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**Parliament of Romania**

**Law no. 350/2005 published on Official Gazette no. 1128 from 14.12.2005**

**ON THE CONDITIONS OF NON-REFUNDABLE FINANCING FROM PUBLIC FUNDS ASSIGNED FOR GENERAL INTEREST NON-PROFIT ACTIVITIES**

The Parliament of Romania adopts the present law,

**CHAPTER 1**

General provisions

**SECTION 1**

Object

Art.1

The present law has the aim of setting the principles, general framework and the procedures for assigning the non-refundable subsidies from the public funds, as well as the means of contesting the act or the decision of the financing bodies which apply the procedures of non-refundable subsidies.

**SECTION 2**

Definitions

Art. 2

In compliance with the present law, the terms and expressions below have the following meaning:

- a) *profit driven activity* – activity driving a direct profit for a natural or legal person
- b) *contracting authority* – any public institution, as defined by the Romanian Constitution, including the body of judges, as well as any national or regional public interest institution, which has the quality of loan manager, according to the law;
- c) *beneficiary* – the applicant whom the non-refundable subsidy contract is assigned to, after the public project selection procedure being applied;
- d) *eligible expenses* – expenses which are taken into consideration for the non-refundable subsidy.
- e) *non-refundable subsidy contract* – contract concluded, by the law, between a public authority, referred to as *financing authority* from now on, and the beneficiary
- f) *non-refundable subsidy* – financial allowance from the state budget, social security budget, special funds budgets, State Treasury budget, local budgets,

extra-budget financed public bodies, external financial aid granted to Romania or to the public institutions, or external loans contracted or guaranteed by the state or by the local public administration bodies, as well as internal loans contracted by the local public administration bodies;

- g) *public funds* – amounts assigned from the state budget, social security budget, special funds budgets, State Treasury budget, local budgets, extra-budget financed public bodies, external financial aid granted to Romania or to the public institutions, or external loans contracted or guaranteed by the state or by the local public administration bodies, as well as internal loans contracted by the local public administration bodies
- h) *applicant* – any natural or legal person with non-profit activity which submits a project proposal

### SECTION 3

#### SCOPE

##### Art. 3

- 1) In order to take part in the procedure of assigning non-refundable subsidy, the applicants have to be non-profit natural or legal persons – associations or foundations set up according to the law, or religious denominations, admitted by the law.
- 2) The provisions of the present law are applicable to any contract assigning non-refundable subsidy from the public funds, excepting the ones funded from external non-refundable funds.
- 3) The legal regime set by the present law for the non-refundable subsidies is not applicable to the special disaster intervention funds and aid for the disaster victims and do not damage the procedures set up by special laws.
- 4) Non-refundable subsidies are granted neither for profit making activities, nor for the activities regulated by the Law no. 182/2002 on classified information's protection, with the subsequent modifications.
- 5) According to the present law, no non-refundable subsidies will be granted for activities which imply developing the infrastructure of the applicant, except the case it represents an essential element of the project.

### SECTION 4

#### Principles of assigning non-refundable subsidies contracts

##### Art. 4

The principles which set the basis for granting the non-refundable subsidies are:

- a) free competition, respectively providing the conditions for the natural or legal person carrying out non-profit activities to become, in accordance with the law, an applicant;

- b) the efficiency of the public funds use, respectively the use of the competing system and the criteria which make possible the evaluation of the proposals and the technical and financial specifications for assigning the non-refundable subsidy contract;
- c) transparency, respectively providing to all those interested the information regarding the enforcement of the procedure for assigning the non-refundable subsidy contract;
- d) equal treatment, respectively the non-discriminatory enforcement of the selection criteria and criteria for assigning the non-refundable subsidies contract, so that any natural or legal person which carries out non-profit activities has equal chances to being assigned the contract
- e) exclusion of the overlapping, meaning that the same activity aiming the same general, regional or local interest cannot benefit from the assignment of more that one non-refundable subsidy contract from the same financing authority;
- f) non-retroactivity, respectively excluding the possibility of assigning non-refundable subsidies to an activity already under way of being carried out or already completed at the date when the financing contract was concluded.
- g) co-financing, meaning that the non-refundable subsidies must be completed by a contribution from the beneficiary, of at least 10% from the total value on the financing.

