will choose the method of procurement taking into account the total value of goods, services, works that are considered similar or addressing to the economic operators constantly involved in activities in a relevant profile market estimated for the entire implementation period of the project, without having to conduct a single procedure/direct procurement.

If a private beneficiary implements several financing subsidies/agreements in the same period for the election of the procurement procedure in a project, the estimated values of such subsidies/ agreements for the same type of supply/service/work is not cumulated. They will be estimated separately for each subsidy/agreement.



#### 4.3.4. Applicable legislation for procurement for **Ukrainian beneficiaries**.

##### **Public project beneficiaries**

The current public procurement legislation in Ukraine comprises both primary and secondary legislation. There is one main law covering public procurement issues - The Law of Ukraine **“On Public Procurement”** No. 922-VII of 25 December 2015 that has entered into force gradually from 1 April 2016. On 19 April 2020, amendments to the Law of Ukraine "On Public Procurement" introduced by Law of Ukraine № 114-IX dated 19 September 2019 took effect, except for provisions governing the procedure for restricted tendering, which will become effective on 19 October 2020 (the "New Law").

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Apart from this Law, Cabinet of Ministries of Ukraine resolutions and orders of the Ministry of Economic Development and Trade of Ukraine drawn up in pursuance of the above Law may be included in the basic legal acts comprising a legal framework regulating public procurements:

##### **Resolutions of the Cabinet of Ministries of Ukraine:**

- “On approval of the Procedure operation of e-procurement procedure carrying out e-platform authorization” from 24 February 2016 No. 166;
- “On establishing a fee for filing a complaint” from 28 March 2016 No. 291

##### **Orders of the Ministry of Economic Development and Trade of Ukraine:**

- “On approval of the Model regulation on the tender committee or on the authorized person(s)” from 30 March 2016 No. 557;
- “On approval of the forms of the documents in the sphere of public procurement” from 22 March 2016 No. 490;
- “On the definition of a web portal of the Authorized Purchasing Authority in the electronic procurement system and ensuring its functioning” No. 473 from 18 March 2016;
- “On approval of the Procedure of publication of information on public procurement” from 18 March 2016 No. 477;
- “On approval of the Procedure of determination of the procurement item” from 17 March 2016 No. 454;
- “On Approval of Model tender documents” from 13 April 2016 No. 680

The *“Law of Ukraine on procurement”* and its amendments from 19 April 2020 introduce an **e-procurement** on-line information and telecommunication system - **“Prozorro”**, which is a platform and a collaboration environment that ensures open access to public procurement (tenders) in Ukraine via a dedicated web portal <https://prozorro.gov.ua> . The mentioned Law stipulates the minimum thresholds for public bodies when the application of the *“Prozorro”* system is mandatory.



**Below UAH 3000** all basic procurement principles have to be respected but no specific proof of the market price is required. Ukrainian public bodies conclude the contract for supply/service/works and pay against the invoice. The on-line electronic system “Prozorro” is not used.

Rules and procedures for contacts value **between UAH 3000 and UAH 200,000 for goods/services and UAH 1,5 million for works** are regulated by the Order of the State Entrepreneurship “Zovnishtorhvydav Ukrainy” from 13 April 2016 No. 35. Even if this document is not a regulatory act, but it complements the Law of Ukraine “On Public Procurement” and defines the order of using the “Prozorro” platform for mentioned threshold using the procedure of the **price-based E-Auction**.

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**Equal or above UAH 200,000 for goods/services and UAH 1,5 million for works:** the beneficiaries has to follow clauses of the “*Law of Ukraine on procurement*” which make on-line e-procurements via “Prozorro” platform mandatory.

Ukrainian beneficiaries, in accordance with the provisions of the Financing Agreement, also need to comply with the rules stipulated in the ENI CBC Implementing Regulation (EU) no 897/2014. Articles 53 to 55 of the ENI CBC IR define the type of procedure and thresholds for services, supplies and works. Moreover Article 9 of the Special Conditions of the Financing Agreements stipulate that: “...*For the avoidance of doubt, lower thresholds than those set out in title VI Chapter 4 of Implementing Regulation (EU) no 897/2014 may be applied by beneficiaries or the CBC partner country*”. This clause applies to the public bodies, as the thresholds in the national legislation are lower and the national legislation is mandatory for these bodies.

Factsheet on procurement by project public beneficiaries in Ukraine prepared by the TESIM project describes the compliance of the national regulation requirements with points ENI CBC Implementing Rules for the procurement above 60,000 €.

### **Private project beneficiaries**

The activity of the non-governmental, nonprofit organizations in Ukraine is regulated mainly by the “Law of Ukraine on Civic Associations” from 22 June 2012 No.5026-VI.

The applicable legal framework for procurement for the non-governmental, **nonprofit organizations** within the Programme would be:

- Commission implementing regulation No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 establishing the ENI;

The requirements of the Financing Agreement, which stipulates the procedures in the ENI CBC Implementing Regulation no 897/2014 of 18 August 2014;

- Commission implementing regulation (EU) 2020/879 of 23 June 2020 amending Implementing Regulation (EU) No 897/2014 as regards specific provisions to align the provisions for the implementation of cross-border cooperation programs financed under the European Neighbourhood Instrument with specific measures in response to the COVID-19 pandemic



- Decree of Cabinet of Ministers of Ukraine No 554 of 11th July 2018 on CBC programmes implementation.

Procedures, rules and thresholds for private beneficiaries are described in the Guide on procurement by private project beneficiaries in Ukraine prepared by TESIM project.

An overview of the applicable legislation and requirements for procurement are described in detail in Annex 1 (Factsheet on procurement by project public beneficiaries in Ukraine) and Annex 2 (Guide on procurement by private project beneficiaries in Ukraine) of the manual<sup>3</sup>.

#### 4.4. Provisions in the ENI CBC Implementing Rules

##### 4.4.1. Provisions in the ENI CBC Implementing Rules

Section 1 of the chapter 4 of the ENI CBC Implementing Rules<sup>4</sup> (Regulation No 897/2014, hereinafter ENI CBC IR) regulates procurement. The articles relevant to beneficiaries are as follows:

Article	Content
52.2	General principles
52.3	Rules of nationality and origin
53	Procedures and thresholds for service contracts
54	Procedures and thresholds for supply contract
55	Procedures and thresholds for work contract
56	Use of negotiated procedure

Article 52.2 stipulates that:

a) *The contract is awarded to the tender offering the best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interest;*

b) *For contract with a value of more than 60.000€, the following rules shall apply:*

- i. An evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;*
- ii. Sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;*
- iii. Equal treatment, proportionality and non-discrimination shall be ensured;*
- iv. Tender documents must be drafted according to the best international practice;*
- v. Deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;*
- vi. Candidates or tenderers shall be excluded if they fall within one of the situations described in article 106(1) of Regulation 966/2012 [...].*

These principles are further detailed later in the manual.

<sup>3</sup> Annex 1 and Annex 2 are documents elaborated by the TESIM project. Beneficiaries whose legislation is lacking to describe for their particular type of organization the specific procurement procedures, thresholds and templates shall follow Annex 2 as recommendations and guidelines until such legislation would be available

<sup>4</sup> [https://ec.europa.eu/europeaid/commission-implementing-regulation-no-8972014-18-august-2014-laying-down-specific-provisions-1\\_en](https://ec.europa.eu/europeaid/commission-implementing-regulation-no-8972014-18-august-2014-laying-down-specific-provisions-1_en)



### ***Specific guidelines for beneficiaries:***

Regardless of threshold, the beneficiary must be able to justify **why and how** either **best value for money or lowest price** criterion was applied. This is an underlying principle behind all the requirements for each procedure chosen.

#### **4.4.2. Rules of nationality and origin**

Article 52.3 stipulates that *“In all cases, the rules of nationality and origin set forth in articles 8 and 9 of Regulation 236/2014 shall apply.”* This rule is also included in article 5 of the General Conditions of the Financing Agreements signed between the European Union and CBC Partner Countries for the ENI CBC programmes.

#### **What does it mean in practice?**

The **rule of nationality** on the eligibility conditions for the participation of economic operators in procurement procedures is the same as the one applied in the Member States. Therefore, there is **no restriction on nationality of tenderers**.

The Common Implementing Rules (EC Regulation 236/2014) makes reference to the threshold of the competitive negotiated procedure laid down in Commission Implementing Regulation No 897/2014, which corresponds to EUR 100 000. This indeed means that when the value of the supplies to be purchased is below EUR 100 000 per purchase, the supplies do not have to originate from an eligible country (full untying). It shall also be mentioned that this Regulation provides that in the case of actions implemented under shared management with a Member State, as it is the case of the HUSKROUA 2014-2020 ENI CBC, **countries that are eligible under the rules of that Member State hosting the MA are also eligible**.

**According to the Hungarian legislation no restrictions regarding origin are foreseen, so there is no restriction on the origin of supplies.**

As an exception, the sanctions currently imposed by the EU on Russia (and vice versa) may lead to restrictions in the acquisition of goods and services from this country.

#### **4.4.3. Conversion of thresholds from Euro to national currency**

**A preliminary consideration:** the amounts indicated in the ENI CBC IR and in the programme rules are all in euro, while in the actual procurement procedures mainly national currency will be used. **In this case, which exchange rate should be used to verify if a procedure is above or below the threshold?**

### ***Specific guidelines to beneficiaries:***

Costs incurred in any other currency will be converted into Euro by using the monthly accounting rate of the Commission available at the following URL address:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

Exchange rate fluctuations are expected during the project cycle, from the development of the budget during the submission of the project proposal to the beginning of the project implementation period



(when the procurement plan has to be prepared) and to the actual moment of the launching of the procedures.

