

Report under Article 9 of the Commission Decision on services of general economic interest and point 62 of the Framework for State aid in the form of public service compensation

Hungary

2012-2013

1 Description of the application of the Decision

1.1. Public service functions/sectors involved

1. Operation of public sports facilities
2. Provision of infrastructure required to perform local-government public functions, technical support for organisations performing institutions' operating tasks
3. Administrative and service support activities linked to public administration and public security
4. Local-government asset-management and asset-administration functions
5. Public urban-management functions
6. Public service events

7. Public service activities linked to the publication of the Magyar Közlöny [Hungarian Official Gazette]
8. Local-government water management
9. Maintenance and care of local-government buildings
10. Public catering
11. Public sanitation
12. Public IT services, public IT developments
13. Youth policy
14. Public broadcasting services, support for local television
15. Waste management
16. Sewage collection and treatment
17. Chimney sweeping rendered as a public service
18. Funeral services
19. Public lighting
20. Management of publicly owned green spaces
21. Recreation scheme for the central public administration
22. Support for district heating

1.2. Content and forms of entrustment

In Hungary the aid-grantors met the entrustment obligation laid down in Article 4 of the Decision through contracts (grant agreements, public-benefit contracts, grant contracts, public service contracts), legislation (acts, government decrees, ministerial decrees, local-government decrees) or activity authorisations. Legislative entrustments accounted for 7.31 %, contractual entrustments for 92.69 %, of individual grants.

The data submitted reveals that local authorities entrust most public service functions to in-house service providers.

In Hungary, only beneficiaries referred to in Article 2(a) of the Decision received aid in the form of public service compensation. No public service compensation was granted on the basis of Article 2(b)-(e) of the Decision.

The State Aid Monitoring Office, which is responsible for examining whether state aid complies with EU competition rules, delivered a preliminary opinion on all planned aid (aid schemes, calls for tenders, individual grants) covered by the Decision and submitted to it in accordance with Section 7(1) and Section 17 of Government Decree No 37/2011 of 22 March 2011 on the procedure for state aid for the purposes of EU competition law and on the regional aid map. The Office approved only those aid plans that incorporated all the requirements of the Decision.

All legal acts approved by the Office contained a reference to the Decision, the entrustment, the public service obligation, the duration of the entrustment, the parameters for calculating, controlling and reviewing the compensation, an obligation to keep the documents for 10 years, and the rules on avoiding and recovering any overcompensation.

Where the beneficiary also engaged in activities falling outside the scope of public services, the compensation had to be recorded separately; this obligation has also been laid down in the aid plans.

Chapter 8 of and Annex 3 to Government Decree No 37/2011 govern the types of aid falling

within the scope of the Decision. Section 20 states that it is the obligation of the body granting the aid to check whether the specific recording and communication obligations laid down in the Decision, and the various obligations set out above, are met. Section 20(5) requires the body granting the aid to submit a report to that effect, containing the information laid down in Annex 3, to the State Aid Monitoring Office.

1.2. Duration of the entrustments

The data submitted reveal that the local authorities of the larger towns and cities usually entrust beneficiaries with the performance of public service functions under framework contracts concluded for several years, although the annual compensation for performing these public service functions is laid down in annual contracts. The smaller local authorities usually conclude shorter, annual contracts. As the more expensive facilities are mostly state/local-authority-owned (e.g. water-utility and sewage facilities), public service contracts concluded with operators do not exceed 10 years, since the development costs are incurred by the state or the local authority.

1.3. Exclusive or special rights

No information on this matter was received from aid-grantors.

1.4. Description of compensation mechanism

According to the information received, most of the public service compensation granted by aid-grantors was in the form of non-refundable aid.

All the plans approved by the Office applied the 'cost-compensation' method, where the compensation was used to cover justified costs incurred during the performance of a public service obligation that are not covered elsewhere, and in certain cases to cover reasonable profits.