## CHAPTER II

### Procedures for assigning the non-refundable subsidies contracts

#### SECTION 1

##### General provisions and rules

###### Art. 5

Assigning the non-refundable subsidies is exclusively done upon public project selection, a procedure which allows assigning a contract of non-refundable subsidy from public funds, through a selection made by a commission, by respecting the principles provisioned on art. 4.

Art. 6 The procedure of project selection includes the following stages:

- a) publishing the annual schedule of non-refundable subsidies assignment
- b) issuing the participation announcement
- c) registration of the candidates
- d) transmitting the documents
- e) presenting the project proposals
- f) checking the eligibility, registration and fulfillment of the financial and technical capacity
- g) evaluation of the project proposals

- h) communication of the results
- i) conclusion of the non-refundable subsidy contract(s)
- j) publishing the announcement of assigning the non-refundable subsidy contracts

#### Art. 7

The projects include information on the aim, specific objectives, activities, added costs, results aimed at, all being evaluated on strict indicators, chosen on a justified basis.

#### Art. 8

The competitive evaluation of the projects is done according to the general evaluation criteria provisioned by the present law, as well as the specific evaluation criteria issued by each financing authority.

#### Art. 9

Any natural or legal person with no patrimonial object, carrying out non-profit activities meant to support the accomplishment of general, regional or local public interest objectives has the right to take part, in accordance to this law, in the procedure for assigning the non-refundable subsidy contract.

#### Art. 10

Assigning the non-refundable subsidy contracts is done within the limits of the public funds allotted to the programs annually approved in the budgets of the financing bodies.

#### Art. 11

The planning and execution procedures of the non-refundable subsidies' funds ceiling, the procedures of assignment of the non-refundable subsidies contracts, the non-refundable subsidies contracts concluded between the contracting authority and the beneficiary, as well as the budget expenditure reports on non-refundable subsidies are public interest information, in accordance with the provisions of the Law no. 544/2001 on the free access to public interest information.

#### Art. 12

- (1) For the same non-profit activity, a beneficiary can only contract one non-refundable subsidy form the same contracting authority during the fiscal year.
- (2) IN case one beneficiary contracts, during the same year, more than one non-refundable subsidy from the same contracting authority, the financing level cannot exceed one third of the total public funds allotted to the programs annually approved in the budget of the respective contracting authority.
- (3) In order to participate in the selection procedure, the applicants must fill in a declaration on their own responsibility, proving that they fulfill the requirements from paragraph (1) and (2).

#### Art. 13

The eligible expenses can only be paid upon signing a non-refundable subsidy contract, if the expenses are just and appropriate and were contracted during the execution of the contract.

Art. 14

- (1) The number of participants in the projects selection procedure is not limited
- (2) The contracting authority must repeat the project selection procedure in case there is only one applicant.
- (3) In case after the procedure being repeated again only one applicant submits a project proposal, the contracting authority has the right to assign the contract to this applicant, in accordance to the law.

SECTION 2

Transparency and publicity

Art. 15

- (1) The financing bodies set their own annual program of non-refundable subsidies, in accordance to the present law, having it advertised in the Official Gazette, Part VI, in no more than 30 days from the approval of the contracting authority's budget.
- (2) The annual program can include one or more project selection sessions.
- (3) Advertising the annual program in the Official Gazette, does not bind the contracting authority to carry out the respective selection procedure.