***Specific guidelines for beneficiaries:***

**Check the threshold in national currency and EUR twice!**

You need to ensure the use of the right procurement procedure, in accordance with the threshold in Euro indicated later on in this manual. Please check the conversion to national currency **when preparing your procurement plan and again before launching the procedure.**

We strongly recommend to **indicate the conversion rate in the tender documents** in order to facilitate the work of the national controllers/auditors carrying out the expenditure verification, as well as the Programme and national bodies responsible for control.

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Additional fluctuations may take place during the project implementation, once the procurement contracts are awarded.

***Specific guidelines for beneficiaries:***

Please note that the **rate used to check the compliance with the thresholds for the type of procedure will NOT be the same one than the reporting of the expenditure.**

In accordance with the Programme rules, the exchange for reporting will be the exchange rates of the Commission of the month during which the expenditure was submitted for verification (GC Article 6.6).

**4.4.4. Procurement procedures and thresholds**

Articles 53 to 55 of the ENI CBC IR define the type of procedure and thresholds of procurement for services, supplies and works, as follows:

Article 53	Service contracts
> 60.000 euro < 300.000 euro	Competitive negotiated procedure without publication
≥ 300.000 euro	International restricted tender

Article 54	Supply contract
> 60.000 euro < 100.000 euro	Competitive negotiated procedure without publication
≥ 100.000 euro < 300.000 euro	Open tender procedure published in the programme area
≥ 300.000 euro	International open tender

Article 55	Work contract
≥60.000 euro < 300.000 euro	Competitive negotiated procedure without publication
≥ 300.000 euro < 5.000.000 euro	Open tender procedure published in the programme area
≥ 5.000.000 euro	International open tender



In cases where the tender needs to be published in the Programme area, the publication should also be in English, so that the potential contractors from other countries may have equal opportunity to participate.

#### 4.4.5. Use of negotiated procedure

Article 56 of the ENI CBC IR stipulates that: *“The beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Article 266, 268, 270 of Delegated Regulation (EU) No 1268/2012.”*

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“Negotiated procedures” should not be confused with the “Competitive negotiated procedure” mentioned in article 53 to 55.

A non-exhaustive list of the cases referred in Article 56 of ENI CBC IR is as follows:

- Extreme urgency,
- Extension of contracts already started (with respect of certain conditions),
- Additional delivery of original supplies as replacement of normal supplies,
- Contract following a contest,
- The tender procedure has been unsuccessful,
- Where for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular provider,
- Where a new contract has to be concluded after early termination of an existing contract.

#### 4.4.6. Procedures below 60.000€

There is no specific reference in the ENI CBC IR on the procedures with a value **below 60.000 €**. For such procedures, beneficiaries must refer to their national legislation and organizational rules.

**However, in case the respective national legislation does not cover procurement procedure below 60.000€ for certain types of Beneficiaries<sup>5</sup>, the recommendations of Annex 2 apply entirely and are endorsed by the HUSKROUA ENI CBC 2014-2020 Programme. Beneficiaries need to be aware that the rules and guidelines of Annex 2 need to be adapted to their national specifics and need to be consistent in applying these rules. In case specific legislation is made available for these cases during the Project and Programme’s implementation, the national legislation shall be followed.**

**All Beneficiaries shall also avoid conflict of interest, independent, when performing the proof of market prices.**

#### 4.4.7. Key challenges and recommendation depending on the type of contract

**Service contracts** comprise of **study contracts, and contracts regarding other supporting activities (e.g.: advisory, special expertise, catering, transport services etc.)**. These contracts are intended to engage support or to gain from exterior knowledge in the areas, which are not covered internally (within the partnership or project team) and require additional external support.

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<sup>5</sup> For example, for private Beneficiaries in Ukraine and Romania



Challenge	Recommendation/ guidelines for beneficiaries:
<b>Poor quality of the terms of reference (ToR)</b> may lead to a higher risk of failure in delivery and potential disagreement between the contracting authority and the service provider in the final acceptance.	The ToR must include adequate level of details on the expected services.
Restrictive conditions <b>in the selection criteria, which might contain formulation limiting fair competition, e.g. request of very narrow qualifications of very specific skills for experts.</b>	Ensure that the formulation of the requirements is specific enough to maximize the impact of the contract, but not so restrictive that a very limited number of potential tenderers or experts comply with them.
Splitting of contracts, <b>either intentionally, so to avoid more complex procedures, or unintentionally, due to the recurrent use of the same provider for similar orders in the same project.</b>	Prepare a detailed procurement plan to identify all the services needed for the project implementation and verify that the type of procedure is the one requested by this guide, in accordance with the nature and size of the contract.
Lack of sufficient number of quality or compliant offers, <b>either due to the low capacity of the invited tenderers, too restrictive requirements or inadequate publication</b>	Organize clarification meetings with all potential tenderers, if needed and establish a “Questions and answers” document available to all of them; ensure not too restrictive requirements (see above) and wide publication of tenders. In case of competitive negotiated procedure, consider inviting more than 3 tenderers.

**Supply contracts** cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract. Supply contracts usually include complementary services, such as installation or training of users, that is, the contracts are often hybrid.

Challenge	Recommendation/ guidelines for beneficiaries
Poor quality of the technical specifications ( <b>see previous table</b> )	See previous explanation
Restrictive conditions ( <b>see previous table</b> )	See previous explanation
Splitting of contracts ( <b>see previous table</b> )	See previous explanation
Lack of sufficient number of quality or compliant offers ( <b>see previous table</b> )	See previous explanation
Inadequate quality of goods delivered, <b>not matching with the technical specifications</b>	Carefully check the supplies upon delivery and issue an acceptance document proving that this verification was done.



## Chapter 5 - Eligibility of costs:

Eligible costs are actual costs incurred by the Beneficiaries which meet **all** (cumulatively) the criteria set out in Articles 48.1, 48.2, 48.3 and 48.5 of the ENI CBC IR as follows:

- (a)<sup>6</sup> they are incurred during the implementation period of the project.
- (b) they are indicated in the project's estimated overall budget;
- (c) they are necessary for the project implementation;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the accounting standards and the usual cost accounting practices applicable to the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency;
- (g) they are supported by invoices or documents of equivalent probative value.

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For the **technical documentation for infrastructure component projects, costs related to technical documentation can be considered eligible** if they have been incurred between the launching of the first call for proposals (the 15th of February 2017 for the 1<sup>st</sup> Call or 17 May 2017 for the projects awarded through the 2<sup>nd</sup> call and prior to the date of the signing of the GC.

As main rule, only incurred and paid expenditures can be submitted for expenditure verification.

### Eligible costs per budget heading

Similar budget lines and classification costs shall be used when making the financial reports as the ones in the budget of the Application Form.

#### 5.1. Staff costs – budget line “Human resources”

Staff costs include the salaries of dedicated project staff and personnel employed by the Beneficiaries executing project related tasks of internal management or internal expertise. Staff can either be already employed personnel of the Beneficiaries or new recruited personnel after signing the Grant Contract.

**In all cases, staff costs need to comply with the national legislation of the country the Beneficiaries reside in.**

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<sup>6</sup> An exemption from the rule (a) are the cost related to the technical documentation for infrastructure components projects and the costs related to the final report, respectively expenditure and revenue verification, audit and project evaluation.



### ***Specific guidelines for Beneficiaries:***

- **Costs related to project management can be externalized in the exceptional justified cases approved by the JTS** (it is valid mainly for public bodies such as executive committees of municipal councils, hospitals, educational institutions which are restricted by the norms of the legislation in extending the organizational structure or other institutions having exceptional, compelling circumstances). In this case the costs related to the project management should be assigned under the section of the Budget 4 “Services” and be formed as civil law based contracts. No externalization of the costs related to project management possible to the companies, only to the individual entrepreneurs.  
Important note: in case of the project management costs externalization the procurement rules and procedures for service must be applied.
- When allocating certain positions to internal staff, the Beneficiaries have to pay attention that similar roles are not also subcontracted. Such a situation could raise questions on overlapping costs. E.g: a legal expert is already budgeted in the project as external services and an internal employee of the Beneficiary is dedicated for a similar role under “Staff costs”. In this case it is recommended that the legal expertise to be subcontracted as well, unless an exceptional case requires otherwise.

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**Staff costs include salaries, employer’s and/ or employee’s social security charges and other remuneration-related costs. Social security charges refer to all obligatory social security and pension related payments, incurred and paid by the employer.**

According to the provisions of the *Guidelines for Applicants* with reference to the eligible staff costs, the above-mentioned staff costs must not exceed those normally borne by the beneficiary unless it is demonstrated that this is essential to carry out the project.

### ***Specific guidelines for Beneficiaries:***

The salary of project staff or newly recruited staff must be at the normally borne level used in the organization, meaning the salary normally paid for a similar position in the organization. As a general recommendation, identifying savings in the project cannot be an argument for salary increase. The risk the Beneficiaries bear when including higher than normally borne salaries is that during the control and audit phase, that particular staff costs can be considered ineligible.

Employees can work **full-time or part-time as % of time, or on an hourly or daily basis** for the project

Part-time work within the project can be one of the following cases and it needs to always be supported by timesheets. One of the options for part time work must be chosen and kept throughout the whole implementation period:

- Part time with a fixed percentage of time dedicated to the project per month; flexibility of working time reporting is allowed according to the workload of the specific month;
- Part time with a flexible numbers of hours/ days worked on project per month.

Persons working part-time must fill in timesheets and specify monthly the number of hours/ days or percentage of time dedicated for the project and a description of the tasks carried out. The number of hours or days or percentages of time stated for the project has to correspond to the **actual and real time** dedicated to the project.



### **Specific guidelines for the Beneficiaries:**

In case an employee is working part time for the project and part time for other tasks within the same organization, **the actual salary rate** must be used when calculating his/ her costs in the project budget. Different hourly rates in the frame of the same employment contract are not allowed, unless for the part time work within the project a separate contract is concluded.

For example if the gross salary of a Financial Manager is 1000 euro, and he/she works 25% of the time in the project (2 hours per day), the equivalent of the salary in the project budget shall be 250 euro.

