



**Operační program
Jan Amos Komenský**

METHODOLOGY FOR THE TREATMENT OF PROPERTY FUNDED BY P JAC

Programming period 2021 - 2027

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OVERVIEW OF CHANGES

Chapter	Specification of the changes compared to version 1 effective from 17 May 2022	Justification for the revision
1.	Formal corrections.	Alignment with the current sample of the legal act on grant award / transfer, update of the Framework for State Aid for Research, Development and Innovation, clarification of the title of the Request for approval to lease.

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1. LEASES AND LOANS IN P JAC PROJECTS

According to the general sample of the legal act on the grant award/transfer (hereinafter also Legal act) in P JAC, the following applies:

17.1 *The beneficiary is obliged to treat the property funded by the grant with due care, in particular to protect it against damage, loss or theft.*

17.2 *Except in cases where the purpose of the project is fulfilled, the beneficiary may not, during the project implementation and sustainability, transfer the property funded even partially by the grant without the prior written approval of the P JAC Managing Authority to the ownership of another person or let it be used by another person (in the case of loans and leases, the condition of the prior written approval of the P JAC Managing Authority applies only to fixed assets and at the same time the period of borrowing or renting longer than 30 calendar days¹), and furthermore, this property may not be encumbered for that period without the prior written approval of the P JAC Managing Authority, nor may the ownership rights of the beneficiary be restricted in any way.*

17.3 *The beneficiary is obliged to ensure that the property transferred for use is not further transferred for use to another entity.*

17.4 *In the case of lease/loan of equipment (except for equipment supported in the de minimis regime), the beneficiary is obliged to keep an instrument log for the instrument he/she wishes to lease/lend on a complementary basis, in which the lease/loan must be distinguished from other use by the beneficiary. In the case of lease/loan of immovable property (except for property supported in the de minimis regime), the beneficiary is similarly required to keep an area log to distinguish the lease/loan of the property or part of it from other use by the beneficiary. The obligation to keep an instrument log or an area log applies at least for the duration of the lease/loan.²*

17.5 *The beneficiary is obliged to inform the P JAC Managing Authority in the relevant project report about the leases or loans carried out in the given period."³*

In case the beneficiary⁴ has spare capacity of the property built or acquired from the P JAC, i.e. if the entire capacity is not used for the purposes, resp. the needs of the project, it may (in the case of fixed assets, if the duration of the loan or lease is longer than 30 calendar days, after prior written approval of the P JAC Managing Authority (hereinafter also MA)) offer this capacity to other entities to increase the efficiency of public funds spent on the acquisition and commissioning of the property, in the form of a loan or lease, taking into account the 3E principle and observing other conditions below.

¹ I.e., more than 30 calendar days continuously in 1 calendar year, or a planned recurring lease/loan to the same entity for a similar activity for a total duration exceeding 30 calendar days in 1 calendar year.

² The instrument/area log may be replaced by another type of record, provided that it contains similar data to enable control of the use of the equipment/property, including the distinction between economic and non-economic activities.

³ The exact text may vary depending on which call the project falls under.

⁴ Or, in the case of state organizational unit, the project implementer. For the sake of simplicity, only "beneficiary" will be referred to hereafter. The project partner can also dispose of spare capacity of the property built or acquired from the P JAC, but the beneficiary/implementer shall submit the request for approval.

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1) Specific obligations of the beneficiary in case of loan

Loan (or gratuitous provision)⁵ of property can be implemented (in relevant cases after prior written approval of the MA) in the event that the spare capacity is provided:

- another research organisation under the so-called "Open Access",
- to the body exercising public power⁶ or
- an institution that is part of the national educational system and is funded entirely or mainly by public funds,

and only for their non-economic activities (not for economic activities such as contract research, a music concert, a paid language course, a paid sports club, etc.⁷). The beneficiary (if provided for in the Legal act) will request the approval of the MA in the form of an internal dispatch in MS2021+. The loan of property must always be in accordance with the Legal act, which means that the loan must not jeopardise the achievement of the purpose of the grant and compliance with the sustainability conditions, if any, and all the rules resulting from the Legal act must be respected.