Art. 16

- (1) The contracting authority has the obligation to publicly announce its intention of assigning financing contracts. The participation announcement must be published in the Official Gazette, Part VI, a central daily newspaper on the website of the regional or general interest contracting authority, respectively in at least two local daily newspapers and on the website of the local contracting authority.
- (2) In order to ensure a maximum transparency, the contracting authority will publish the participation announcement also through other national or international mass medias. The participation announcement must mention the number and the date of the Official Gazette which advertised it, according to the provisions of paragraph (1) and will only include the information published in the Official Gazette, Part VI.

Art. 17

The general or regional interest contracting authority has the obligation to transmit for publication, to the Official Gazette, an announcement of non-refundable subsidy assignment, no later then 30 days from the contract conclusion date.

Art 18

- (1) At the end of the budget execution, the contracting authority has the obligation to draw up a report on the non-refundable subsidies contracts concluded during the fiscal year, stating the financed programs, their beneficiaries and the results of the contract.
- (2) The report will be published in the Official Gazette, Part VI, as well as on the general or regional interest contracting authority's website.

Art. 19

- (1) The Official Gazette has the obligation to publish the announcements and the report mentioned at art. 15 – 18, in no more than 12 days from their registration.
- (2) If, in case of emergency, the contracting authority speeds up the procedure of projects public selection, according to art. 20 paragraph (2), The Official Gazette has the obligation to publish the participation announcement in no more than 5 days from its registration.

### SECTION 3

#### Deadline for project proposal submission

##### Art. 20

- (1) The financing authority has the obligation to set and include in the participation announcement the deadline for the proposals submission. This must not be earlier than 30 days from the announcement publication.
- (2) If, in case of emergency, respecting the term mentioned at paragraph (1) would create a prejudice to the contracting authority, it has the right to speed up the project selection procedure, by reducing the number of days, but not to less than 15 days.
- (3) In the case described at paragraph (2), the contracting authority has the obligation to include in the participation announcement the reason for reducing the term mentioned at paragraph (1).
- (4) The contracting authority has the right to extend the submission term of the project proposal, with the condition that the new deadline is publicly announced, at least 6 days before the expiration of the initial deadline, to all applicant who received, in accordance to the present law, one copy of the documents for the project draw up and presentation.

### SECTION 4

#### Eligibility, registration, technical and financial capacity

##### Art. 21

- (1) Will face the exclusion from the procedure for assigning the non-refundable subsidy contract, as being un-eligible, any applicant in one of the following situations:
  - a. hasn't paid its tax obligation to the state budget and social security budget
  - b. provides false information within the documents submitted
  - c. makes a severe professional mistake or hasn't paid it's obligations assumed in another non-refundable subsidy contract, if the contracting authority can prove these allegations
  - d. it is a subject of liquidation procedure or it is already in a state of liquidation or termination, according to the legal provisions in force.
  - e. does not submit the declaration mentioned at art. 12 paragraph (3)
- (2) The contracting authority has the right to ask the applicants to submit documents proving their eligibility as provisioned at paragraph (1), as well as edifying documents, proving their registration as a legal person or any other documents of registration/certification, according to the legal provisions in Romania.

- (3) As for the natural persons, carrying Romanian or foreign citizenship, with no patrimonial activity, the contracting authority has to consider the documents as required for the eligibility in his/her country of residence.
- (4) The provisions on technical and economic-financial capacity from art. 32 and 33 from the Emergency Ordinance no. 60/2001 on public procurement, approved with amendments by Law no 212/2002, with the subsequent amendments, are also applicable.

## SECTION 5

### Documents for the project proposal drawing up and presentation

#### Art. 22

- (1) The financing authority has the obligations to prepare the documents needed for the drawing up and presentation of the project proposal, which has to include, at least:
  - a. general information of the contracting authority
  - b. minimal qualification requirements and the documents needed for proving these requirements
  - c. terms of reference
  - d. instructions on the deadlines which must be respected and the formalities needed to be carried out
  - e. information on the criteria used on assigning the non-refundable subsidy contract
- (2) The terms of reference contain characteristics of the projects, referring the scope, specific objectives, the activities needed to be carried out and the criteria of results evaluation