Salaries corresponding to holiday compensations or sick leave are eligible costs in case an employee is dedicated 100% for the project (full time employment or only part time). In case of hourly reporting of working time dedicated to the project, the above mentioned compensations shall not be included in the project reports.

**Full time working** in the project means that an individual dedicates 100% of his/ her working time to the project. In this case the staff costs shall be the 100% of the total gross employment cost.

**Part time working hours with a fix percentage** of time worked on the project per month: the staff costs shall be a fixed percentage of the gross employment cost in line with a fix percentage of the time worked in the project.

**Part time working on an hourly or daily basis** is one in which an employee is contracted on an hourly or daily basis and dedicates a certain number of hours / days to work on the project. The staff cost in this case is the part of the gross employment cost depending on the number of hours or days worked in the project. The hourly or daily rate shall be fixed in the employment document or work contract.

**Part time with a flexible numbers of hours/ days worked on project per month** means, that the project introduces an average fix number of hours/days as unit rate and in timesheet may be indicated different number of hours/days varying from month to months. However they are obliged to meet the total number of working hours/days per year as indicated in the budget for the reporting period.

Job descriptions of project staff must be at all times kept up-to-date and presented during monitoring visits/ reporting / on the spot checking.

Reported salary costs must always be based on an **employment/work contract/appointment decision** and the **actual working time for the project**.

Maternity, paternity leave, bonuses or unjustified salary increases are not eligible costs. Stipends and scholarships are also not allowed. Sub-contracting between partners is forbidden.

Budget line Staff costs comprises of both project management staff as well as internal experts involved in implementation that are employed **directly** by any of the project Beneficiaries for the purposes of the project.



For staff costs, the following documents must be provided for reporting, controlling or audit purposes:

- Employment/work contract and/ or an appointment decision with the Lead Beneficiary or one of the Beneficiaries; the appointment decision needs to be aligned with specific national or organizational rules;
- Updated job descriptions providing information on responsibilities related to the project;
- Payroll data, pay slips (never invoices or acts of performance);
- Timesheets (in case of staff not dedicated 100% of time to the project); Proof of payment of salaries and employment taxes; social security charges.

### ***Specific guidelines for the Beneficiaries:***

#### **What to avoid when working with the budget line “Staff costs”?**

- Superficially filling in the timesheet and not correlate them with the actual tasks performed according to the job description and within the project;
- Using a different hourly rate within the same working contract (tasks in the project and regular tasks within the organization). E.g.: a position in the project budget was allocated 500 euro gross for 50% of the working time and 70% of the total pay;
- Voluntary work is not eligible;
- Staff costs are not to be considered in kind contributions; please note that in kind contributions are not eligible;
- Documents that identify the working relation between the Beneficiary organization and the employee are not available at all times;
- A situation in which an employee of the Beneficiaries on permanent leave cannot be contracted as an external expert for any of the project partners.

## **5.2. Travel**

Travel and accommodation expenses of project staff and representatives of the Lead Beneficiary/ Beneficiaries shall be budgeted and reported under the heading “Travel” as mentioned below. In order for the below costs to be eligible, the staff or representatives of the Lead Beneficiary/ Beneficiaries have to carry out tasks that are necessary and directly linked to the project (linked or reflected by the project activities).

Travel costs cover the following:

- visa costs;
- train, plane or bus tickets;
- fuel;
- travel insurance costs;
- toll, bridges, parking fees ;
- taxi fees (in duly justification required).

For travelling, the travel policy of the Beneficiary organization as well as the national legislation in force shall be used. The principle of sound financial management should apply to the choice of transport and accommodation. For example economy class shall always be considered when purchasing plane tickets.



### ***Specific guidelines for the Beneficiaries:***

Per diems cover accommodation, meals and local travel within the place of the mission and sundry expenses.

For the daily allowance, the reference shall be the national legislation and these rates shall not be higher at the date of the mission than the ones published by the European Commission: [https://ec.europa.eu/international-partnerships/documents-library\\_en?keyword=per%20diem%20rates](https://ec.europa.eu/international-partnerships/documents-library_en?keyword=per%20diem%20rates) (the most updated version shall be used).

Travel costs must be definitely borne by the beneficiary. Direct payment of costs by a staff member of the beneficiary must be supported by a proof of reimbursement from the employer.

With respect to the principle of sound financial management, the most cost-efficient mean of transportation shall be used.

The duration of the mission must be clearly in line with the purpose of it. Moreover, the eligible duration of a mission cannot be longer than from the day before to the day after the concerned meeting. Costs for any longer duration of the mission are eligible if it can be demonstrated that the additional costs (e.g. extra hotel nights, extra per diems, additional staff costs) do not exceed the savings eventually made in the costs for transportation.

The reimbursement of daily allowances must be reduced in those cases in which concerned costs have been partially covered by third parties according to the institution's internal rules (e.g. lunch or dinner paid by the organizers of a meeting/event).

Costs covering the traveling and/ or accommodation of external expertise shall not be budgeted in the "Travel" budget line, but shall be included in the services provided.

Travel costs outside the Programme area are not eligible, except on exceptional cases and if enclosed in the approved budget of the project.

Travel of participants or guests to project events shall be subcontracted and enclosed in the project's budget under the budget line "External expertise and services".

With reference to travel and accommodation, the following shall serve in order to allow for smooth reporting, controlling or audit:

- Authorization of mission of the employee(s) travelling, bearing information on the destination and the start and end date of the mission;
- Proof of expenditure and of mission (e.g.: tickets, invoices, fees, boarding pass, etc.);
- Proof of payment of costs directly paid by the beneficiary and/or proof of reimbursement to the employee (e.g. bank statement);
- Agenda;
- List of participants bearing their signature;
- Mission reports for each trip identifying the summary of the event and the amounts for accommodation and travel;



- In case of travel by car (either employee's car or company car), mileage calculation sheet with statement of the distance covered, the cost per unit according to national or institutional rules and total cost;
- In case of daily allowance costs, the proof of payment (of net per diem and costs directly linked to per diem incurred and paid by the employer such as employment taxes and social security charges).

#### ***Specific guidelines for the Beneficiaries:***

- For all travel and accommodation costs, proper documentation on the link between the project activity and the expenses for travel and accommodation shall be made in order to justify the missions;
- Budget line 2.3 "Travel costs for other stakeholders" covers costs for the representatives of the Lead Beneficiary/ Beneficiaries who execute tasks directly related to the project; direct beneficiaries of the project can also be reported under this budget line provided the costs related to travel and accommodation have not been reported elsewhere;
- Concerning the use of private car, organization and national rules shall apply; a private car of any of the employees of the LB/ Beneficiaries cannot be subcontracted.

#### ***Challenges when working with the "Travel" budget line?***

- Beneficiaries shall be prepared to keep an accurate account of the number of travelers, number of days, total accommodation and subsistence costs for each trip. Mission reports for each mission shall be elaborated and stored five years after the project's closure. Similarly, agenda of the events of meetings shall be kept as well as trip requests, orders, tickets, invoices. Direct payment of travel and accommodation costs by a staff member of the Beneficiaries must be supported by a proof of reimbursement from the respective Employer;
- Travel costs and accommodation can be paid for representatives of the Beneficiaries in the understanding that such individuals hold decision making positions, for example a mayor in case of a town hall or headquarter representatives for a local or regional institutions/ organization acting as Beneficiary.

### **5.3. Equipment and supplies**

Costs under the budget line "Equipment and supplies" refer to rented or purchased equipment and supplies directly needed for the project implementation. Such cost may be related, but not limited to:

- IT hardware, licenses and software - clear project relevance is necessary and connection to project activities is to be detailed;
- Vehicles - only in duly justified cases; vehicles that contribute to the project goal achievement;
- Various tools and devices or specific equipment;
- Furniture and fittings;
- Machines, instruments and laboratory tools;
- Office and specific equipment;
- Setting up the purchased equipment, including initial instruction costs from the equipment provider to the beneficiary;



- Transportation costs of the equipment;
- Other goods and materials needed for the project (not necessarily assimilated to equipment).

The above-mentioned expenditure, in order to be considered eligible, needs to fulfill the following criteria as well:

- National legislation and rules on procurement need to be followed as well as the Programme's instructions in this respect (please see section on Procurement);
- Visibility rules shall be followed (please check the Communication and Visibility rules); the purchased equipment observing the visibility rules shall be available to be presented during monitoring visits/ on the spot checks; photos of the mentioned rules applied shall also serve as documentation for further monitor and control purposes;
- Equipment must be clearly linked to the project and be essential for its effective implementation;
- All equipment items have to be clearly described in the Application Form or if not the case, must be agreed by the MA/JMC/JTS according to the modification rules;
- Equipment expenditure cannot refer to items already financed by other grants (e.g. EU, national or regional);
- Equipment cannot be purchased, or rented from another beneficiary within the project.

#### ***Specific guidance for the Beneficiaries:***

Equipment and supplies budget heading can include costs of purchase (new or used) or rented equipment.

The following shall serve in order to allow for smooth reporting, controlling or audit:

- Contracts or written agreement including adequate technical specifications and sufficiently detailed financial information about the purchase of equipment, with a clear reference to the project and the Programme. Any changes to the contract must comply with the applicable procurement rules and must be documented;
- Receipts, invoices;
- Proof of payment and delivery (e.g.: taking over certificate, stock taking certificate);
- Accounting records identifying the costs of equipment and supplies (Fixed assets register etc.);
- Documentation of the procurement process: invitation to tender, received tenders, evaluation grid and awarding the contract;
- Photos showing the respect of the visibility requirements.

