

EXPLANATORY STATEMENT

The draft Regulation shall be an implementation of the delegation included in Article 27 paragraph 4 of the Act of 11 July 2014 on the principles of implementation of the cohesion policy programmes, financed under the 2014-2020 financial perspective (Journal of Laws, item. 1146, as amended), hereinafter referred to as "the Act".

This Regulation shall establish the legal principles for granting of *de minimis* aid and state aid under the European Territorial Cooperation programmes for years 2014-2020. The Regulation shall set out detailed purpose, conditions and procedures for granting entrepreneurs *de minimis* aid and state aid under the European Territorial Cooperation programmes for 2014-2020: the Cross-Border Cooperation Programme INTERREG V-A Poland - Slovakia (2014-2020), the Cooperation Programme INTERREG Poland - Saxony 2014-2020, the Cooperation Programme INTERREG V-A - Poland-Denmark-Germany-Lithuania-Sweden (SB) 2014-2020 and the entities granting the aid. The conditions for granting aid under this Regulation, in terms of *de minimis* aid, are set out in the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), hereinafter referred to as "Regulation No 1407/2013" and, in the area of state aid, in the 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 (OJ L 187, 26.6.2014, p. 1), hereinafter referred to as "Regulation No 651/2014" which shall define the categories of aid and the conditions under which the granted aid is compatible with the internal market within the meaning of Article 107 paragraph 3 of the Treaty on the Functioning of the European Union (hereinafter: the TFEU), and thus exempt from the notification obligation referred to in Article 108 of TFEU.

The purpose of this Regulation shall be to enable the support for economic and social development through subsidy aid for entities implementing projects within the European Territorial Cooperation programmes for 2014-2020, covered by the regime of state aid under Article 107 paragraph 1 of TFEU. It should be noted that the rules have been formulated in such a way that it is possible to grant the aid at the so-called first and second level on their basis. Therefore, the proposed Regulation indicates that both managing authority of the program and the beneficiary, referred to in Article 2 point 1 of the Act, can be the entity granting the aid.

The beneficiary granting *de minimis* aid or state aid can be both the beneficiary and the leading beneficiary, referred to in Article 13 of Regulation of the European Parliament and of the Council (EU) No 1299/2013 of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. . 259).

§ 1 of the project defines the scope of the proposed Regulation.

§ 2 specifies the EU legal basis for its adoption in the scope of granting *de minimis* aid, i.e. Regulation 1407/2013.

§ 3 specifies the EU's legal basis for its adoption in the scope of granting state aid, i.e. Regulation 651/2014.

§ 4 provides the glossary of key terms used in the Regulation i.e. definitions of research infrastructure, organisational innovation, aid intensities, single undertaking, innovation clusters, SMEs, entrepreneur, regional investment aid, multifunctional recreational infrastructure.

§ 5 point 1 specifies the directory of entities granting *de minimis* aid and state aid under this Regulation. These shall be the managing authority and the beneficiaries. Such an approach means that the proposed Regulation shall not make a distinction between the aid granted by the managing authority (i.e. the first level), or by the beneficiary (i.e. the second level), making it possible to provide aid on both levels.

§ 5 point 2 stipulates that a beneficiary may grant *de minimis* aid and state aid, provided that such a possibility is offered by the project financing agreement within the meaning of Article 2 paragraph 26 point c of the Act. This exemption aims at prevention of situations in which support would be transferred by the beneficiaries contrary to the terms of the implemented projects, set out in the project financing agreement.

§ 6 of the draft Regulation specifies the entities to which *de minimis* aid may be granted. It also contains a reference to the provisions preventing a certain group of entities from obtaining *de minimis* aid, i.e. Article 1 paragraph. 1 of Regulation No 1407/2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (EU Official Journal L 347 of 20 December 2013, p. 289). It refers to the EU regulations regarding the forms and rules for granting *de minimis* aid. Point 3 indicates that pursuant to Article 3 paragraph 2-9 of the Regulation No 1407/2013, the Regulation defines the permissible *de minimis* aid granted to a single undertaking. Point 4 states that the *de minimis* aid shall be granted according to the

rules of accumulation of aid. Point 5 stipulates that the *de minimis* aid can be granted to an entrepreneur to cover part of or all the eligible costs.