2) Specific obligations of the beneficiary in the case of lease

In the case of lease⁸, the beneficiary must (in relevant cases, in addition to the obligation to obtain prior written approval of the MA) comply with the obligations set out in the Legal act, relevant regulations on State aid (esp. Framework for State Aid for Research, Development and Innovation⁹, Commission Notice on the notion of State aid¹⁰) and rules regarding the project revenues (see chapter 8.3 of Rules for applicants and beneficiaries). The beneficiary is fully responsible for complying with these rules.

a) Obligations of the beneficiary related to the lease of the property arising from the legal act on the grant award/transfer:

- The lease of the property must always be in accordance with the Legal act, which means that the lease must not jeopardise the achievement of the purpose of the grant and compliance with the sustainability conditions, if any, and all the rules resulting from the Legal act must be respected. In case of doubt, the beneficiary may consult the MA before actually submitting the Request for approval of lease of acquired property.
- The beneficiary (if the Legal act stipulates the obligation to obtain prior approval of the Managing Authority) is obliged to submit to the MA a **Request for approval of lease** of the acquired property (see the recommended template of the Request for approval of the lease of property acquired from P JAC), in the form of an internal dispatch in MS2021+, or

⁵ A gratuitous provision is also considered to be a loan, where the borrower bears the usual costs associated with the use of the item (see Section 2199 of Act No. 89/2012 Coll., the Civil Code, as amended, hereinafter referred to as the "CC") and participates in the operating costs associated with the operation of the relevant property for the duration of the loan.

⁶ An entity exercises public authority when the activity in question is one of the essential functions of the State or is linked to those functions by its nature, its purpose and the rules governing it.

⁷ In the case of the exercise of an economic activity of the institution, the beneficiary is obliged to set a market price of the lease in order to avoid the granting of indirect state aid.

⁸ The following applies both to lease (see § 2200 et seq. CC) and other forms of provision of property against payment (e.g. tenancy - see § 2332 et seq. CC).

⁹ Framework for State Aid for Research, Development and Innovation 2022/C 414/01, especially points 21, 26 and 27.

¹⁰ Communication from the Commission on the concept of State aid referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01).

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as an attachment to the Change request, if as a result of the implementation of the lease, a change in the project would also arise (e.g. the project would start to generate income).

- In the case of both the lease of space (relative to the total eligible space) and the lease of equipment (relative to the individual instrument), the beneficiary shall attach to the Request for approval of lease, in particular:¹¹
 1. **Lease overview** (of all leases approved/implemented so far under the project, see annex Recommended Lease overview template);
 2. **Method of determining (calculating) the price for the lease** (can be supported by e.g. market research or expert opinion or tender documents);
 3. **Draft lease agreement** (with a clear specification of the purpose of the lease).
- b) **Obligations of the beneficiary related to the lease of the property arising from the Framework for State Aid for Research, Development and Innovation and the Commission Notice on the notion of State aid:**
 - The spare capacity of the acquired property can be leased only **on an ancillary basis**, taking into account the 3E principle. Complementarity refers to both the capacity of the leased property and the purpose of the lease.
 - The beneficiary should always prefer to provide value-added services (e.g. contract research, carrying out required tests/measurements on equipment operated by project staff, training, etc.) rather than simple lease of the property.¹²
 - The contractual relationship should allow for termination by reasonable notice in the event of an unexpected increase in the need for capacity (capacity ceases to be available) or if the terms of the lease are no longer favourable to the beneficiary.
 - The lease of the property (except for property supported in the de minimis regime) must be negotiated at **market price**. The market price may be **determined in one of the following ways**, in accordance with the Commission Notice on the notion of State aid:
 - through a competitive, transparent, non-discriminatory and unconditional **tender procedure**¹³,
 - **benchmarking**, i.e. assessing the price charged to users for access to comparable property (market benchmark)¹⁴,
 - by other valuation methods based on generally accepted standard valuation methods (e.g. **expert opinion**)¹⁵.

If the market price cannot be determined by any of the above methods, the price for the lease must:

¹¹ The documents required below will always be requested from the beneficiary. The beneficiary may provide other relevant supporting documents, as well as the MA may request them if they are necessary for the assessment of the Request for approval of lease.