#### **5.4. Services**

Services are provided by a public or private body or a natural person outside of the beneficiary organization. Budget line "Services" includes costs based on contracts or written agreements paid against invoices or request for reimbursement to service providers. Services such as the one listed below can be considered under this budget line:

- Promotion, communication visibility actions, publications;
- Translation and interpretation;
- Website development and related services;
- Specific expertise and services needed for project purposes;



- Studies, surveys, trainings and related fees;
- Organization of seminars, conferences, meetings and related fees;
- Expenditure and revenue verification;
- Financial expertise (bookkeeping and accounting);
- Legal and notary fees;

The above-mentioned costs, in order to be considered eligible, needs to comply with the national legislation and Programme's rules on procurement in order to be considered eligible.

- National legislation and rules on procurement need to be followed as well as the Programme's instructions in this respect (see Section 2 on Procurement);
- Services must clearly link to the project and be essential for its effective implementation;
- Where applicable, deliverables and outputs produced by experts/service providers must respect the relevant publicity requirements;
- Contractual advances in accordance with normal commercial law and practice, stipulated in a contract between the beneficiary and the service provider, supported by receipted invoices (e.g. advance payment for an expert carrying out a study) are eligible but dependent to later confirmation that the service has been properly and timely delivered, therefore it can be only reimbursed when final invoice has been issued and paid;
- A Beneficiary or a Beneficiary staff cannot act as a service provider during the project implementation.

A Beneficiary or a Beneficiary staff cannot act as a service provider during the project implementation.

#### ***Specific guidelines for Beneficiaries:***

Costs of publications, studies, researches, conferences and seminars should only be indicated if fully subcontracted. Communication and visibility activities should be properly planned and budgeted at each stage of the project implementation. These activities should not only focus on publicizing the EU support for the action but also on its outcome and impact.

The following shall serve in order to allow for smooth reporting, controlling or audit (for the exhaustive list, please refer to Article 11.9 from the Grant Contract):

- Contract or written agreement laying down the services to be provided with a clear reference to the project and the programme. For experts paid on the basis of a daily/hourly fee, the daily/hourly rate together with the number of days/hours contracted and the total amount of the contract must be provided. Any changes to the contract must comply with the applicable procurement rules and must be documented;
- Certification of Performance;
- Receipts, invoices in line with relevant national rules. E-invoices are only eligible, if the project ID and Acronym is indicated on the invoice. Those cases where recording these information is not possible (e.g. travel services, like flights, trains) fall under the exemption of the above mentioned obligation;
- Proof of payment (e.g: bank statement, etc) and performance (e.g.: certificate of performance, etc);



- Deliverables produced (e.g. studies, promotional materials) or, where applicable, documentation of the delivery (e.g. in case of events: agenda, list of participants, photo-documentation, etc.) Studies (e.g. evaluations, strategies, concept notes, design plans, handbooks) financed partly or fully from the programme;
- Accounting records identifying the costs of services;
- Documentation of the procurement process: invitation to tender, received tenders, evaluation grid and awarding the contract.

### 5.5. Project dedicated office (budget line 5) and administrative costs (budget line 7)

Project dedicated office and administrative costs are indirect costs intended to finance operating costs of the Beneficiaries. During the application phase, Beneficiaries had to choose between using budget line “5 Project dedicated office” or “7. Administrative cost”. Using both lines for the same organization is not allowed as it would have been considered double funding.

Budget line 5 “Project dedicated office” is designed mostly for small organizations, while the large public entities or organizations should use the “7. Administrative costs”.

#### **Specific guidelines for Beneficiaries:**

IT equipment and software or office furniture cannot be included in this budget line, but under “Equipment”. However IT system support, office rent, electricity and other administrative costs related to the operations of the Beneficiaries shall be included under this budget line.

The “Administrative costs” are calculated on a flat rate base – maximum 2% of direct cost without infrastructure component on project level, whilst on beneficiary level the flat rate can be either 0% in case office costs are inserted or 2% in case the flat rate option is chosen. The flat rate cannot exceed EUR 60 000 per beneficiary and per project. The rate has to be calculated on the basis of a fair, equitable and verifiable calculation method.

The costs associated with the flat rate do not need to be supported by accounting documents and such a method is used in order to simplify the accounting procedures.

Flat rate costs cannot cover non-eligible expenditure.

Flat-rate financing must also respect the no-profit and co-financing principles and in the same time avoid double financing. The method to calculate the flat-rate can be based on:

- a. Statistical data or similar objective means;
- b. A beneficiary-by-beneficiary approach by making reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices.

Once the amounts have been assessed and verified by the National Controllers/Auditors and accepted by Joint Technical Secretariat, they will not be challenged by *ex post* controls. However, Beneficiaries need to keep for themselves and present the explanations/ justify, if required, on the calculations and methods on how the costs were estimated.



### **Specific guidelines for Beneficiaries:**

Costs covering legal expertise will be under the budget line “Service” if outsourced. If a person is hired from the Beneficiaries side, it will be presented under the budget line “Human resources”, however it will not be allocated as costs in any case under the “Administrative costs”.

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## **5.6. Investment/ works**

“Investment and works” budget line is intended to cover the following types of costs related to **construction, renovation and installation of infrastructure**:

- Studies, building documentations, permissions containing all necessary documentation for the infrastructure component of the project i.e.: Feasibility Study, Environmental Impact Assessment, Permissions, plan documentation, etc. as the respecting National Legislation require;
- Expenditures for the financing of infrastructure and works also cover costs related to creation of infrastructure that do not fall into the scope of other budget lines like: site preparation, delivery, handling, installation, renovation, and purchase of land or building, other costs related to planned works, e.g.: costs of preparation of the technical documentation (applicable only in case when both design and execution of works are foreseen in the same project, in other cases cost of technical documentation shall be included under the budget heading 4. Service), costs of supplies including purchase of fixed assets etc., when applicable.

In order to support the applicants’ efforts to finance the elaboration of documentation related to infrastructure components and to adapt to different national requirements for the elaboration of technical documentation for infrastructure components projects, a grant may be awarded retroactively to cover such costs. However, these costs can be considered eligible for financing if they have been incurred between:

- For the 1<sup>st</sup> Call for proposals – LIPs: the launching of the first call - the 15<sup>th</sup> of February 2017 and prior to the date of the signing of the grant contract;
- For the 2<sup>nd</sup> Call for proposals – regular projects: the launching of the call – the 17<sup>th</sup> of May 2017 and prior to the date of the signing of the grant contract.

In both cases, the signing of the grant contract is dependent upon the availability of the documentation for the infrastructure components as well as on the availability of the building permit (if applicable).

Purchases of land or buildings can only be done if it amounts below 10% of the eligible expenditure of the project concerned.

Ownership of the infrastructure must to be transferred to the final beneficiaries and/or local Partners, at the latest by the end of the Project.

Works must clearly link to the project and be essential for its effective implementation.

Works have to be duly described in the Application Form or in its valid modifications.



Where applicable, infrastructure and works realized by the project must respect the relevant publicity requirements.

Depending on the nature of the intervention linked to the works to be carried out, all compulsory requirements set by relevant legislation on environmental policies or other relevant policies released by national/regional/local authorities must be fulfilled.

Contractual advances in accordance with normal commercial law and practice, stipulated in a contract between the beneficiary and the contractor, supported by receipted invoices (e.g. advance payment) are eligible but dependent to later confirmation that the service has been properly and timely delivered, therefore it can be only reimbursed when final invoice has been issued and paid.

According to the IR 897/ 2014, **Large Infrastructure Projects** mean projects comprising a set of works, activities or services intended to fulfil an indivisible function of a precise nature pursuing clearly identified objectives of common interest for the purposes of implementing investments delivering a cross-border impact and benefits and where a budget share of at least EUR 2,5 million is allocated to acquisition of infrastructure. As a consequence, in case of Large Infrastructure Projects, the budget share for infrastructure and works has to be above EUR 2,5 million as initially stated in the budget of the project.

In addition, any project including an infrastructure component shall repay EU contribution if, within five years of the project closure or within the period of time set out in state aid rules, where applicable, it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled (according to Grant contract art. 12.7).

#### ***Specific guidelines for the Beneficiaries:***

Project (either LIPs or regular) that include an infrastructure component of at least EUR 1 million shall provide by the end of the project implementation period

a detailed description of the capacity building component of the project (897/2014 EU Regulation (ENI IR) Article 43.2 b).

The following shall serve in order to allow for smooth reporting, controlling and/ or audit:

- Documentation of the procurement process: invitation to tender, received tenders, evaluation grids;
- Contracts or written agreements laying down the works and infrastructure making a clear reference to the project and the Programme. Any changes to the contract must comply with the applicable procurement rules and must be documented;
- Proof of payments (e.g. bank statements) and delivery (e.g: Certification of performance);
- Documents attesting delivery and receipt;
- Actual outputs;
- If applicable, after the finalization of the works, but at latest with the final beneficiary report the usage permit issued by the relevant authority;
- Legal documents specifying the ownership (at the latest by the end of the Project).



### 5.7. *Non-eligible costs*

The following costs related to the implementation of the project shall not be considered eligible:

- (a) debts and debt service charges (interest);
- (b) provisions for losses or liabilities;
- (c) costs declared by the beneficiary and already financed by the Union budget;
- (d) purchases of land or buildings for an amount exceeding 10 % of the eligible expenditure of the project concerned;
- (e) exchange-rate losses;
- (f) duties, taxes and charges, including VAT, except where non-recoverable under the relevant national tax legislation;
- (g) loans to third parties;
- (h) fines, financial penalties and expenses of litigation;
- (i) contributions in kind as defined in Article 14(1) of the IR meaning any non-financial resources provided free of charge by a third party.

#### ***Specific guidelines for Beneficiaries:***

Some examples of non-eligible costs:

- Costs incurred outside the implementation period of the project, with the exception of retroactive awards as defined in the call for proposals;
- Recoverable VAT in Member States;
- VAT in Ukraine;
- Costs that have already been covered by other sources (programmes, donors);
- Costs of gifts;
- Contracting own employees (or beneficiaries' employees) as external experts;
- Passport costs etc.