1.5. Overcompensation

The Office approved only those aid plans that contained the rules on repayment of overcompensation, taking account of the 10 % carry-forward rule.

According to the information received from aid-grantors, overcompensation rarely occurred. In the four cases where it did, either it was repaid by the beneficiary or deducted from the following year's compensation under the 10 % rule.

1.6. Total public service compensation granted in Hungary in accordance with the Decision

Aid totalling HUF 32 424 002 458 was granted to 318 beneficiaries in 2012, against aid totalling HUF 39 259 420 919 granted to 348 beneficiaries in 2013.

1.7 Other quantitative information

	<i>Sector</i>	<i>Number of beneficiaries</i>
1	Operation of public sports facilities	1
2	Provision of infrastructure required to perform local-government public functions, technical support for organisations performing institutions' operating tasks	1
3	Administrative and service support activities linked to public administration and public security	1
4	Local-government asset-management and asset-administration functions	3
5	Public urban-management functions	2
6	Public service events	2
7	Public service activities linked to the publication of the <i>Magyar Közlöny</i> [Hungarian Official Gazette]	1
8	Local-government water management	1
9	Maintenance and care of local-government buildings	1
10	Public catering	1
11	Public sanitation	1
12	Public IT services, public IT developments	14
13	Youth policy	2
15	Public broadcasting services, support for local television	610
16	Waste management	1
17	Sewage collection and treatment	36
18	Chimney sweeping rendered as a public service	1
19	Funeral services	1
20	Public lighting	1
21	Management of green spaces	1
22	Recreation scheme for the central public administration	1
23	Support for district heating	60

Where a beneficiary performs several public service activities, it appears under all relevant sectors in the table.

In the case of individual aid, the average amount of aid stood at approximately HUF 330 million in 2012 and HUF 600 million in 2013.

As regards aid schemes during the period under review, an aid amount of around HUF 65 million per beneficiary was paid out.

2. Problems encountered when applying the Decision

General remark:

Given the complexity of the issue, we believe that the Member States should be provided with

a summary of the methodologies for calculating reasonable profit used by the Member States and approved by the Commission.

Specific questions:

- Where the aid-grantor undercompensates the beneficiary during the contract period owing to a lack of funds, as a result of which the compensation does not cover justified costs, and the beneficiary is forced to take out a loan, can the aid-grantor compensate the beneficiary at a later date (but still during the contract period) by (a) paying off the amount of the loan on maturity or the outstanding balance before maturity or (b) assuming the beneficiary's debt up to the current value of the undercompensation?
- Since reasonable profits are granted by the aid-grantor in order to cover any risks that may be incurred by the beneficiary in the future, can the contract be amended so that - where the contract did not originally contain any reasonable profit or it fails to achieve the maximum swap rate + 100 basis points - the amended contract allows for the possibility of reasonable profit in order to offset as fully as possible the categories of costs subsequently incurred but not originally covered by the contract?
- Is the following method for calculating reasonable profit correct?

The amount of profit must be determined in such a way that, taking account of compensation and profit, the beneficiary's rate of return on capital for each separate public service activity (pre-tax earnings for each separate public service activity \div equity capital for each separate public service activity distributed on a cost basis) cannot exceed the swap rate + 100 basis points.

3. Third-party complaints

No such complaints were received by the Office.

4. Miscellaneous

When assessing the various contracts and agreements the Office always examined first whether the conditions set out in the Altmark judgment were met. If the aid-grantor could not prove beyond all doubt that these conditions were met, the Office then began to examine whether the planned measure was in line with the conditions laid down in the Decision.

In accordance with Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest¹, the Office issued 8 opinions in 2012 and 16 opinions in 2013.

We wish to point out that Hungary has no aid measure containing public service compensation that was approved by the European Commission on the basis of the European Union framework for state aid in the form of public service compensation².

Budapest, 2014 October

¹ OJ L 114, 26.4.2012, p. 8.

² OJ C 85, 11.1.2012, p. 15.