§ 7 clarifies the rules on state aid. There are listed so-called exemptions with regard to state aid - the sectors and economic activities that shall be excluded from the scope of this Regulation, as well as exemptions regarding aid to companies in difficult situation and the exclusion of certain measures of aid. Determination of the scope of the abovementioned exemptions has been made by reference to the provisions of Regulation No 651/2014, describing them in detailed way.

Subsequently, it is determined an exemption involving entities having the obligation to repay state aid, following a previous decision of European Commission, declaring the aid illegal and incompatible with the internal market. This condition shall be the implementation of the standard referred to in Article 1 paragraph 4 point a of Regulation No 651/2014. This Regulation shall not apply to *de minimis* aid.

There are determined issues regarding the incentive effect. In accordance with §7 point 3, beneficiary must submit an application for aid, hereinafter referred to as "application" in accordance with Article 6 paragraph 2 of Regulation No 651/2014, that is, before the start of works within the meaning of Article 2 paragraph 23 of Regulation No 651/2014, i.e. before the start of construction works relating to the investment or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible; buying land or preparatory works, such as obtaining permits and conducting feasibility studies shall not be considered start of works. By way of derogation from the provisions of Article 6 paragraph 2-4 of Regulation No 651/2014 in the case of aid for culture and heritage conservation, if the conditions laid down in Article 53 of Regulation No 651/2014 are fulfilled, the requirement of the incentive effect shall not apply, or it shall be recognized that they produce such an effect. This Regulation shall not apply to *de minimis* aid.

It is indicated that the state aid may be granted in the form specified in Article 5 paragraph 2 point a of Regulation No 651/2014, i.e. comprised in grants or interest rate subsidies.

In turn, § 7 point 5 contains a reference to Article 8 of Regulation No 651/2014, which in a comprehensive and exhaustive way shall govern the issues of cumulation of state aid. In addition, the point 6 indicates that the rules of Article 7 paragraph 1 of Regulation No 651/2014 shall be used to calculation of the aid intensity and the eligible costs. The abovementioned provision shall envisage the need for the use of figures before any deduction of tax or other charge and a clear, specific and contemporary documentary evidence of

eligible costs. In order to calculate the gross grant equivalent (GGE) there shall be applicable national regulations issued under the Act of 30 April 2004 on procedures concerning state aid (Journal of Laws of 2007 No 59, item 404, as amended), i.e. Regulation of the Council of Ministers of 11 August 2004 on the detailed method of calculating the value of state aid granted in various forms (Journal of Laws No 194, item 1983, as amended). At the same time the value of state aid granted may not exceed the thresholds set out in Article 4 paragraph 1 of Regulation No 651/2014.

§ 8 point 1 specifies that the regional investment aid shall be granted under conditions of Article 14 of Regulation No 651/2014. Paragraph indicates that the investment aid shall be granted to cover the eligible costs, as referred to in Article 14 paragraph 4 of Regulation No 651/2014, if the conditions set out in Article 14 paragraphs 6-9 of Regulation No 651/2014 are fulfilled. These conditions are as follows:

1) in accordance with Article 14 paragraph 6 of Regulation No 651/2014 the assets acquired shall be new except for SMEs and for acquisition of an establishment. Costs related to the lease of tangible assets may be taken into account under the following conditions:

a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment project for large undertakings or three years in the case of SMEs;

b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.

In the case of acquisition of assets of an establishment within the meaning of Article 2 paragraph 49 of Regulation No 651/2014, only the costs of acquiring of assets from third parties unrelated to the buyer shall be taken into account. The transaction must be carried out on market terms. If the aid for the purchase of assets has been granted even before their purchase, the cost of these assets shall be deducted from the eligible costs associated with the acquisition of the establishment. If a member of the family of the original owner or a person employed takes over a small business, the condition ordering the purchase of assets from third

parties not connected with the buyer shall be repealed. Acquisition of shares/stocks shall not constitute initial investment;

2) in accordance with Article 14 paragraph 7 of Regulation No 651/2014 in the case of aid granted for a fundamental change in the production process, the eligible costs must exceed the depreciation of assets linked to the activity to be modernised in the course of preceding three fiscal years. In the case of aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the fiscal year preceding the start of the work;

3) in accordance with Article 14 paragraph 8 of Regulation No 651/2014 intangible assets are eligible for the calculation of investment costs, if they fulfil the following conditions:

- a) they must be used exclusively in the establishment receiving the aid;
- b) they must be amortisable;
- c) they must be purchased under market conditions from third parties unrelated to the buyer, and
- d) they must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years or three years in the case of SMEs;

4) for large undertakings, costs of intangible assets are eligible only up to a limit of 50% of the total eligible investment costs for the initial investment;

5) in accordance with Article 14 paragraph 9 of Regulation No 651/2014, where the eligible costs are calculated by reference to the estimated wage costs, as referred to in paragraph 4 point b, they must meet the following conditions:

- a) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months, meaning that any job lost shall be deducted from the apparent created number of jobs during that period;
- b) each post shall be filled within three years of completion of works; and

c) each job created through the investment shall be maintained in the area concerned for a period of at least five years from the date the post was first filled, or three years in the case of SMEs.

§ 8 point 3 of the draft states that in accordance with Article 14 paragraph 3 of Regulation No 651/2014 regional investment aid shall be granted to large enterprises only for an initial investment in favour of new economic activity in the area concerned. Point 4 indicates that regional investment aid cannot be granted for so-called replacement investment, restoring the establishment's production capacity. It is connected with the fact that regional investment aid shall be granted only for the initial investment.

§ 8 point 5 defines that regional investment aid for research infrastructures may be granted under the Regulation if it meets the conditions set out in Article 14 paragraph 11 of Regulation No 651/2014, i.e.: regional aid for research infrastructure shall be granted only if the aid is made conditional on giving transparent and non-discriminatory access to the aided infrastructure.

§ 8 point 6 defines maximum intensity of regional investment aid for projects under the European Territorial Cooperation programmes by reference to the provisions of the European Commission on setting a regional aid map for 2014 - 2020. The intensity of regional investment aid shall be calculated by multiplying the amount of aid, expressed in GGE and the costs eligible for aid. It shall be determined in relation to the eligible investment costs declared by the beneficiary at the time of applying for regional investment aid. The intensity of regional investment aid shall be dependent on the prosperity of the region, determined by GDP per capita. In the case of initial investment relating to projects under the European Territorial Cooperation covered by Regulation (EU) No 1299/2013, the aid intensity for the area of initial investment shall apply to all beneficiaries participating in the project. If the initial investment is spread over two or more areas covered by the aid, there shall be applied the maximum aid intensity relating to the area incurring most of the eligible costs. On assisted areas eligible for aid under Article 107 paragraph 3 point c of Treaty, the provision shall apply to large enterprises only if the initial investment is for new economic activity.

§ 8 point 7 indicates in turn that the maximum intensity of regional investment aid for SMEs shall increase by the so-called premiums (bonuses). If the aid is granted to a micro or small entrepreneur, the base aid intensity may be increased by 20 percentage points, in the

case of medium-sized enterprise, it can be increased by 10 percentage points. Point 8 defines the rules for determining the maximum intensity and value of the regional investment aid by reference to the following provisions of Regulation No 651/2014:

1) Article 14 paragraph 12 - according to which:

- a) the rule is not to exceed the maximum amount of aid resulting from application of the maximum aid intensity, if the investment aid granted is calculated on the basis of eligible costs resulting from combining investment costs or wage costs,
- b) in the case of large investment projects, aid may not exceed the adjusted aid amount calculated in accordance with the mechanism defined in Article 2 point 20 of Regulation No 651/2014.

Due to the fact that the use of standard intensities for larger investments could cause a risk of distortion of competition, permissible amount of aid for large investment projects, i.e. exceeding EUR 50 million, shall be calculated at less favorable manner to entrepreneurs - based on the adjusted amount of aid provided for in Article 2 point 20 of Regulation No 651/2014. As a result of using this formula, the maximum amount of aid for projects exceeding EUR 50 million shall be lower than that calculated using the standard aid intensity;

2) Article 14 paragraph 13 - according to which:

- a) Any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project;
- b) Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects;

3) Article 14 paragraph 14 of Regulation No 651/2014 - under which the aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support.

§ 8 point 9 indicates a condition related to the need to maintain the investment in the region, under the terms of Article 14 paragraph 5 of Regulation No 651/2014. This condition shall require maintenance of the assisted investment in the area: in the case of large enterprises - for at least 5 years after its completion, in the case of SMEs for at least 3 years.