**In addition, any costs that do not conform to the HUSKROUA eligibility requirements shall also be considered non-eligible.**

### 5.8. *Costs retroactively awarded*

The Programme covers retroactively awarded costs related to infrastructure components: adaptation to different national requirements and/ or elaboration of technical documentation for infrastructure components projects.

These costs can be considered eligible for financing if:

- - For LIPs - they have been incurred between the launching of the first call for proposals (the 15th of February 2017) and prior to the date of the signing of the grant contract;
- - For regular projects – they have been incurred between the launching of the second call for proposals (17 May 2017) and prior to the date of the signing of the grant contract.

Such costs are the following:

- The Environmental Impact Assessment;
- The Feasibility Study;
- Technical documentation for the infrastructure component.



The above costs must be eligible in the same way as any other project costs, with the exception related to the date incurred and paid.

Retroactively awarded costs will be reimbursed in the framework of the first interim report.

Projects already completed cannot be subject to retroactive awarding of a grant.

## Chapter 6: Reporting and monitoring

### 6.1. Reporting

Within the HUSKROUA ENI 2014-2020 Programme, there are **two types of reports both on beneficiary and project levels**:

1. Interim report – in support of each payment requests; within 3 months following each 12 months reporting period at the latest;
2. Final report – 3 months after the end of the implementation period at latest.

	Interim report	Final report
<b>Contains</b>	- Narrative and financial parts covering the last 12 months of implementation (see below details)	Additionally to the interim report, the final report shall: <ul style="list-style-type: none"> <li>- cover any period not covered by the previous reports (for both financial and narrative);</li> <li>- include the proofs of the transfers of ownership as referred to in Article 12 of the GC<sup>7</sup></li> <li>- includes also a short description of the project – max 3 pages with results, indicators, financial aspects, photos and further plans</li> </ul>
<b>Format</b>	INTERREG+ or else: <ul style="list-style-type: none"> <li>- Templates of Beneficiary Report and Project Report provided by the MA</li> <li>Template for expenditure and revenue verification provided by the MA</li> </ul>	Similar to interim format
<b>Done by</b>	- Beneficiary Report: each Beneficiary separately Project Report: All beneficiaries provide input; prepared by the Lead Beneficiary Expenditure and revenue verification: National Controllers/Auditors	Similar to interim report
<b>Submitted to</b>	- Every beneficiary submits the Beneficiary Report for expenditure and revenue verification to the national controllers/ audit through the INTERREG+ system	Similar to interim report

<sup>7</sup> Article 12.6 of the GC explicitly mentions that that copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than 5.000 EUR per item, shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was less than 5.000 EUR per item shall be kept by the Lead Beneficiary for control purposes.



	<p>- Project Report (including the expenditure and revenue verification reports of all Beneficiaries) are prepared and submitted by the Lead Beneficiary to the JTS through the INTERREG + system</p>	
<b>When is due</b>	<p>- Beneficiaries have to submit their reports within 15 days after the end of the reporting period</p> <p>- Project Report is due within 3 months after the end of the reporting period (including verification of expenditure and revenue);*</p> <p>- Expenditure and revenue verification report is due after each 12 months period and for any request for further pre-financing payment.</p> <p>- The UA auditors shall perform the expenditure and revenue verification for the regular project within 30 days, and for the infrastructural project within 45 days as defined by the Programme (the requirement is fixed in the template of the service contract between the auditor and Ukrainian Beneficiary). The timeframes for the National Controllers are defined in the respective national legislation/Operations Manual etc.</p>	<p>-- Beneficiaries have to submit their reports within 30 days after the end of the implementation period</p> <p>- Project Report is due within 3 months after the end of the implementation period;</p> <p>- In case of termination of the contract, 3 months from the date of termination (GC 17.17).</p>
<b>Process after sending the Project Report</b>	<p>- JTS is to check the report in 30 days (+30 days for completion);</p> <p>- MA is to initiate further pre-financing payments within 30 days date from the acceptance of the report by the JTS</p>	<p>- Similar to interim report</p> <p>- The balance (final payment) of the grant will only be payable after the end of implementation, when the request for payment together with the final report has been approved by the JTS.</p>

\*In case the Interreg + system is not functional to provide an expenditure verification report, the deadline defined for the Beneficiary to submit the Beneficiary report and the Lead Beneficiary to submit the Project interim and final reports with all approved expenditure verification reports for the first 12 months period shall be prolonged with maximum 6 months depending on the availability of the functional system.

### ***The interim report***

Article 6.2 of the GC describes at length the **principles** that stand behind the interim reports:

- Each **interim report** contains a **narrative and a financial part**) and shall be elaborated and submitted by each Beneficiary;
- In the Project Report **the Lead Beneficiary shall collect all the necessary information from Beneficiaries** that would allow an assessment on the implementation of the project;

*The narrative part of the report:*

The narrative part of the report describes the activities implemented, the quantified assumed Programme level output and result indicators, as well as the project specific output and result indicators, the updated work plan and time plan, the procurement plan as well as any new information on the risks associated with the project. The narrative part shall also tackle any hurdles encountered in the timeframe described. Information on the communication plan for the reporting period shall also be provided. At the same time some brief description of the activities for the next timeframe, until the end of the project shall be given. Although the reporting will be done in INTERREG+, a template with the required information from implementations is available as Annex 4.

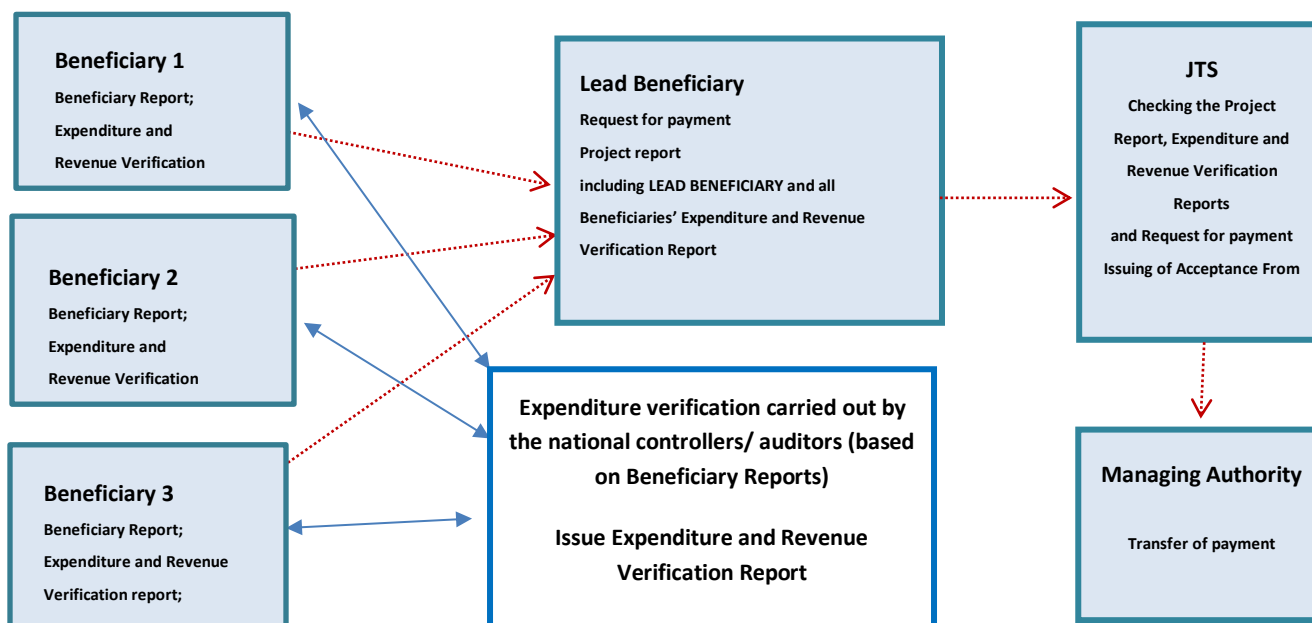
The following documents shall be incorporated in the interim reporting:

- Updated procurement plan;
- Evidence of attained outputs and results;
- Photos from events organized within the project;
- Photos of works and/ or equipment purchased;
- Promotional materials;
- List of attendees to events organized within the project etc.

*The financial part of the interim report:*

The financial part shall cover the whole project regardless of which part is financed by the MA (the reports will cover 100% of the eligible expenditures incurred and not only 90%).

All costs reported to the programme are subject to examination of expenditures. The examination of expenditure of the Lead Beneficiary and Beneficiaries which are registered and located in the Members States will be performed by the respective CCP. In case of Ukrainian Beneficiaries, expenditure and revenue verification services have to be subcontracted to those Auditors, which are in the list set up by Ukraine CCP.



**Figure 3 – Interim reporting structures and flows**



The Lead Beneficiary shall inform the JTS about any transfer between items within the same main budget heading, including cancellation or introduction of a new item or transfer involving a variation of 20% or less of the amount originally entered by “request for modification(s) (or modified by an Addendum to the GC). Any change that exceeds the 20% of the amount originally entered must be set out in writing in an Addendum to the GC and the Beneficiary shall provide a new amended budget together with the arguments supporting the change.

### ***Specific guidelines for Beneficiaries:***

A budgetary item that was not reported in the concerned reporting period can be reported in the next reporting periods with the condition of providing sufficient arguments for such a case.

E.g. A Beneficiary purchased a computer in the 1<sup>st</sup> year of implementation. Due to the fact that the bill was not available at the 12 months report, the Beneficiary is allowed to report it in the next reporting period (end of year 2) or in the following ones, but not later than the final reporting period.

The following documents are also part of the interim reporting:

- Request for payment;
- Beneficiary report for each Beneficiary;
- Project narrative and financial report (Project Report);
- Expenditure and revenue verification reports.

### ***The final report***

The Final report has to be submitted 3 months after the end of the implementation period. The final report is a tool that allows the Lead Beneficiary to report the overall achievements of the project and obtain the final payment. The financial part of the final report includes all verified expenditures made during the reporting period and not included in the interim reports.