#### Art. 23

- (1) Any natural or legal person with no patrimonial scope who obtained, in accordance to the present law, one copy of the documents needed for the drawing up and presentation of the project proposal, has the right to demand and receive further clarifications from the contracting authority.
- (2) The contracting authority has the obligation to transmit an answer to any clarification request, but only if received at least 6 days before the project proposal submission deadline.
- (3) The contracting authority has the obligation to send the answer to the clarifications request at least 4 days before the project proposal submission deadline.
- (4) The financing authority has the right to fill in, on its own initiative, for clarifications, the documents for the offer drawing up and presentation and it has the obligation to communicate to all applicants any such filling in. Sending the information must respect the terms mentioned at paragraph (3)

## SECTION 6

### Project proposal drawing up, presentation and evaluation

#### Art. 24



- (1) The applicant has the obligation to draw up the project proposal, in accordance to the provisions of the documentation needed for the project drawing up and presentation.
- (2) The technical proposal is drawn up in accordance to the requirements included in the terms of reference, so that it would provide all the information needed for the technical evaluation.
- (3) The financial proposal is drawn up so that it would provide all the information needed for the financial evaluation.

#### Art. 25

- (1) The nature project proposal is firm and binding from the content point of view and must be signed by the applicant or by a person legally empowered by the applicant. The budget stays firm during the execution of the entire contract of non-refundable subsidy contract.
- (2) The applicant has the obligation to state the price in lei, in the financial proposal

#### Art. 26

Submission, modification or withdrawal of the project proposal can only be done in accordance to the art. 42, 43, 45 and 48 -50 from the Emergency Ordinance no 60/2001, approved with modifications by the Law no 212/2002, with its subsequent amendments.

#### Art. 27

The contracting authority has the obligation to set up, for each contract of non-refundable subsidy, an evaluation comity, in accordance to art. 51 paragraph (1) and (2), art. 53 and 54 from the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments.

#### Art. 28

Project proposals evaluation is done by applying accordingly the provisions of chapter VI, section 4 from the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments.

### SECTION 7

Criteria for assigning the non-refundable subsidy

#### Art. 29

- (1) The selection criteria for assigning the non-refundable subsidies must make possible the evaluation, with competitive and competition rules, the applicants' capacity to finalize the activity proposed for financing.
- (2) The criteria for assigning the non-refundable subsidy contract must make possible the evaluation of the qualities of the proposals and the technical and financial specifications, published in the participations announcement.

#### Art. 30

The contracting authority has the obligation to mentions in the participation announcement and in the project proposal's draw up and presentation documents, the criteria on which the

contract is assigned; once set, the criteria cannot be changed during the entire procedure of assignment of the non-refundable subsidy contract.

#### Art. 31

- (1) The project(s) decided as winners are those which get the highest score and which are shown by the calculation scheme as the most advantageous from the technical-financial point of view.
- (2) The calculation scheme mentioned at paragraph (1) is set by considering, together with the budget, different criteria of proposal evaluation, depending on the nature of each non-refundable subsidy contract. These criteria have to be clearly defined by each contracting authority, through the drawing up of specific norms which have to be in a strict connection with the contract's nature and which, after being set, cannot be changed during the application of the procedure for the assignment of the non-refundable subsidy contract.
- (3) The contracting authority has the obligation to mention in the offer draw up and presentation documents the evaluation criteria for the project proposal, as well as the detailed calculation scheme which is going to be applied.

### SECTION 8

#### Means of communication

#### Art. 32

- (1) Any communication, request, information, notification provided by the present law must be sent as a written document
- (2) Any written document must be registered when transmitted or received
- (3) Any written document must be confirmed as being received, except the documents which, themselves, confirm receiving a document
- (4) Written document can be transmitted by one of the following means:
  - a. mail
  - b. telegram
  - c. telex
  - d. fax
  - e. electronic

#### Art. 33

- (1) The contracting authority or the applicant who sent the documents by one of the means mentioned at art. 32 paragraph (4) letters b-d has the obligation to send the respective documents in no more than 24 hours as letters as well, by mail
- (2) In case the written documents are electronically transmitted, they will be subject of the laws on electronic signature, so that they will fulfill the conditions for proof and validity of a juristic fact

#### Art. 34

The contracting authority has the obligation to not discriminate the applicants from the point of view of the means of communication used by them for transmitting or receiving documents, decisions or other communications.