¹² An exception may be cooperation with partners on research projects (e.g. Centres of Competence, Horizon2020).

¹³ See points 90 to 94 of the Commission Notice on the concept of State aid.

¹⁴ See points 98 to 100 of the Commission Notice on the concept of State aid.

¹⁵ See points 101 to 105 of the Commission Notice on the concept of State aid.

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- reflect full costs and generally include a margin based on the margins normally applied by undertakings operating in the sector of the service concerned, or
- be the result of negotiations under normal market conditions, provided that the beneficiary in the negotiations seeks to obtain the maximum economic benefit in concluding the contract and covers at least its marginal costs.
- The beneficiary must allow open and **non-discriminatory access** to the property acquired within the project (except for property supported in the de minimis regime) which it wishes to lease.
 - The MA recommends that beneficiaries conclude a lease contract for **a maximum period of one year** to avoid blocking other entities interested (in spare capacities).
 - In the case of lease of property for a period **longer than 30 days** (continuously per calendar year, or planned recurring lease to the same entity for a similar activity for a total duration exceeding 30 days per calendar year), the MA recommends that information that the spare capacity of the property acquired from public funds is being leased, including the financial conditions of the lease, **to be published throughout its duration at least on the beneficiary/project website** or by other appropriate means.
 - If the beneficiary chooses the method of establishing the market price for the lease through a **tender procedure**, the MA recommends the beneficiary to **offer the** spare capacity of the property to be leased **publicly** (for example on the beneficiary/project website) **for at least 30 days** before concluding the lease contract.

3) Common provisions for loan and lease

In the case of both leasing and loan (regardless of whether the beneficiary was required to obtain prior approval), the beneficiary is further required to comply with the following provisions under the Legal act:

- **The beneficiary is obliged to ensure that the leased/lent property is not transferred for use by another entity.**
- In the case of lease/loan of **equipment** (except for equipment supported in the de minimis regime), the beneficiary is also obliged to keep an **instrument log** for the instrument he/she wants to lease/lend on an ancillary basis, in which the lease/loan must be distinguished from other use by the beneficiary. In the case of lease/loan of **immovable property** (except for property supported in the de minimis regime), the beneficiary is similarly obliged to keep an **area log** which allows the lease/loan of the property or part of it to be distinguished from other use by the beneficiary.¹⁶ This does not affect the possible obligation to keep more detailed records for the purpose of verifying compliance with the provisions of ancillary economic use according to the **Methodology of reporting economic activities** in terms of State aid in P JAC.¹⁷

¹⁶ The obligation to keep an instrument log or area log applies at least for the duration of the rental/borrowing period. The instrument/area log may be replaced by another type of record, provided that it contains similar data enabling the use of the equipment/property to be checked, including the distinction between economic and non-economic activities.

¹⁷ If the Legal act considers it relevant for the beneficiary.

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- The beneficiary is obliged to **inform the MA** about the leases or loans carried out in the monitoring period in **the relevant project report** (project implementation report or project sustainability report).

Vending machines: in the case of the placement of vending machines in the premises of the beneficiary, it is not (with reference to CJEU judgment C-451/06) either a lease or a tenancy of the space, but a grant of the right to use a certain space in which the vending machine is placed, but not with a restriction on the use or enjoyment of the same space by another entity.

Recommended templates:

Recommended template for the Request for approval of the lease of property acquired from P JAC

Recommended template for the Lease overview

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Table: Obligations of the beneficiary

Obligations of the beneficiary in the case of loan	Obligations of the beneficiary in the case of lease
- prior written approval of the MA (only in cases where it is required in the Legal act)	- prior written approval of the MA (only in cases where it is required in the Legal act)
<p>Obligations according to the Legal act:</p> <ul style="list-style-type: none"> - must not jeopardise the purpose of the grant and compliance with the conditions of sustainability (if stipulated) - compliance with all Legal act rules - request for approval to lend (only in cases where prior approval is required) - prohibition of transferring the property to other entities for use - instrument log or area log - informing about realized loans in project implementation report / project sustainability report 	<p>a) Obligations according to the legal act:</p> <ul style="list-style-type: none"> - must not jeopardise the purpose of the grant and compliance with the conditions of sustainability (if stipulated) - compliance with all Legal act rules - request for approval to lease (only in cases where prior approval is required) <u>with annexes</u> (lease overview, method of determining the price, draft lease agreement) - prohibition of transferring the property to other entities for use - instrument log or area log - informing about realized leases in project implementation report / project sustainability report
- can only be lent to certain entities, and only for their non-economic activities	<p>b) Obligations according to the Framework for State Aid for Research, Development and Innovation and the Commission Notice on the notion of State aid:</p> <ul style="list-style-type: none"> - complementarity of the lease - determination of the market price - allowing open and non-discriminatory access to the acquired property