The format of the project report as well as of the request for payment shall be provided by the JTS and are obligatory to use. The project reports and the requests for payment will be submitted electronically via INTERREG+ system.

The JTS checks the project report and the request for payment based on the expenditure and revenues verifications and supporting documents submitted by the Lead Beneficiary.

The JTS checks the request for payment and project report within maximum 30 days after the arrival of the documents: the missing documents or clarifications (if any) must arrive within maximum 30 days after the clarification requests from the JTS towards the Lead Beneficiary has been issued.



***Specific guidelines for Beneficiaries:***

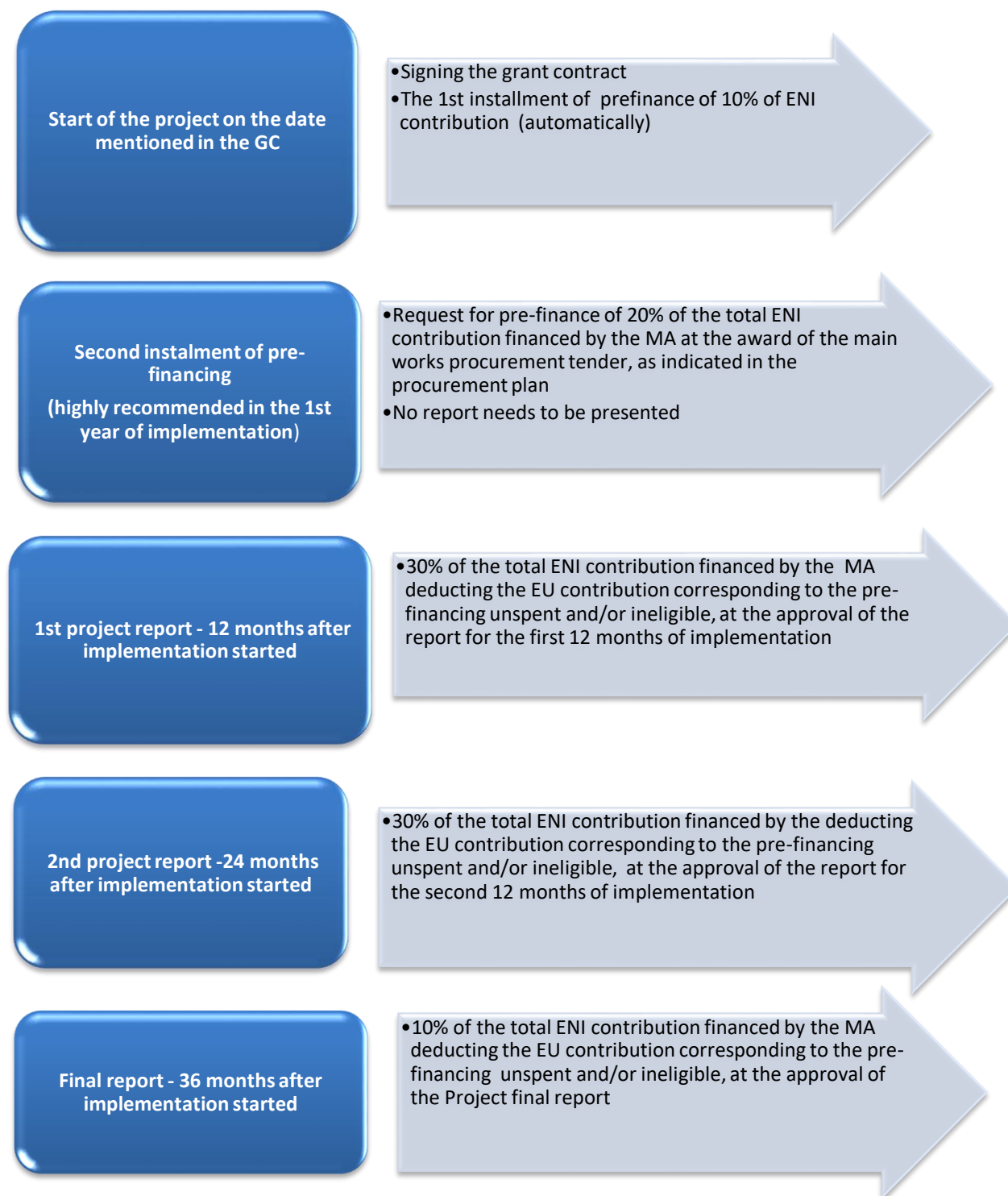
Lead Beneficiary is encouraged to keep close communication with the JTS Programme Manager assigned for the project and make use of the possibility for the personal consultation (via meetings or telephone calls) if needed in connection with project implementation and questions about the preparation of project reports and requests for payment.

In case the Lead Beneficiary fails to submit a project report and request for payment or clarification defining the reason of the delay of the submission within 3 months after a 12-month period, the programme manager sends a warning to the Lead Beneficiary and requests a summary of progress of the project.

If the Lead Beneficiary fails to present the project or final project report, the MA may terminate the contract immediately.

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In order to show an example for reporting, please see the figure below (in case a project of 36 months that includes an infrastructure component requiring a building permit). If the type of the project is different than the example, then the processes are also different. For details please see the relevant part of Article 7.2 of the GC.



**Figure 4 - Milestones of reporting for a project of 36 months that includes an infrastructure component requiring a building permit**

## 6.2. Monitoring visits

The JTS may perform monitoring visits in order to check the progress of the projects from a professional point of view. Depending on the necessity one or more monitoring visit(s) may be carried out in case of each project. The visit may be connected to a project event where the beneficiaries are participating as



well. The goal of the visit is that the JTS can make sure of the professional accomplishment and the reality of the project, and it also provides possibility for the Lead Beneficiary and Beneficiaries for project consultation.

The monitoring visit is not a pre-requisite for the approval of the project report and the request for payment. Although, if the programme manager and/or financial manager finds during the monitoring visit that the project implementation is (significantly) different from the objectives indicated in the grant contract or other breach of contract or irregularity is suspected, the JTS – depending on the gravity of findings – can initiate the following actions:

- inform the Lead Beneficiary;
- initiate the amendment of the grant contract;
- report the suspicion of irregularity to the irregularity officer of the relevant PC and parallel to the MA in order to initiate at the responsible organization of the PC/MS concerned the investigation of the suspicion of irregularity;
- propose the termination of the grant contract, etc.

Projects may also be required to facilitate the Result Oriented Monitoring (ROM), which will be carried out by the MA/JTS and/or external experts on behalf of the EC. ROM visits as well as the methodology it operates upon shall be provided to the Beneficiaries in advance. ROM assessment also takes into account the information presented in the project reports.

### 6.3. Monitoring project's indicators

Each project has to specify the result as well as the output indicators that it chooses to monitor in order to measure its physical progress. The chosen indicators – both result and output - are mandatory for each project to fulfill by the end of its implementation period.

For this reason, the Beneficiaries have to retain data related to its achievements, analyse the data and support it with the updated information that is available. In case the Beneficiaries notice a risk of not achieving certain indicators in due time as planned, they must brief the JTS and the MA and present beforehand recommendation for actions to proceed and follow-up plans in order to make up for the delays or missing data.

The Beneficiaries have to be aware that the Programme's indicators are based on the aggregation of data from the project level. The miscommunication or lack of fulfilling the output and result indicators shall have a direct consequence at the Programme level.

## Chapter 7: Changes in the project and grant contract amendments

### 7.1. Addenda and notifications

The GC can be amended according to Article 16 of the Grant Contract.

Amendments however cannot change the purpose or effect of making changes to the GC that would call into question the grant award decision and cannot increase the maximum amount established in the contract.



The following issues may be subject to **addendum**:

- Changes in the partnership;
- Significant budget reallocations like a transfer between main budget headings involving a variation of more than 20% of the amount originally entered (or as modified by addendum);
- Extension of the implementation period.

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In case of an addendum initiated by the Lead Beneficiary, the request will be submitted via INTERREG+. The request is checked by the JTS and, if validated (the MA may oppose the proposal of the Lead Beneficiary) and upon receiving the needed documents from the Lead Beneficiary, an addendum is prepared. Certain amendments may only be approved by the JMC. Beneficiaries should be aware of the fact that the contract can be modified only during its execution period.

If an addendum is requested by the Lead Beneficiary, it must submit that request to the JTS 30 days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated by the Lead Beneficiary and accepted by the MA.

Other notifications may have **administrative character (e.g. changing the contact details) or can be other project changes (OPC)**.

An **OPC and admin changes** are basically less significant modifications in which the modification of the Grant Contract itself is not necessary. The Lead Beneficiary submits the request via INTERREG+ and if the case, the JTS validates the request or may decide to forward the decision to the MA if deemed necessary.

Subject to OPC and admin changes can be matters that fall in the following cases:

- the amendment to the Budget or Description of the Project that does not affect the basic purpose of the project; and
- a transfer between items within the same main budget heading including cancellation or introduction of an item with limited financial impact or
- a transfer between main budget headings involving a variation of 20% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs.

The Lead Beneficiary shall submit such amendments collected during the concerned reporting period in form of a "request for modification(s)" for approval to the Joint Technical Secretariat by the end of the reporting period but in the interim or final report at the latest. This method may not be used to amend the headings for indirect costs, or the amounts or rates of simplified cost options defined in the Contract.

The Lead Beneficiary can also choose to notify the JTS on modifications that are not subject to addendum in advance, before the date the changes shall be implemented, in order to get an opinion of the JTS or a confirmation that the proposed change is not subject to an addendum.

OPC and admin changes can be also issues related to: change of address, bank account or auditor, correction of errors or corrections of inconsistencies between different parts of the projects and minor other changes.

## How to handle changes in

### Project's activities

Planned project activities can be modified for justified reasons that don't change the basic purpose of the project. An approval from the MA/ JTS is needed to change the activities and the work plan. Follow the procedure stated above to notify the change.

