

State aid scheme

For financing the RD projects within the Programme (RO 02) financed through EEA Financial Mechanism 2014-2021 and Norwegian Financial Mechanism 2014-2021

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1. Scope of application

Art.1

(1) The present procedure establish a transparent¹ state aid scheme in order to support the research and development activities (RD), hereinafter referred to as Scheme.

(2) The RD activities are specified in research and development projects developed under the Research Programme, financed through EEA Financial Mechanism 2014-2021 and Norwegian Financial Mechanism 2014-2021.

(3) The state aid is awarded as subsidy (grant), based on a financing contract.

(4) The Scheme is excepted from the obligation to notify the European Commission, according to the provisions of the Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance (Block Exemption Regulations for State aid), published in EU Official Journal No L187/26.06.2014.

Art.2

(1) The present Scheme does not apply to:

(a) Aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;

(b) Aid contingent upon the use of domestic over imported goods.

(2) The present Scheme does not apply to:

(a) Aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing council Regulation (EC) No 104/2000 (1), with the exception of aid for SMEs' access to finance (aid for the new established enterprises), aid in the field of research and development, innovation aid for SMEs;

(b) Aid granted in the primary agricultural production sector;

(c) Aid granted in the sector of processing and marketing of agricultural products, in the following cases:

(i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or

(ii) where the aid is conditional on being partly or entirely passed on to primary producers;

(3) Where an undertaking is active in the excluded sectors as referred above, and also in sectors which fall within the scope of present State Aid Scheme, the provisions of the present Scheme applies to aid granted in respect of the latter sectors or activities, as long as

¹ Reg. (UE) 651/2014, Art.5 (Transparency of aid)

(1) This Regulation shall apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent of the aid ex ante without any need to undertake a risk assessment ('transparent aid');

(2) The following categories of aid shall be considered to be transparent: (a) aid comprised in grants and interest rate subsidies;

that the provider and the beneficiary of the state aid ensure by appropriate means, such as separation of activities or distinction of costs, that the activities in the excluded sectors do not benefit from the aid granted in accordance with this State Aid Scheme.

2. Objectives

Art.3

(1) The main objective of the Scheme is research and development. Thus, the Scheme sustains the fulfillment of the objectives stipulated in the two Memoranda of Understanding on the Implementation of the EEA and Norwegian Financial Mechanisms 2014-2021 with respect to their contribution to the reduction of economic and social disparities in the European Economic Area and to the strengthening of bilateral relations between the Donor States² and Romania.

(2) The Scheme contributes to the fulfillment of the specific objectives of the Research Programme – RO 02:

- a) Developing the research and development potential in Romania;
- b) Increasing the international visibility of research and development results;
- c) Integration of research teams from Romania into prestigious international networks;
- d) Sustaining technological transfer from the research entities to industry, in order to increase the competitiveness and visibility of research results on the European market.

3. Legal framework

Art.4

The present Scheme is elaborated according to:

- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, published in EU Official Journal No L 187/26.06.2014;
- Emergency Government Ordinance No 77/2014 regarding the national procedures for the State Aid, as well as for the amending and supplementing the Competition Law No 21/1996, approved by Law No 20/2015, with subsequent amendments and supplements;
- Protocol 38c regarding the EEA Agreement on the EEA Financial Mechanism 2014-2021 and the Agreement between the Kingdom of Norway and the European Union on the Norwegian Financial Mechanism 2014-2021;
- Memorandum of Understanding on the Implementation of the EEA Financial Mechanism 2014-2021 between the Donor States and the Government of Romania;
- Memorandum of Understanding on the Implementation of the Norwegian Financial Mechanism 2014-2021 between the Kingdom of Norway and the Government of Romania;