## SECTION 9

The canceling of the procedure for the assignment of the non-refundable subsidy contract

### Art. 35

The contracting authority has the right to cancel the application of the procedure for the assignment of the non-refundable subsidy contract, under the conditions provided at Chapter VI, section 7 from the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments.

## CHAPTER III

Conclusion, execution and termination of the non-refundable subsidy contract

### Art. 36

- (1) The termination and the execution of the non-refundable subsidy contract is done by respecting the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments.
- (2) Once the non-refundable subsidy contract is terminated, the beneficiary has the obligation to sign a declaration of impartiality as shown in the annex.

### Art. 37

- (1) The contracting authority and the beneficiary can set in the non-refundable subsidy contract that the payments to the beneficiary are made in installments, depending on the stage the contract is in and the due expenses, according to the possible financial risks, the duration and the evolution of the financed activity or depending on the internal set up or functioning costs of the beneficiary.
- (2) The contracting authority will not pay the last installment to the beneficiary, before validating the final activity report and the financial report, which the beneficiary is obligated to submit to the premises of the contracting authority in no more than 30 days from the termination of the activity.
- (3) The validation is done in no more than 30 days from the submission of the final activity report and the financial report.
- (4) The contracting authority may reserve the right to check on the beneficiary both during the execution of the contract and after the report validation, in order to complete the non-refundable subsidy file, but no later than 3 months from the expiration of the term mentioned at paragraph (3)
- (5) The provisions of art. 75, 76, art. 77 paragraph (1), art. 78 and 79 from the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments are adequately applicable to the non-refundable subsidies from the public funds.

### Art 38

- (1) When, for carrying out the contract provisions, the beneficiary purchases, from non-refundable public funds, goods or services, the procurement procedure is the one

from Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments.

- (2) The non-refundable financing contracts will stipulate, under the sanction of nullity, the Accounts Court as having the capacity to control the finances of the non-profit activity unfolding under the public funds.

#### CHAPTER IV

##### Appealing

###### Art. 39

The rules and decisions which determine or are the result of breaking the present law can be appealed on the grounds of art. 80 – 83, art. 85 – 91 and art. 93 – 96 from the Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments

#### CHAPTER V

##### Contraventions and sanctions

###### Art. 40

The provisions of art. 98 – 101 from Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments are applicable to the non-refundable subsidy contracts financed from public funds.

#### CHAPTER VI

##### Transitory and final provisions

###### Art. 41

The provisions of the present law are completed accordingly with the provisions of Emergency Government Ordinance no 60/2001, approved with approved with modifications by the Law no 212/2002, with its subsequent amendments

###### Art. 42

The present law shall come into effect in 30 days from the date of its publication in the Official Gazette, Part I.

The present law was adopted by the Romanian Parliament in compliance with art. 75 and art. 76 paragraphs (2) from the Romanian Constitution.

Bucharest, December 2, 2005

No 350

## ANNEXA

### DECLARATION OF IMPARTIALITY

Shall be considered as a conflict of interests, any situation which hinders the beneficiary at a certain moment to act in compliance with the objectives of the contracting authority, as well as the situation when the objective and impartial execution of the duties of a person involved in implementing the project might be compromised from any reason: family related, political, economic or any other interests common to the someone else's.

The undersigned, as a natural person or empowered to represent the applicant organization, regarding the execution of the project, I obligate myself to take any precautionary measures needed for avoiding any conflict of interest, as defined above and I obligate myself to inform the contracting authority on any situation which produces or might produce such a conflict.

Name and surname:

Position:

Signature and stamp: