

## **Guidance on the drafting of the financial guarantee and check list**

The present document is a guidance on the drafting of the financial guarantee offered by the ADRION Programme to beneficiaries to comply with the requests set forth in the Programme Manual.

Private and lead partners are strongly advised to read the present document carefully and to timely ensure that all the requirements are available.

Indications reported in this document must be obeyed by the private partner: in this respect the Lead Partner is asked - in accordance with the lead partner principle and as reported in art. 7 lett. o) of the Subsidy Contract – to provide evidence to MA/JS, through the provided template offered by the Programme, that the private project partner(s), if present within the partnership, has signed a financial guarantee and that it contains specific requirements.

Provision of evidence of the signature of the financial guarantee is a pre-condition for the affected partner for receiving the disbursement of the subsidy and, if it is due, of the advance payment.

The present document is structured in two parts:

Part A contains the minimum requirements the financial guarantee and the Guarantor must ensure;

Part B contains the template attesting the evidence of the financial guarantee to be signed by the Lead Partner (Part B shall be provided to the lead partners as a single template).

## **Part A – Financial Guarantee characteristics and Guarantor requirements**

### **§ 1. Legal basis**

The legal provision for the issue of the present financial guarantee (hereinafter referred to as “Guarantee”) is based on the following legal framework and guidelines:

- ADRION Programme Manual of the first call for proposals (paragraph 22 – Contractual provisions), according to which the financial guarantee shall be for an amount covering the affected project partner EU contribution (ERDF or IPA II co-financing) and lasting one year after the approval of the project final report;
- Decision of the Monitoring Committee of the ADRION Programme dated 10 May 2017 granting a subsidy to the operation in subject;
- Partnership Agreement signed between the Lead Partner of the project and the Project Partners;
- Approved application form<sup>1</sup> as attached to the Subsidy Contract defining the project partner eligible budget.

### **§ 2. Subject of the financial guarantee**

The subject of the financial guarantee (hereinafter: Guarantee Holder) is the project private partner involved in the ADRION operation<sup>2</sup>.

### **§ 3. Guarantee beneficiary**

The Beneficiary of the guarantee is the Interreg V-B Adriatic-Ionian – ADRION - Managing Authority, Emilia-Romagna Region – Directorate General Resources, Europe, Innovation, and Institutions of the Emilia-Romagna Region – Viale Aldo Moro, 18 – 40127 Bologna (Italy) BIC: xxxxxxxxxx

### **§ 4. Duration and termination of the Guarantee**

The guarantee shall expire one year after the submission of the Project Final Report as defined in § 5.3 of the Subsidy Contract and § 18 of the Partnership Agreement. If for whatever reason the Project Final Report cannot be approved at the latest 3 months after the guarantee termination date, a new or an extended guarantee for the same amount as in the initial guarantee shall be provided for a period ending one year after the finalization of the approval process of the final report. Similarly, a new or an extended guarantee for the same amount shall be provided if 3 months before the guarantee termination date an audit in accordance with § 12 of the Subsidy Contract and § 14 of the Partnership Agreement is still pending. The duration of this extended or new guarantee shall be reasonably determined by the Beneficiary on the basis of the expected duration of the audit plus a reasonable safety margin.

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<sup>1</sup> It is suggested to include the application form as an annex of the financial guarantee.

<sup>2</sup> Do not forget to include in the document the number of the operation, its title and acronym.

## **§ 5. Guarantee provided by a third party other than a financial institution**

As a general rule, the guarantee is provided by a financial institution<sup>3</sup>; the guarantee may also be provided by a third party/parties (e.g.: the partners involved in the same funded ADRION project) other than a financial institution (hereinafter: the Guarantor). The Guarantee may also take the form of a joint guarantee.

The Guarantor acknowledges having a perfect knowledge of the clauses and conditions of the obligations included in the Partnership Agreement, as well as of the financial situation related to the Guarantee Holder in order to assess its situation prior to undertaking this commitment. As long as the Guarantor is bound by this commitment, it is responsible for monitoring the Guarantee Holder's situation, the Beneficiary having no duty of information to the Guarantor in this respect.

The Guarantor undertakes to provide a guarantee for the Guarantee Holder to the benefit of the Beneficiary, under the terms and conditions laid out in the present Guidelines, and shall guarantee the payment of all sum due from the Guarantee Holder to the Beneficiary in principal.

## **§ 6. Minimum requirements and obligations of third party/ies acting as Guarantor other than a financial institution.**

A Guarantor other than a financial institution must at least:

- being in continuous operation as a business entity not shorter than 2 fiscal years<sup>4</sup>;
- transmit a *patronage letter*<sup>5</sup> subscribed by the legal representative of the Guarantor to the Lead Partner of the funded ADRION operation, stating its commitment to undertake a guarantee obligation for the benefit of the project partner. The patronage letter must be written in English language.

## **§ 7. Payment of the Guarantee**

The Guarantor irrevocably assumes a guarantee obligation up to the private partner EU co-financing pursuant to Art. 1936 and following articles of the Italian Civil Code (Codice Civile).

Guarantee may be called in at any time by the Beneficiary during the period specified under § 4 by sending a Letter of Demand which shall also include a statement that the project partner has failed to fulfill its obligations under the Partnership Agreement and specifying the amount being claimed in EUR.

The Guarantor shall execute the guarantee only upon presentation of such a document signed by the Beneficiary within 20 working days. No further requirements are necessary for paying the guarantee.

The Guarantor shall not be in a position to withhold payment of the demanded amounts from the Beneficiary or require any further documents or declarations from any party.

The Guarantor expressly waives all benefits of discussion and division in regard to the Beneficiary, and undertakes to make payment up to the limit of the commitment, without any need for the Beneficiary to take legal proceedings against the Guarantee Holder.

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<sup>3</sup> The definition "financial institution" includes banks, trust companies, insurance companies, and brokerage firms or investment dealers.

<sup>4</sup> To be proofed through provision of the last 2 balance sheets to the lead partner or signed declarations by the board of statutory auditors.

<sup>5</sup> The letter must contain the minimum requirement set forth in the present guidelines.

## **§ 8. Guarantor liability**

If the Guarantor decides to terminate the period of liability under its guarantee, the Lead Partner must be duly informed at least 90 days before the proposed termination date; the lead partner is in charge of notifying the Beneficiary. The Beneficiary's acknowledgment is necessary for the termination of the period of liability for all or a specified portion of the Guarantor's guarantee.

The Guarantor remains however liable for all work and workmanship performed during the period of guarantee efficacy.

It is in the project partner liability to provide a suitable replacement security instrument before the termination of the period of liability under the Guarantor.

## **§ 9. Guarantor succession**

All persons/bodies succeeding to the rights of the Guarantor for any reason or claim (such as in the case of a merger or division etc.) shall be bound jointly and severally to the Beneficiary to fulfil the guarantee under the same conditions as the Guarantor. The Beneficiary shall be able to demand payment from any of these persons/bodies of all amounts that the Beneficiary would have been entitled to demand of the Guarantor, without any division of recourse among these persons being imposed on the Beneficiary.

## **§ 10. Miscellaneous**

Amounts blocked in bank accounts of the affected partners cannot be accepted as financial guarantee.

Any modification and amendment to the Guarantee shall be made in writing. All notices and declarations pursuant to the guarantee shall be made in writing.

All costs, if any, resulting from the establishment of the Guarantee, including, but not limited to, all advisors fees, shall be borne by the Guarantee Holder where they occurred.

All stamp duties arising in connection with the establishment or performance of this Guarantee (if any) shall be borne by the Guarantor.

The guarantee must be printed on the Guarantor headed paper, signed and dated.

The Beneficiary reserves the right to check whether the guarantee has been signed by affected partner and if it is compliant with the minimum requirements reported.

## **§ 11. Applicable Law and Jurisdiction**

The guarantee and the effect given to it shall be governed exclusively by the Italian law. Any dispute relating to the guarantee or to any payment made in the context thereof shall be exclusively decided by the competent Civil Court of Bologna (Italy). Legal proceedings shall be in Italian.

**Part B - template attesting the evidence of the financial guarantee to be signed by the Lead Partner**

Lead Partner headed letter

I, the undersigned [name, surname], in my capacity as the legal representative / delegated person of [name of the Lead applicant in original language and name of Lead applicant in English] acting as Lead Applicant of the project [number, acronym] declare having received copy of the financial guarantee of the private project partner [name of the project partner]<sup>6</sup>.

In relation to the above I declare that:

	Yes	No
The financial guarantee has been provided by a financial institution.		
The financial guarantee has been provided by a Guarantor other than a financial institution (please specify below):		
In case the financial institution is located in an IPA Partner State, it offers guarantees equivalent to those offered by a financial institution of an EU Partner State.		
The Guarantee has as beneficiary the ADRION Managing Authority.		
The Guarantor other than a financial institution is in continuous operation as a business entity for at least 2 fiscal years (statement to be confirmed through the declarations reported in the two last balance sheets or signed declarations by the board of statutory auditors).		
The Guarantor other than a financial institution has transmitted a <i>patronage letter</i> subscribed by its legal representative to the lead partner.		
The Guarantee covers a period equal to the project duration plus an additional year after the approval of the last project final report.		
The Guarantee refers to the EU co-financing amount of the private partner as reported in the application form attached to the subsidy contract and shall be paid in EUR.		
The Guarantee ensures the payment to the ADRION Managing Authority within 20 working days from the receipt by the Managing Authority/Beneficiary Letter of Demand.		
The Guarantor declares of not withholding payments and requiring any further documents or declarations from any party.		

<sup>6</sup> In case more private partners are involved, one declaration per each private partner has to be provided.

The lead partner is informed about the Guarantor's intention of terminating its liability under the Guarantee and is notified at least 90 days before the proposed termination date.		
The Guarantee is printed on the Guarantor headed paper, signed and dated.		
The Guarantee does not include the use of amount blocked in bank accounts.		
The Guarantee refers to the Civil Court of Bologna (Italy) in case of legal proceedings.		

Date

Signature

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