§ 9 point 1 indicates that assistance for consultancy in favour of SMEs shall be governed by provisions of Article 18 of Regulation No 651/2014. It specifies the eligible costs for aid for consultancy in favour of SMEs as the costs of services provided by external consultants, provided that such services shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising. It is also indicated that the intensity of aid for consultancy in favour of SMEs shall not exceed 50% of the eligible costs.

§ 10 defines that provisions of Article 19 of Regulation No 651/2014 shall apply to aid to SMEs participation in fairs, therefore costs of renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition shall be considered eligible costs. Also it indicates that the intensity of aid to SMEs participation in fairs shall not exceed 50% of the eligible costs.

§ 11 indicates that in relation to aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects, there shall apply the provisions of Article 20 of Regulation No 651/2014. The eligible costs of the cooperation of SMEs participating in European Territorial Cooperation projects comprise of the following:

- 1) costs for organisational cooperation including the cost of staff and offices to the extent that it is linked to the cooperation project;
- 2) costs of advisory and support services linked to cooperation and delivered by external consultants and service providers, under the conditions of Article 20 paragraph 3 of Regulation No 651/2014, i.e. the costs shall not constitute a continuous or periodic activity nor relate to undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising;
- 3) travel expenses, costs of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project.

The value of the aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects at the same time shall not exceed 50% of the eligible costs.

§ 12 indicates that the provisions of Article 25 of Regulation No 651/2014 shall apply in relation to aid for research and development projects. The aided part of the research and development project must completely fall within at least one of the following categories:

- 1) fundamental research;
- 2) industrial research;
- 3) experimental development;
- 4) feasibility studies.

There are indicated the costs that the designer considers as the eligible costs of research and development project, which may be eligible for aid. These are costs that shall meet the conditions set out in Article 25 paragraph 3 and 4 of Regulation No 651/2014, i.e. the eligible costs of research and development projects allocated to a specific category of research and development, and these shall include:

- a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project.
- b) 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 principles are considered as eligible,
- c) costs of buildings and land, to the extent and for the duration 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 principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible,
- d) costs 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;
- e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.

It should be added that the eligible costs for feasibility studies shall be the costs of the study.

§ 12 defines the rules for determining the maximum aid intensity provided for research and development projects under the proposed Regulation. The maximum aid intensity shall be determined in accordance with Article 25 paragraph 5 of Regulation No 651/2014. The aid intensity for research and development projects for individual beneficiaries shall not exceed 100% of the eligible costs for fundamental research; 50% of eligible costs for industrial research; 25% of eligible costs for experimental development; 50% of eligible costs for feasibility studies. The aid intensity may be increased in accordance with Article 25 paragraph 6 and 7 of Regulation No 651/2014. The aid intensity for industrial research and experimental development may be increased to a maximum of 80% of eligible costs in the following manner:

- 1) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
- 2) by 15 percentage points if one of the following conditions is fulfilled:

a) the project involves effective collaboration between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs; or between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10% of the eligible costs and have the right to publish their own research results,

b) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

§ 13 indicates that the aid for research and development in the fishery and aquaculture sector shall be governed by the provisions of Article 30 of Regulation No 651/2014. According to Article 30 paragraph 5 of Regulation No 651/2014, aid shall be granted directly to the research and knowledge-dissemination organisation and shall not involve the direct

granting of non-research related aid to an undertaking producing, processing or marketing fishery or aquaculture products.

It is also indicated that the eligible costs of projects related to research and development activities in the fishery and aquaculture shall consist of the costs specified in Article 25 paragraph 3 of Regulation No 651/2014. Furthermore, in accordance with Article 30 paragraph 4 of Regulation No 651/2014, the results of the aided project must be available on internet from the end date of the aided project or the date on which any information concerning those results is given to members of any particular organisation, whatever comes first. The results shall remain available on internet for a period of at least 5 years starting from the end date of the aided project. §13 point 3 indicates that aid intensity shall not exceed 100% of the eligible costs.

§ 14 specifies that the provisions of Article 26 of Regulation No 651/2014 shall be applied for investment aid for research infrastructures. The eligible costs of investment in research infrastructure shall consist of the costs of investment in tangible and intangible assets.