2. TREATMENT OF FIXED ASSETS SUPPORTED OUTSIDE THE STATE AID REGIME FROM P JAC FUNDS AFTER THE END OF THE PROJECT'S SUSTAINABILITY PERIOD¹⁸

This part of the methodology is not relevant for property supported in the state aid regime (GBER/SGEI) or in the de minimis regime (in these cases the economic use of the supported property is not limited).

In accordance with the legal act on the grant award/transfer ("Legal act"), **projects for which all the supported fixed assets have not yet been written off are obliged to comply with the conditions of non-economic use of fixed assets supported outside the state aid regime throughout the lifetime of the supported property, respectively the depreciation of the supported property.**

In view of this fact, it is necessary that the beneficiary / project partner (hereinafter referred to as "beneficiary/partner") continues to monitor the share of ancillary economic activity of the entity (relevant entity) after the end of the project's sustainability period according to the *Methodology of reporting economic activities* for at least 10 years from the grant award / issuance of the Legal act (if the lifetime of the supported property is longer than 10 years). The beneficiary/partner is obliged to keep the documentation necessary for possible checks of compliance with this condition, but no longer has to submit it annually to the Managing Authority ("MA"). Should there be a risk of exceeding the limit of possible ancillary economic use of the supported fixed assets, the beneficiary/partner or the new acquirer of the property is obliged to inform the MA immediately.

The following procedure takes into account the conditions of non-economic use as well as other obligations arising from the state aid rules¹⁹ when treating the property after the end of the project's sustainability period:

Step 1 - Has the supported property already been depreciated?

Yes - If the supported property is already depreciated, there is no need for its further monitoring in terms of fulfilling the conditions of ancillary economic activities and the property can therefore be transferred without further conditions (although the MA recommends that any transfer of depreciated property in relation to enterprises²⁰ should also take place under market conditions, taking into account the risk of granting indirect state aid to the acquirer) → **THE PROPERTY IS NOT MONITORED.**

No - For non-depreciated property that has been supported by the P JAC, the condition of non-economic or ancillary economic use still applies and it is necessary to examine other circumstances of the transfer of property → Go to step 2.

Step 2 - Should the property be transferred to an external entity?

Yes - If the property is to be transferred to an external entity, or if there is a transfer between beneficiary and partner or vice versa, it is necessary to examine the other circumstances of the transfer - go to step 3.

No - If there is only an internal transfer within the beneficiary or partner, it is necessary to continue to monitor the transferred property for compliance with the conditions of ancillary economic activities,

¹⁸ Respectively, after the end of project implementation in case the project is not obliged to be sustainable.

¹⁹ In particular, the rules for granting indirect aid within the meaning of Chapter 2.2 of the Framework for State Aid for Research, Development and Innovation as well as the general principles for the transfer of state aid to the acquirer when property is transferred. Compliance with the state aid rules is the full responsibility of the beneficiary/partner.

²⁰ An enterprise is an entity that carries out an economic activity, i.e. offers goods or services on the market.

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as the location of the property within the beneficiary/partner is not relevant and the beneficiary/partner advantage is still present. The transferred property must continue to be monitored and be part of the relevant entity → **BENEFICIARY/PARTNER CONTINUES TO MONITOR THE PROPERTY.**

Step 3 - Should the property be transferred at market price?