² The Kingdom of Norway, Iceland and the Principality of Liechtenstein

- Regulation on the Implementation of the EEA Financial Mechanism 2014-2021 issued by Iceland, the Principality of Liechtenstein and the Kingdom of Norway and Regulation on the Implementation of the Norwegian Financial Mechanism 2014-2021 issued by the Kingdom of Norway;
- Guidelines adopted by the Financial Mechanism Committee and the Norwegian Ministry of Foreign Affairs according to the Regulations;
- Emergency Government Ordinance No 34/2017 regarding the financial management of the external non-reimbursable funds corresponding to the EEA Financial Mechanism 2014-2021 and the Norwegian Financial Mechanism 2014-2021, with subsequent amendments and supplements;
- The Government Ordinance No 62/1999 on the establishment of the Executive Agency for Higher Education and Research Funding, approved as amended by Law No 150/2000, with subsequent amendments and supplements.

4. Management

Art.5

(1) The provider of the state aid and the manager of this State Aid Scheme is the Executive Agency for Higher Education, Research, Development and Innovation Funding (UEFISCDI).

5. Definitions

Art.6

Within the present Scheme, the terms have the following meanings:

- 1) **State aid(s)** is any measure that fulfills the criteria laid down in the Article 107(1) of the Treaty on the Functioning of the European Union;
- 2) **Research and knowledge dissemination organisation** means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities, the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, for example in the quality of shareholders or members, may not enjoy a preferential access to the results generated by it.

The knowledge transfer activities have a non-economic nature, when they are conducted either by the research organization (including their departments or subsidiaries), or jointly with, or on behalf of other such entities, and where all profits from those activities are reinvested in the primary non-economic activities of the research organization (R&D activities independent or collaborative, non-exclusive and non-discriminatory dissemination of the R&D results, public education). The non-economic nature of the knowledge transfer

activities is not prejudiced by contracting the provision of corresponding services to third parties by way of open tenders;

3) **Economic agent** is an entity engaged in economic activities, namely activities consisting in offering goods and/or services on the market, irrespective of its legal status or way of financing;

4) **Subsidy (grant)** – non-reimbursable resources transfer from the State budget to certain undertakings, in return for compliance with the conditions set out in this Scheme;

5) **Products** – goods or services for the market;

6) **Management of the Scheme** consists of all the specific activities of coordination (planning, programming, financing), control (monitoring, evaluation, information updating) and reporting on the development and results of the State Aid Scheme;

7) **Small and medium-sized enterprises (SMEs)** means undertakings fulfilling the criteria laid down in the Annex I of the UE Regulation No 651/2014. In the present Scheme, the micro-enterprises are assimilated in the small enterprises category;

8) **Large enterprises** means undertakings not fulfilling the criteria laid down in Annex I of the UE Regulation No 651/2014.

9) **Fundamental research** means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view;

10) **Industrial research** means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation;

11) **Experimental development** means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements;

12) **Personnel costs (expenditures)** means the cost of researchers, technicians and other supporting staff to the extent employed on the relevant project or activity;

13) **Effective collaboration** means collaboration between at least two independent parties for exchange of knowledge or technologies, or in pursuing a common objective based on the division of labour and jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered to be forms of collaboration;

14) **Aid intensity** means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary. Aid payable in several instalments shall be discounted to its value at the moment it is granted. The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted. The aid intensity is calculated per beneficiary;

15) **Highly qualified personnel** means staff having a tertiary education degree and at least five years of relevant professional experience which may also include doctoral training;

16) **Secondment** means temporary employment of staff by a beneficiary with the right for the staff to return to the previous employer;

17) **Undertaking in difficulty** means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, „limited liability company” refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and „share capital” includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, „a company where at least some members have unlimited liability for the debt of the company” refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years:

- the undertaking's book debt to equity ratio has been greater than 7,5 and
- the undertaking's EBITDA interest coverage ratio has been below 1,0.

6. Beneficiaries

Art.7

(1) The beneficiaries of State aid are economic agents, legally constituted entities, irrespective of their legal status, with research, technological development as part of their activity, and that are engaged in economic activities, namely activities consisting in offering goods on the market. These include:

(a) Private law:

- (i) R&D units organized as enterprises³;
- (ii) Enterprises and their structures, carrying out research and development activities;
- (iii) Accredited private higher education institutions, or their components;
- (iv) NGOs carrying out research and development activities.