§ 14 point 2 indicates that the research infrastructure can be used to carry out economic and non-economic activity under conditions laid down in Article 26 paragraph 2 – 4 of Regulation No 651/2014 with respect to:

- 1) the condition of the separation of cost when the research infrastructure is used to carry out both economic and non-economic activity;
- 2) the condition of charging a market price for the operation and use of the infrastructure;
- 3) the condition of granting access to the research infrastructure to users on transparent and non-discriminatory market conditions, taking into account the specific situation when access to infrastructure can be granted to users on preferential terms.

There is defined the maximum aid intensity for research infrastructures, which may not exceed 50% of the eligible costs. Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

§ 15 indicates that provisions of Article 27 of Regulation No 651/2014 shall be applicable to aid for innovation clusters. This aid shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation). It is indicated that access to the premises, facilities and activities of the cluster shall be granted under the terms of Article 27 paragraph 3 and 4 of Regulation No 651/2014, i.e. shall be granted to a number of users on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the innovation cluster may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access must be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available. The fees charged for using the cluster's facilities and for participating in its activities shall correspond to the market prices or reflect their costs.

§ 15 point 3 indicates that the investment aid for innovation clusters shall be granted for eligible costs, including the costs of investment in tangible and intangible assets.

Subsequently, it is indicated that the intensity of investment aid for innovation clusters shall not exceed 50% of the eligible costs. The intensity may be increased by 15 percentage points for innovation clusters located in assisted areas fulfilling the conditions laid down in Article 107 paragraph 3 point a of TFEU, and 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions laid down in Article 107 paragraph 3 point c of TFEU. The eligible costs of operating aid for innovation clusters are personnel and administrative costs (including overhead costs), in accordance with Article 27 paragraph 8 of Regulation No 651/2014, and the duration of the operating aid shall not exceed ten years. It is indicated that the intensity of operating aid for innovation clusters shall not exceed 50% of the total eligible costs during the period over which the aid is granted.

§ 16 states that Article 28 of Regulation No 651/2014 shall apply to innovation aid for SMEs. The eligible costs under this aid are the costs stated in Article 28 paragraph 2 of Regulation No 651/2014, i.e.:

- 1) costs for obtaining, validating and defending patents and other intangible assets;
- 2) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and

innovation activities in a newly created function within the beneficiary and not replacing other personnel;

3) costs for innovation advisory and support services.

The aid intensity for SMEs to support innovation shall not exceed 50% of the eligible costs. In the particular case, i.e. aid for innovation advisory and support services, aid intensity can be increased up to 100% of the eligible costs, provided that the total amount of aid for innovation advisory and support services shall not exceed EUR 200 000 per undertaking within any three year period.

According to § 17, provisions of Article 29 of Regulation No 651/2014 shall apply to aid process and organisational innovation. Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs. The eligible costs are the costs mentioned in Article 29 paragraph 3 of Regulation No 651/2014, i.e. .:

- 1) personnel costs;
- 2) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
- 3) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
- 4) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.

The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

§ 18 indicates that provisions of Art 31 of Regulation No 651/2014 shall apply to the training aid. The eligible costs are the costs specified in Article 31 paragraph 3 of Regulation No 651/2014, i.e.:

- 1) trainers' personnel costs, for the hours during which the trainers participate in the training;
- 2) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project.

Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;

- 3) costs of advisory services linked to the training project;
- 4) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

At the same time § 18 point 2 stipulates that aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

Simultaneously, there is defined the maximum training aid intensity that shall not exceed 50% of the eligible costs. The intensity of training aid may be increased up to 70% of the eligible costs in the following manner:

- 1) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
- 2) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100 % of the eligible costs provided that the following conditions are met:

- 1) the trainees are not active members of the crew but are supernumerary on board; and
- 2) the training is carried out on board of ships entered in Union registers.

§ 19 stipulates that provisions of Article 53 of Regulation No 651/2014 shall apply in relation to aid for culture and heritage conservation. Simultaneously, there are indicated cultural purposes and activities, for which aid may be granted in accordance with Article 53 paragraph 2 of Regulation No 651/2014. These are: museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State; intangible heritage in any form, including folklorist customs and crafts; art or cultural events and performances, festivals, exhibitions and other similar cultural activities;

cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies; writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

The aid referred to in § 19 is the investment aid, including aid for the construction or upgrade of culture infrastructure and operating aid. The eligible costs of the project on culture and heritage conservation shall consist of the investment costs in tangible and intangible assets, in the case of investment, and operating costs, in the case of operating aid. For publishing of music and literature, the eligible costs shall consist of the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre-press costs and printing or e-publication costs.