Yes - If the property is to be transferred to an external entity at market price²¹, there is no further transfer of the benefit to that external entity²² and the property no longer needs to be monitored. However, for reasons of legal certainty and in view of the conditions resulting from the Legal act (i.e. the obligation to use the supported resources for non-economic activities), it is necessary that the beneficiary reinvests all profits from the sale of the property supported by the P JAC back into its primary (non-economic) activities, thus eliminating the advantage granted in the form of the undepreciated part of the supported property → **THE PROPERTY IS NOT MONITORED + BENEFICIARY/PARTNER REINVESTS PROFITS IN NON-ECONOMIC ACTIVITIES.**

No - If the property is to be transferred at a price below the market price²³, it is necessary to examine whether this transfer will result in indirect state aid to the undertaking from the beneficiary/partner (within the meaning of Chapter 2.2 of the Framework for State Aid for Research, Development and Innovation) and therefore it is necessary to examine the activities of the acquirer of the property → Go to step 4.

Step 4 - Does the acquirer of the property carry out an economic activity?

Yes - If the property is to be transferred at below market price²⁴ to an acquirer which is an undertaking within the meaning of the state aid rules²⁵, this transfer would constitute a grant of indirect state aid from the beneficiary/partner (within the meaning of Chapter 2.2 of the Framework for State Aid for Research, Development and Innovation), as the acquirer will receive an advantage from the beneficiary/partner in the form of a difference in the price of the property compared to their market price. A transfer below market price could only be carried out if one of the exceptions to the prohibition on state aid (e.g. de minimis aid) applies.

²¹ Or the equivalent of the market price in the case of an exchange for another property/service.

²² According to points 133 and 134 of the General Court's Judgment of 19 June 2019, *Nürburgring eV v European Commission*, T-373/15, where a company which has received aid incompatible with the internal market is acquired at market price, namely the highest price that a private investor would be willing to pay under normal conditions of competition for that company in the state in which it finds itself - in particular after receiving state aid - the aid-element is valued at market price and included in the purchase price. Under these conditions, the acquirer cannot be considered to have been favoured over other operators on the market. If, on the other hand, the sale of the assets of the beneficiary of the state aid takes place at a price below the market price, the unjustified advantage may have been passed on to the acquirer.

In this context, it may be noted that any breach of the conditions of the complementary economic activities would render the original aid contrary to the rules governing the granting of aid and therefore potentially incompatible. The unjustified advantage could subsequently be passed on to the acquirer, who acquired the property under non-market conditions.

²³ Or the equivalent of the market price in the case of an exchange for another property/service.

²⁴ Or the equivalent of the market price in the case of an exchange for another property/service.

²⁵ An undertaking is considered to be an entity which carries out an economic activity (offers goods or services on the market). An entity which carries out only non-economic activities is not considered to be an undertaking within the meaning of the state aid rules. The pursuit of an ancillary economic activity does not alter the fact that the acquirer of the property is not considered an undertaking within the meaning of the state aid rules.

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No - If the property is transferred at below market price²⁶ to an acquirer that is not an undertaking within the meaning of the state aid rules²⁷ (i.e. a municipality, public university or other research organisation) and the property will be used by the acquirer for its non-economic activities²⁸, the transfer can be made²⁹. However, due to the fact that the advantage (the aided property) is transferred to this acquirer, it is necessary that this acquirer continues to monitor the fulfilment of the conditions of the complementary economic activities for the transferred property and that the original aid scheme remains unchanged for at least 10 years from the grant award / issuance of the Legal act.³⁰

For reasons of legal certainty and in view of the conditions resulting from the Legal act (i.e. the obligation to use the supported resources for non-economic activities), in the case of this transfer, it is also necessary that the beneficiary/partner reinvests any profits from the sale of the property supported by P JAC back into their primary (non-economic) activities, thus eliminating the advantage granted in the form of the undepreciated part of the supported property → **PROPERTY ACQUIRER CONTINUES TO MONITOR THE PROPERTY + BENEFICIARY/PARTNER REINVESTS PROFITS INTO NON-ECONOMIC ACTIVITIES.**

²⁶ Or the equivalent of the market price in the case of an exchange for another property/service.

²⁷ An undertaking is considered to be an entity which carries out an economic activity (offers goods or services on the market). An entity which carries out only non-economic activities is not considered to be an undertaking within the meaning of the state aid rules. The pursuit of a complementary economic activity does not alter the fact that the acquirer of the property is not considered an undertaking within the meaning of the state aid rules.

²⁸ Ancillary economic activities can also be considered as non-economic activities according to point 21 of Framework for State Aid for Research, Development and Innovation.

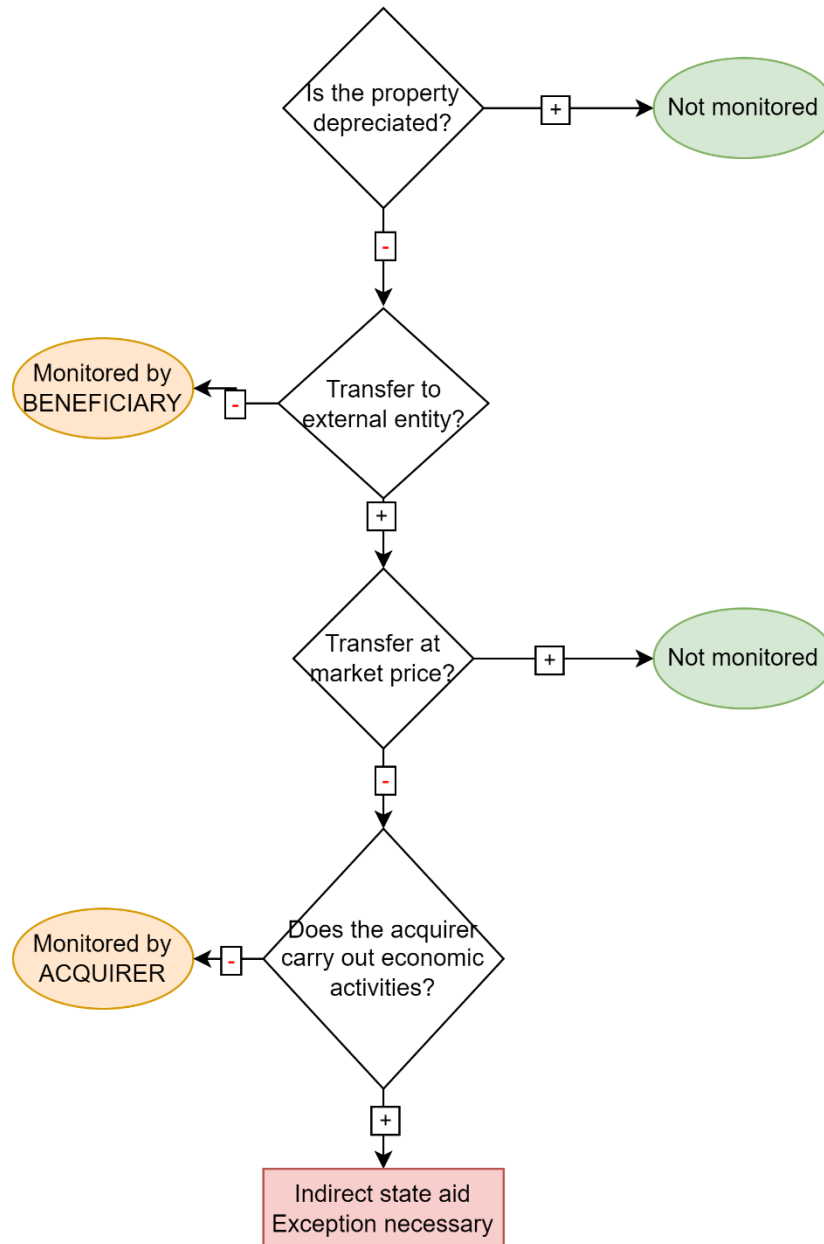
²⁹ In this case, the transfer does not constitute indirect aid within the meaning of Chapter 2.2 of the Framework for State Aid for Research, Development and Innovation.

³⁰ According to point 134 of the General Court's Judgment of 19 June 2019, *Nürburgring eV v European Commission*, T-373/15, if the sale of the assets of the beneficiary of state aid is made at a price below the market price, the unjustified advantage may have been passed on to the acquirer.

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This process can be described by means of a flow chart:

Diagram of the procedure of treatment of the property supported by P JAC after the end of the project sustainability period³¹



³¹ Respectively, after the end of project implementation in case the project is not obliged to be sustainable.

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