(b) Public law:

- (i) institutes or research and development centers organized in national societies, national companies and autonomous administrations;
- (ii) international centers of research and development established under international agreements.

(2) A research organisation may be a beneficiary under this scheme if it carries on economic activity and the capacity allocated to such economic activities each year exceeds 20% of the entity's overall annual capacity, which gives them the status of enterprise in terms of state aid legislation.

(3) The entities conducting both economic and non-economic activities must keep separate accounts of the two types of activities.

Art.8

(1) The economic agents considered „undertakings in difficulty” cannot be beneficiaries of the State aid scheme, as defined according to Art.6 point 17) part of the current Scheme.

(2) When a potential beneficiary has been the subject to a recovery order following a previous European Commission decision declaring an aid illegal and incompatible with the internal market, this should have been already executed and the state aid integrally

³ These could be small, medium or large enterprises

recovered, including the corresponding recovery interest, so that the beneficiary could be eligible.

(3) In the case of a collaborative project within the Scheme, carried out jointly by enterprises and research organizations, the research organization is considered to be the sole beneficiary of State aid (hence indirect aid is not granted to those enterprises), if at least one of the following conditions is met:

- the participating economic agent sustains all the costs of the project; or
- the project results not leading to some intellectual property rights can be widely disseminated and any intellectual property right on the research results resulting from the research organization activity are entirely attributed to the respective organization⁴; or
- any intellectual property rights resulting from the project as well as the associated access rights are shared between the different partners in collaboration in a way that adequately reflects their work packages, contributions and interests; or
- the research organization receives from the participating economic agents a compensation equivalent to the market price corresponding to the intellectual property rights resulting from the research organization activity within the project and transferred to the economic agent partner⁵ or for intellectual property rights to which participating undertakings are granted access rights. The absolute value of any contribution, both financial and non-financial, of the undertakings participating in the costs of the activities of the research organizations or research infrastructures that have led to the intellectual property rights concerned may be deducted from the compensation in question.

(4) If none of the conditions mentioned in point (3) is fulfilled, the collaborative project will be evaluated individually. In the framework of an individual evaluation of a collaborative project, the part of the research organization's contribution to the project that should have been borne by the economic agent is considered as State aid to the economic agent.

(5) For a specific research project, State aid granted to a beneficiary under this Scheme (directly and / or indirectly) may not exceed the maximum amount provided for in Art. 12 of the State Aid Scheme.

(5) The maximum number of beneficiaries of this State aid scheme is 110.

⁴ „Entirely attributed” to the research organization meaning that it will enjoy all the economic benefits accruing from property rights concerned, including both ownership and the sale of license. These conditions are also met if the organization decides to conclude future contracts on these rights, including on the license, with the collaboration partners

⁵ The equivalent compensation calculated at the market price for the intellectual property right refers to the compensation of all benefits resulting from such a right. According to the general State aid principles and taking into account the difficulties encountered in most cases in market pricing, it will be considered that this condition is met if the research organization negotiates, as a seller, with a view to obtaining the maximum benefit when signing the contract.

7. Conditions and criteria

Art.9

The State aid is granted if all the conditions and criteria laid down in the present document are cumulatively fulfilled, within the available budget.

Art.10

(1) The part of the research and development project benefiting from the aid must fall completely into one or more from the following categories:

- (a) fundamental research;
- (b) industrial research;
- (c) experimental development.

(2) The State aid is granted by reimbursement of the eligible costs, according to the instalments established by the financing contract. The total amount of the eligible reimbursed costs cannot exceed the amount laid down in the financing contract.

(3) The State aid is granted without exceeding the intensity of the State aid applicable for each category.

8. Duration of the state aid scheme

Art.11

(1) The Scheme will enter into force on the date of its publication, and will apply until the 30th of April 2020.

(2) The payment of the aid to the Scheme beneficiaries can be made until the 30th of April 2024.

9. Budget of the state aid scheme

Art.12

(1) The budget of the Scheme, financed from public funds is max. 43.500.000 Euro, of which 36.975.000 Euros from the EEA Financial Mechanism and Norwegian Financial Mechanism and 6.525.000 Euros from national contribution. The budget is distributed annually as follows:

Research Programme	2018	2019	2020	Total ajutor de stat
Collaborative research projects	0	16.312.500	27.187.500	43.500.000

(2) The amount of the State aid for each beneficiary shall not exceed 1.500.000 Euro per project.

(3) The exchange rate used in this Scheme is the InforEuro.

10. Eligibility

Art.13

The projects eligible to receive State aid through this Scheme are only those for which the beneficiary has submitted a project proposal to UEFISCDI, accepted for funding under this Scheme, before the start of the project activities.

Art.14

The types of projects to be funded under the Scheme are:

R&D Project Type	Description	Eligible activities
Collaborative research project	Developing partnerships between Romanian research entities and Donor Countries in order to increase the visibility of Romanian research at international level, to integrate Romanian research teams into prestigious international networks, as well as to support public-private partnerships between research organizations and economic agents.	- fundamental research - industrial research - experimental development

Art.15

The envisaged state aid is granted under the Scheme only for projects that are not and have not previously been funded from other national or community public funds, including de minimis support measures, for the same eligible costs (in line with the own responsibility of the beneficiaries).

11. State aid intensity

Art.16

(1) The maximum intensity of State aid for each economic agent should not exceed:

- 100% of the eligible costs for fundamental research;
- 50% of eligible costs for industrial research;
- 25% of the eligible costs for experimental development.

(2) For industrial research and experimental development a bonus of 10% points will be awarded for medium-sized enterprises and of 20% points for small enterprises, up to a maximum aid intensity of 80% of the eligible costs.

(3) For industrial research and experimental development a bonus of 15% points will be awarded, up to a maximum aid intensity of 80% of the eligible costs, if one of the following conditions is fulfilled:

(i) the project involves an effective collaboration:

- between undertakings among which at least one is an SME, and no single undertaking bears more than 70% of the eligible costs; or

- between an undertaking and one or more research organizations, where the latter bear at least 10% of the eligible costs and have the right to publish their own research results;

(ii) the results of the project are widely disseminated through conferences, publication, open-access databases, or free source software, or generally accessible source type (“open source”).

12. Eligible costs (expenditures)

Art.17

For the activities of fundamental research, industrial research, and experimental development, the following types of costs are eligible:

(a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;

(b) additional overhead costs and other operating expenditures, including costs of materials, supplies and similar products incurred directly as a result of the project;

(c) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting practice are considered as eligible;

(d) costs of buildings and land, to the extent and for the period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting practice are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;

(e) cost of contractual research, knowledge and patents bought or licensed from outside sources at arm’s length conditions, as well as costs of consultancy and equivalent services used exclusively for the project.

13. Cumulation

Art.18

The maximum funding intensities allowed by this scheme apply irrespective of the source of public funds involved: local, regional, national or community.

14. Incentive effect

Art.19

Granting aid must result in increased R & D activities at beneficiary level. The direct effect of the aid will materialize in the diversification and increase of the importance, the volume of expenditures and the impact of the RD activities, as well as the improvement of the productivity at the economic agent.

Art.20

Aid for SMEs is considered to have an incentive effect if the project activities started after the beneficiary submitted the project proposal for aid or the aid application. The incentive effect is not disturbed if, before submitting the application, the beneficiary has made a feasibility study for the project for which it does not applying for State aid.

Art.21

In the case of large enterprises, the incentive effect must be examined before the aid is granted. For this purpose, prior to granting the aid in question, in addition to fulfilling the condition for SMEs, it is verified that the project proposal and the accompanying documents contain sufficient data to show that at least one of the following criteria is met, under granting state aid conditions:

- a) a substantial increase in the scope of the project or activity as a result of the aid;
or
- b) a substantial increase in the total amount of expenditures incurred by the beneficiary for the project or activity as a result of the aid; or
- c) a substantial increase in the rate of completion of the project or activity concerned.

15. Monitoring and reporting

Art.22

Within 20 working days from the entry into force of the present Scheme, the provider of the State aid shall transmit, through the Commission's electronic notification system, a summary of the information in this Scheme in the standard format set out in Annex II to Regulation 651/2014 together with a link providing access to the full text of the aid measure.

Art.23

In order to ensure transparency and effective control of state aid, shall apply the provisions of art. 25 Emergency Government Ordinance No 77/2014 regarding the national procedures for the State Aid, as well as for the amending and supplementing the Competition Law No 21/1996, approved by Law No 20/2015, with subsequent amendments and supplements, and will transmitt to the Competition Council annual reports regarding the State Aid scheme established by the present decision, in order to be transmitted to the European Commission, in accordance with Council Regulation (EC) No 659/1999 and Commission Regulation (EC) No 794/2004.

Art.24

(1) The state aid scheme will be published in full on the provider of the State aid website at <http://www.uefiscdi.gov.ro> and will not be implemented before adoption and publication. The information is published as a spreadsheet of data, which allows easy search, retrieval and publication of data on the Internet, for example in CSV or XML format. Access to the website is allowed to any interested party without any restrictions. No prior registration of the user is required to access the website.

(2) The following information on the granting of individual aid shall be published:

- the name of the beneficiary;
- identifier of the beneficiary;
- type of the beneficiary (research organization, economic agent SME/large) at the time of the aid granting;
- the region in which the beneficiary is located, at NUTS II level;
- the sector of activity at CAEN (2) section level;
- the aid element, expressed as a full value in national currency;
- the aid instrument (subsidy/grant);
- the date of the aid granting;
- the objective of the aid;
- the authority providing/administrating the State aid Scheme;
- the authority managing the State aid scheme;
- reference of the aid measure.

Art.25

The State aid provider will keep detailed records of the aid granted under this scheme for a period of 10 years from the date on which the last specific allocation was granted under this scheme. This record must contain all the information necessary to demonstrate compliance with the conditions imposed by Community State aid framework, including information on the type of beneficiary, the incentive effect, the eligible costs and the intensity of the aid.

Art.26

(1) The state aid provider has the obligation to permanently supervise the ongoing aids granted and to order the necessary measures.

(2) The state aid provider has the obligation to submit to the Competition Council in the format and within the period stipulated by the Regulation on State aid monitoring procedures all the data and information needed to monitor State aid at national level.

Art.27

Based on a written request, the provider shall transmitt to the European Commission, through the Competition Council, within 20 working days, or within the period of time established in the request, all information that the European Commission considers necessary to assess compliance with the conditions of this State aid Scheme.

Art. 28

The provider shall submit to the Competition Council this Scheme within 15 days from the date of its adoption, according to Art. 17 of OUG No. 77/2014 on national procedures in the field of state aid, as well as for amending and completing the Competition Law no. 21/1996, as subsequently amended and supplemented.

Art. 29

(1) The Scheme Provider has the obligation, according to the provisions of Art. 29 of the Regulation on the State Aid Register, implemented by the Order of the President of the Competition Council no. 437/2016, to upload the data and information related to this aid scheme within a maximum of 5 (five) working days from the date of its entry into force in the Electronic State Register of State Aid granted in Romania (RegAS).

(2) Funding contracts, aid granting, payments, recovery obligations, and effective reimbursement of such obligations related to this measure will be charged to the Registry (RegAS) within a maximum of 7 (seven) working days from the date of signing the contract or their publication in the Official Gazette of Romania, as the case may be, respectively from the date of the establishment of the payments, the recovery obligations or the effective reimbursement of those obligations.