The value of investment aid for culture and heritage conservation shall not exceed the difference between the eligible costs and the operating profit of the investment, while operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. For publishing of music and literature as defined in Article 53 paragraph 2 point f of Regulation No 651/2014, the maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70 % of the eligible costs. The revenues shall be deducted from the eligible costs *ex ante* or through a clawback mechanism.

For operating aid for culture and heritage conservation, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. In the case of aid for culture and heritage conservation not exceeding EUR 1 million, the maximum amount of aid may be set at 80% of eligible costs.

§ 20 states that the provisions of Article 55 of Regulation No 651/2014 shall apply in relation to aid for sport and multifunctional recreational infrastructures. It is indicated that aid shall take the form of investment aid, including aid for the construction

or upgrade of sport and multifunctional recreational infrastructure and operating aid for sport infrastructure.

The eligible costs of the project for sport and multifunctional recreational infrastructure shall consist of the investment costs in tangible assets and intangible assets for investment aid, and in the case of operating aid for sport infrastructure the eligible costs shall consist of the operating costs of the provision of services by the infrastructure. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

§ 20 point 2 specifies rules for providing the users with assisted sports infrastructure, which cannot be used exclusively by a single professional user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated. Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

Simultaneously, it is determined that if sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.

Moreover, there are announced the rules of entrusting tasks associated with sport or multifunctional recreational infrastructure to a third party. Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

The value of investment aid for sport and multifunctional recreational infrastructure shall not exceed the difference between the eligible costs and the operating profit of the investment; the operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism. In the case of operating aid for sport infrastructure, the aid amount shall not exceed the operating losses

over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

In the case of aid for sport and multifunctional recreational infrastructure not exceeding EUR 1 million, the maximum amount of aid may be set at 80% of eligible costs.

§ 21 specifies that the provisions of Article 56 of Regulation No 651/2014 shall apply to aid for local infrastructures. This provision shall not apply to aid for infrastructure that is covered by other sections of Chapter III of Regulation No 651/2014 with the exception of Section 1 - Regional aid. It shall not apply to airport infrastructure and port infrastructure. Dedicated infrastructure shall not be exempted by this provision.

§ 21 point 2 defines the rules of providing the users with local infrastructure. This infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of infrastructure shall correspond to market price. Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules. Subsequently, it is stipulated that the eligible costs of the project for local infrastructure shall consist of the investment costs in tangible and intangible assets. The amount of the aid for local infrastructure shall not exceed the difference between the eligible costs and the operating profit of the investment; the operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

§ 22 regulates assistance mode, indicating that an entrepreneur shall submit an application to the entity granting *de minimis* aid and state aid. The entity granting *de minimis* aid and state aid can be the managing authority and the beneficiary, i.e. operators organising the competition and providers of services to entrepreneurs.

§ 22 point 2 of the draft Regulation specifies the information to be included in the application for aid. The catalogue is open, because point 10 indicates that the application may also include information requested by the entity granting aid in the documents relating to the call for proposals. The proposed solution is a consequence of the fact that the aid scheme is intended as the legal basis for granting aid under the three European Territorial Cooperation programs for 2014-2020, in a very wide range, and it is

not possible to clearly indicate what kind of information may be needed to evaluate the individual applications.

§ 22 point 3 indicates that the entrepreneur shall attach to the application the information about obtained and planned *de minimis* aid:

1) copies of certificates of *de minimis* aid or certificates of *de minimis* aid in agriculture or certificates of *de minimis* aid in the fishery sector, or a declaration of non-receipt of *de minimis* aid, referred to in Article 37 paragraph 1 point 1 and paragraph 2 point 1 and 2 of the Act of 30 April 2004 on the procedural issues concerning state aid;

2) the information referred to in Article 37 paragraph 1 point 2 of the Act of 30 April 2004 on the procedural issues concerning state aid.

§ 22 point 4 determines that the entrepreneur applying for aid must annex the application with additional documents prepared in accordance with regulations issued pursuant to Article 37 paragraph 6 of the Act of 30 April 2004 on the procedural issues concerning state aid. The list of documents and statements has been specified in the Regulation of the Council of Ministers of 29 March 2010 on the scope of the information provided by the entity applying for aid other than *de minimis* aid or *de minimis* aid in agriculture or fisheries (Journal of Laws No 53, item 312, as amended).

§ 23 indicates the criteria for evaluation determined by the entity granting aid. At the same time, the managing authority - in accordance with Article 12 paragraph 3 of the Act - may delegate some tasks connected with the evaluation of the proposal to the joint secretariat. The joint secretariat shall be appointed by the Managing Authority of European Territorial Cooperation program in consultation with Member States and third countries participating in the abovementioned program. The joint secretariat shall support managing authority and the monitoring committee in carrying out their functions. It shall be also responsible for providing potential beneficiaries with information about funding opportunities under the European Territorial Cooperation programs and support beneficiaries in the implementation of the operation.

Subsequently, there are regulated the issues related to the last element in the framework of an aid - signing the contract. Before signing the contract, the entrepreneur shall provide the entity granting the aid with documents and information referred to in § 22 point 3 relating to the period from the date of submission of the project application to the date

of signing the contract.

§ 24 defines term until which *de minimis* aid shall be granted under the proposed Regulation. Under the provisions of Article 7 paragraph 4 of Regulation No 1407/2013 the term shall expire on 30 June 2021.

Then, § 25 defines the date of granting of state aid based on the proposed regulation. In accordance with Article 58 paragraph 4 of Regulation No 651/2014, aid schemes other than regional aid schemes and risk finance aid exempted under this Regulation shall apply for an adjustment period of six months from the date of the expiry of the Regulation. In accordance with Article 59 of Regulation No 651/2014 the Regulation shall apply until 31 December 2020, which is why, with the exception of regional aid, national laws issued on this basis shall apply until 30 June 2021.

The Regulation shall enter into force on the day following the day of its publication. In accordance with Article 4 paragraph 1 of Act of 20 July 2000 on promulgation of normative acts and some other acts (Journal of Laws of 2011, No 197, item. 1172, as amended) the *vacatio legis* period should last for 14 days. However, in the opinion of the regulation issuing authority, it is justified to shorten the time of entry into force of the normative act due to the urgent need to provide a legal basis for granting aid under the European Territorial Cooperation programmes for 2014-2020.

The draft Regulation has been given a positive opinion in terms of compliance with the EU law (letter no DPUE.920.747.2015/3/ mrz of 15 June.)

The Regulation shall not contain any technical regulations within the meaning of the Regulation of the Council of Ministers of 23 December 2002 on the operation of the national notification system for standards and regulations (Journal of Laws No 239, item 2039, as amended) and shall not be a subject to notification of European Commission in this regard.

The Regulation shall not require the notification to the European Commission under the Act of 30 April 2004 on the procedural issues concerning state aid, as it constitutes an aid scheme within the block exemption. The Regulation shall be in line with current EU regulations in this field and shall not require the submission to the competent authorities

and institutions of the EU, including the European Central Bank, for opinion, notification, consultation or agreement.

Due to the new obligation under Article 1 paragraph 2 letter a) of Regulation No 651/2014, under which, for the aid schemes with the average annual state aid budget of EUR 150 million, a Member State shall be obliged to submit an evaluation plan of the aid scheme to the European Commission within 20 working days from the date of entry into force of a normative act.

The Ministry of Infrastructure and Development has estimated the annual budget of the Regulation. The data contained in the financial plans of European Territorial Cooperation programmes covered by the Regulation show that the total allocation which the Managing Authority plans to spend under the Regulation on aid shall not exceed EUR 308 million and the annual basis shall not be higher than EUR 150 million. This will result in the lack of requirement to prepare an evaluation plan notified to the European Commission under the Regulation.

The draft Regulation, in accordance with Article 5 of the Act of 7 July 2005 on lobbying activity in the legislative process, is available in the Public Information Bulletin of the Ministry of Infrastructure and Development. The draft Regulation, in accordance with §52 point 1 of Resolution No 190 of the Council of Ministers of 29 October 2013 Rules of procedure of the Council of Ministers (Official Gazette item 979), is also included in the Public Information Bulletin on the website of the Government Legislation Centre, the service of Governmental Legislative Process.