### Budget

Budget transfers between budget main headings that exceed 20% of the costs within the headings always require an Addendum. Follow the procedure of the addendum.

### Partnership

A change in partnership in this respect always requires an Addendum. The participation of Beneficiary(ies) in the project partnership may be also be terminated by the Lead Beneficiary. To this purpose, the Lead Beneficiary shall communicate to the Managing Authority/Joint Technical Secretariat the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks of the Beneficiary(ies) whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. Approval of the MA/ JTS is also required.

### Duration of the project

The implementation period of the project is defined in the Grant Contract. The lead partner should inform the Managing Authority as soon as possible about circumstances which may delay the implementation of the project.

### Administrative or small technical changes

Changes of address, bank account, project staff are accepted upon notification/ OPC/ admin changes. The Lead Beneficiary shall initiate the specific changes in INTERREG+ or if not available, inform the project manager in the JTS by e-mail and send the necessary original documents. Changes to the project staff shall also be described in the interim report.

## 7.2. Termination and suspension of the contract

Either the Lead Beneficiary or the Managing Authority may terminate and/or suspend the GC. Articles 17.2, 17.4, 17.5 and 17.11 of the Grant Contract are to be observed in relation to the Grant Contract termination.

In case of detecting a (serious) breach of the grant contract, the JTS notifies the Lead Beneficiary and if the LB fails to comply with the obligations of the grant contract and also fails to furnish a satisfactory justification within 30 calendar days from sending the warning letter, the JTS may decide to suspend payments to the project. The Lead Beneficiary shall be officially notified of such a situation.

In case suspension of payments is of no availability, or if the Lead Beneficiary is in any of the situations listed under points 17.11 of the Grant Contract, the JTS may recommend to the MA the termination of the contract. Taking into account the gravity of infringements, in case of any of the situations provided for under Article 17.17 of the grant contract, the JTS may also recommend the partial or full repayment of ENI contribution already paid.



If such a decision is taken by the MA, the Lead Beneficiary is being informed through a declaration on the reasons of the termination.

The participation of Beneficiary(ies) in the Grant Contract may be also be terminated by the Lead Beneficiary. To this purpose, the Lead Beneficiary shall communicate to the Managing Authority/Joint Technical Secretariat the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks and budget of the Beneficiary(ies) whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. Approval of the MA/ JTS is also required.

## Chapter 8: Horizontal aspects

### 8.1. Expenditure verification

All expenditures and revenues included in the GC should be independently verified in order to check:

- If the expenditure actually incurred and if it is real and paid (expenditure really happened);
- The expenditure's accuracy (the expenditure amounts are stated correctly according to the supporting documents) and
- Expenditure eligibility (the amounts satisfy the eligibility criteria, project and budget).

An expenditure and revenue verification report has to be done after each reporting period and it is mandatory for every Beneficiary. An expenditure and revenue verification report and its annexes are accompanied by a request for payment (except for the first instalment of the pre-financing and the second pre-finance installment in case of projects that include an infrastructure component). Templates for the expenditures and revenues verification for the national controllers/auditors provided in the Annex 5.

Country	Expenditure verification done by	Type of service
Hungary	National controllers within SZPO as CCP	Free of charge for Hungarian beneficiaries
Slovakia	First Level Control within Ministry of Agriculture and Rural Development as CCP	Free of charge for Slovak beneficiaries
Romania	Control Contact Point, established within the Ministry of Regional Development and Public Administration	Free of charge for Romanian beneficiaries
Ukraine	Auditors from the list of the Ukrainian CCP The list of auditors is available on the webpage of the Programme <a href="https://huskroua-cbc.eu/contacts/controllers-auditors">https://huskroua-cbc.eu/contacts/controllers-auditors</a>	Charged services – cost is planned within the project budget

Provisions related to the project verification report shall be included in the Partnership Agreements with all Beneficiaries.



For further details as regards list of controllers or details on national rules, please contact the national authority or the control contact point in your country.

The national controller/auditor examines whether the costs, as well as the revenue of the project declared by the Lead Beneficiary and the Beneficiaries are real, accurately recorded, eligible and necessary for the implementation of the project, in accordance with the Grant Contract and issues an expenditure verification report conforming to the instructions of the MA.

## 8.2. Irregularities

If the JTS finds out that the project implementation significantly differs from the objectives indicated in the grant contract or act of negligence might have been caused by the beneficiary that has or would have effect on the budget of the EU or the national budgets (suspicion of irregularity), the JTS immediately initiates the investigation of irregularity at the responsible body of the participating PC concerned and in parallel notifies the MA.

### *Specific Guidelines for Beneficiaries*

*What is an irregularity? According to Article 2 (m) of the EU Implementing Regulation 897/2014, an irregularity is any **infringement** of a financing agreement, a contract or of applicable law **resulting from an act or omission** by an economic operator involved in the implementation of the programme, **which has, or would have, the effect of prejudicing the budget of the Union** by **charging an unjustified item of expenditure** to the budget of the Union.*

Programme tasks related to irregularities are principally carried out on national level, but there are several tasks within the responsibility of the JTS and the MA.

Recovery of amounts of ENI contribution unduly paid is the responsibility of the MA. In case the repayment is not done within 60 days upon receipt of the debit note issued by the MA, the participating countries in which the beneficiary concerned is located are responsible for repayment of the amount unduly paid to the MA. In case of Ukraine the relevant provisions of the Financing Agreement shall apply.

The JTS shall exercise the following tasks related to irregularities:

- reporting of suspicion of irregularity identified during the project monitoring and verification activities (e.g. during on-the-spot checks or checks by Audit Authority);
- supporting the MA in its tasks related to recoveries (preparing debit note and other documents related to the recovery procedure).



### **Specific guidelines for Beneficiaries:**

*Some potential risks that can lead to irregularities:*

- Claiming recoverable VAT;
- Non-compliance with the national public procurement rules: using the wrong procurement procedures, artificially splitting lots during the procurement process;
- Reporting of expenditure already claimed;
- Reporting items that are not in the approved budget of the project;
- Including into indirect cost items that are financed under other budget headings
- Timesheets not aligned with the working time mentioned in the contract. Failing to correct it;
- Non-compliance with visibility requirements.

*According to Article 5 of the Regulation 2988/ 1995:*

Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

- a. Payment of an administrative fine;
- b. Payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate (...);
- c. Total or partial removal of an advantage granted (...);
- d. Exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;
- e. Temporary withdrawal of the approval or recognition necessary for the participation in a Community aid scheme (...).

### **8.3. The Recovery Procedure**

The recovery procedures will follow the provisions set in Article 74 and 75 of Implementing Rules. The Managing Authority shall be responsible for pursuing the recovery of amounts unduly paid together with any interest on late payments from the Lead Beneficiary. The concerned beneficiaries shall repay to the Lead Beneficiary the amounts unduly paid in accordance with the partnership agreement signed between them. If the Lead Beneficiary does not succeed in securing repayment from the concerned beneficiary, the LB has to send an official letter to the MA and as an attachment of this letter the requests for payments sent to the beneficiary.

Where the recovery relates to a claim against a beneficiary established in a Member State and the Managing Authority is unable to recover the debt (60 days upon receipt of the debit note issue by the MA), the Member State in which the beneficiary is established shall pay the due amount to the Managing Authority and claim it back from the beneficiary concerned.

Where the recovery relates to a claim against a beneficiary established in Ukraine and the Managing Authority is unable to recover the debt the Financing Agreement shall apply.

The Commission may at any time take over the task of recovering the amounts directly either from the beneficiary or from the concerned participating country.



Should the beneficiary fail to make repayment within the deadline set by the Managing Authority, the Managing Authority may increase the amounts due by adding interest at the rate applied by the European Central Bank to its main refinancing transactions in euro on the first working day of the month in which the time-limit expired, plus three and a half percentage point (article 14.5 of the GC).

In accordance with Article 39.3 of ENI CBC IR, any project including an infrastructure component shall repay the Union contribution if, within five years of the project closure or within the period of time set out in state aid rules, where applicable, it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.

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#### 8.4. Anti-fraud

Corruption represents situations like conflict of interests, bribery, illegal gratuities or economic extortion. Article 17.5 of the GC states that the Managing Authority may suspend this Contract or the participation of a Lead Beneficiary/Beneficiaries in this Contract if the Managing Authority/Joint Technical Secretariat has evidence that, or if, for objective and well justified reasons, the Managing Authority/Joint Technical Secretariat deems necessary to verify whether presumably:

- a) the grant award procedure or the implementation of the Project have been subject to substantial errors, irregularities, fraud or corruption;
- b) the Lead Beneficiary/Beneficiaries have breached any substantial obligation under this Contract.

#### **Specific Guidelines for Beneficiaries:**

##### **What is fraud?**

Paraphrasing Article 1.1 of the *Convention on the Protection of the European Communities' Financial Interests*:

- a. In respect of **non-procurement related expenditure**, any act or omission relating to:
  - i. The use or presentation of **false, incorrect or incomplete statements** or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budgets managed by the Union, or in its behalf;
  - ii. **Non-disclosure information** in violation of a specific obligation, with the same effect;
  - iii. **The misapplication of such funds or assets** for purposes other than those for which they were originally granted.
- b. In respect of **procurement related expenditure**, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
  - i. The use or presentation of **false, incorrect or incomplete statements** of documents which has as its effect the misappropriation or wrongful retention of funds or assets from the Union's budgets managed by the Union, or on its behalf;
  - ii. **Non-disclosure information** in violation of a specific obligation, with the same effect;
  - iii. **The misapplication of such funds or assets** for purposes other than those for which they were originally granted.

[...]



### 8.5. State aid

State aid is not granted under the HUSKROUA ENI CBC Programme, therefore the JTS/MA and the Beneficiaries shall pay attention during the whole implementation period whether the project activities fall under the definition of State aid (in accordance with Article 107(1) of the Treaty on the Functioning of the European Union in case of Beneficiaries of Member States, or Article 262 of Chapter 10 of Title IV of the EU-Ukraine Association Agreement in case of Ukrainian Beneficiaries). In the application phase Beneficiaries were already asked to fill out the “State aid declaration” in order to assess if their project is potentially involving State aid. Carrying out further assessments during the implementation phase would help to identify the risk of accomplishing State aid relevant activities. To this regard, the Beneficiaries are also invited to consult the relevant national controllers/ auditors in order to obtain information on rules and limitations concerning State aid. The national controllers/ auditors shall prepare further assessment on the topic of state aid. The MA/JTS may ask for information from the Beneficiaries during the implementation period.

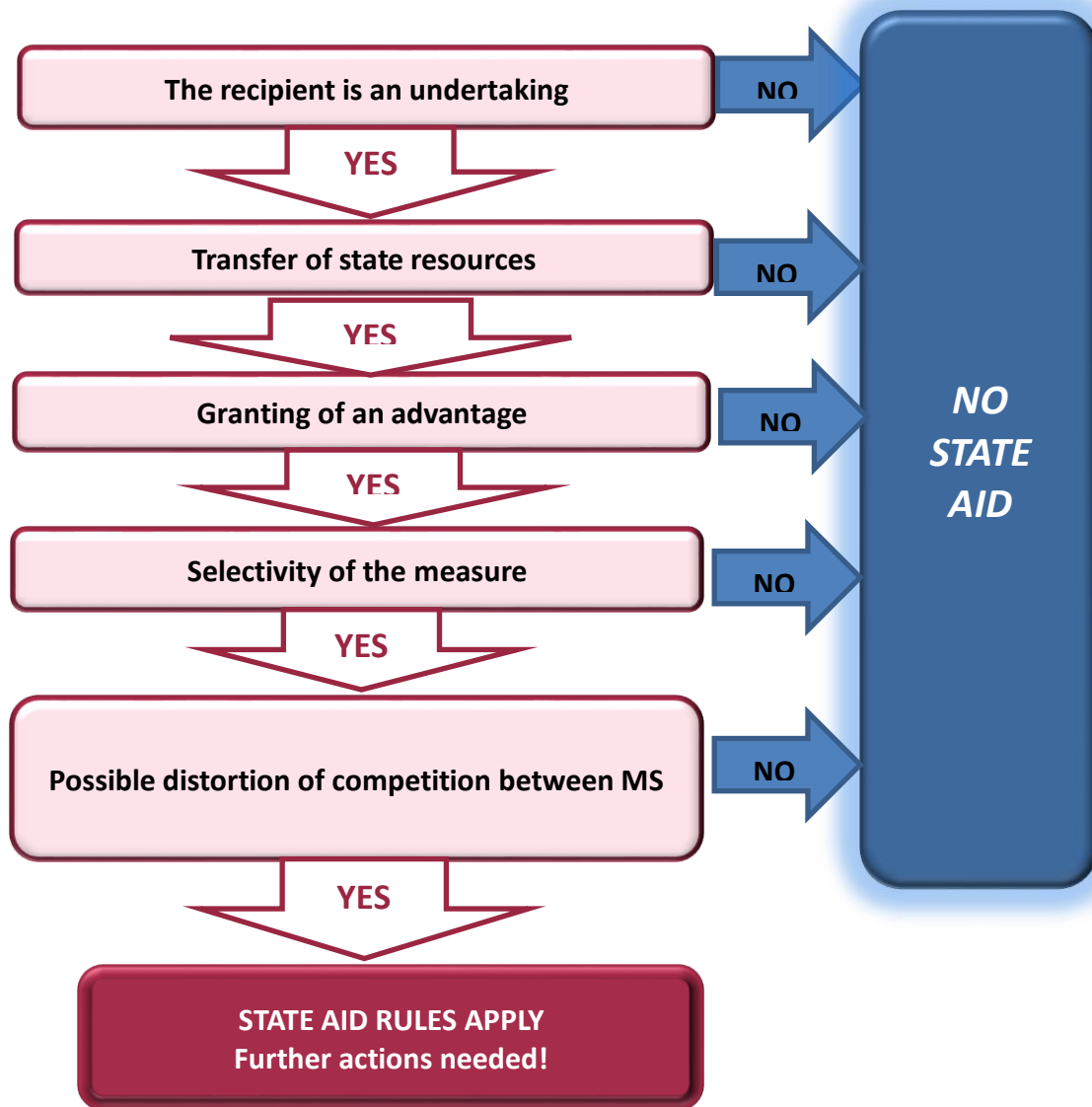


Figure 4 - Supporting questions in order to identify if at risk of carrying out state aid relevant activities



The following terminology shall be observed:

**Undertaking** = entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking depends entirely on the nature of its activities. In this respect, an undertaking can be a public institution or a non-governmental organization too. Any activity consisting on offering goods and services on a market represents an economic activity.

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**Transfer of state resources** = direct grants, loans, guarantees, direct investment.

**Granting an advantage** = any economic benefit which an undertaking could not have obtained under normal market conditions. Whenever the financial situation of an undertaking is improved as a result of state intervention, on terms different from normal market conditions, an advantage is present.

**Selectivity** = not all measures which favors economic operators fall under the notion of state aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors.

**Distortion of competition** = A measure granted by the state is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For aid to be considered to distort competition, it is normally sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear on the course of its day to day business operation.

***What may or may not constitute state aid relevant? Some practical examples:***

- A museum sells tickets for a new reconstructed site that was refurbished with the support of the Programme. The total income that was generated is used for maintenance purposes of the museum and is below the total costs of maintenance. For this particular case, the activity is not considered as economic, the applicant/partner is not an undertaking for State aid purposes and it can be concluded that there is no State aid risk associated with it.
- A hospital buys medical equipment with the support of the Programme and uses that equipment for services that it offers in return of a market fees. In this case activity will most likely be considered as “economic” because it could be similarly carried out by a private body operating in the market. In this case what the Beneficiaries may do in order to not fall in the state aid category is to offer those services free of charge.

## 8.6. Closing the project

All projects should close their activities within the implementation period stated in the grant contract. Costs related to the final report, expenditure verification and evaluation can be incurred not later than the date of submission of their final report and have to be included in it.

Closing the project means closing the procedure related to the payment of the ENI contribution of the final request for payment and delivering of the final report, all the achievements of the project and arranging the final audit. The final report and the final payment request accompanied by the mandatory documents shall be submitted to the JTS within 3 months after the end of the implementation period.



While closing the project, the programme and financial managers of the JTS verify the final project report submitted and check if all the activities are completed according to the grant contract, while also checking if all the requirements arising from the grant contract are fulfilled (e.g the project has been fully implemented by carrying out the planned activities, the planned outputs and results, the project has been realized in due time etc).

In case the project is completed and the final project report is accepted by the programme manager and the financial manager, the JTS calculate the exact amount of ENI contribution to be paid to or to be recovered from the project. Financial closing cannot be initiated in case other processes related to the project are not closed such as irregularity and recovery procedures.

After financial closing, the LB shall receive a final acceptance form enabling the final payment. After the final payment to the LB is received, the project is considered closed and the LB is informed about the closure. The project folders are also archived.

While the project is considered closed the project data in INTERREG+ are available for further audits until five years from the date of payment of the programme balance. During this period, irregularity procedures and repayments may be initiated related to the project. The project is finally closed by the closure date of the Programme.

## 8.7. Follow-up after project's closure

Article 70 of the ENI CBC Implementing Rules and Article 11.7 of the Grant Contract indicate the period open to follow-up after the project closes.

### **Specific Guidelines for Beneficiaries:**

Article 11.7 of the Grant Contract mentions:

*Each Beneficiary shall keep all records, accounting and supporting documents related to this Contract for five years following the payment of the balance of the programme, in accordance with Article 70 of the ENI CBC IR, and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of. The Managing Authority shall inform the Lead Beneficiary when the payment of the balance of the Programme is made by the European Commission.*

*They shall be easily accessible and filed so as to facilitate their examination and the Lead Beneficiary shall inform the Managing Authority of their precise location in the final report. The Lead Beneficiary shall inform of any change of location without delay.*

In order to allow for a smooth follow-up of the projects, Beneficiaries shall make sure that:

- The Partnership Agreement is valid until the end of the five years period following the payment of the balance of the Programme and includes all the necessary clauses to ensure smooth after-closure procedures. The five year obligations following the payment of the balance of the Programme must be ensured regardless of the continuity of the staff assigned to the project, especially in terms of the access to documents, information systems and infrastructure and equipment financed by the project;
- The original documents and the computerized systems need to be easily accessible during the follow-up period. If the period for retention of documents and computerized records required by the national rules



or the organization's usual practice is less than the five years period following the payment of the balance of the Programme, ad-hoc adequate procedures have to be designed and implemented at the beginning of the project;

- Financial documentation must be accessible in its original form or equivalent according to national law and must include proof of delivery of services and supplies;
- The Beneficiaries must agree to nominate a person with adequate knowledge of the project, its content, its archives and computer systems and records.

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The programme rules on information and visibility shall also be respected during the whole lifetime of the products produced with the assistance of the HUSKROUA ENI CBC 2014-2020 Programme even after the closing of the project. E.g if the project purchases an offroad vehicle, the vehicle should keep the visibility signs associated with the programme as well.

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## **ANNEXES:**

**Annex 1 - Factsheet on procurement by project public beneficiaries in Ukraine. Applicable rules, tips and recommendations**

**Annex 2 - Guide on procurement by private project beneficiaries in Ukraine. Applicable rules, templates, tips and recommendations**

**Annex 3 - Guide on procurement by private project beneficiaries in Romania. Applicable rules, templates, tips and recommendations.**

**Annex 4 - Beneficiary report**

**Annex 5 - Expenditure and revenues verification templates for national controllers/auditors**

**Annex 6 - Project report (will be provided later)**



## ***PARTNERSHIP***

## **WITHOUT BORDERS**