



MINISTRY OF
INNOVATION AND TECHNOLOGY

State Aid Monitoring Office

Budapest, 19 March 2019

HT.5261 - Draft Commission Notice on the recovery of unlawful and incompatible State aid (recovery notice) –written comments from Hungary

1. In paragraph 4 of the draft recovery notice and the related footnote 7, reference should be made to the amendment of the Implementation Regulation as well (it was also amended when the original procedural regulation was amended in 2015).
2. Among the Treaty provisions for compatibility in paragraph 8, the legal base of agricultural aid (Article 42 TFEU) should also be mentioned.
3. In paragraph 35, we believe that the reality is that in certain national laws, the legal base of the legal measure becomes null and void from the original adoption of the legal base and not from the adoption of the Commission's recovery decision as the text suggests (possibly as a result of the decision, but not from the decision). The text needs to be adjusted accordingly, in order not to be ambiguous.
4. Concerning paragraph 38 indent 2, we would like to point out that aid measures can become authorised and thus existing aid under Article 4(6) of the Procedural Regulation, i.e. 15 days after a written reminder of sent by a Member State if the Commission does not take action following a notification. Paragraph 38 should refer to this case.
5. Concerning paragraph 39 indent 5, the Hungarian authorities think that the information summarized in the footnote is too important to be only in a footnote. We would ask this to be moved to the main text of the draft.
6. Concerning paragraph 64, for clarity reasons, we would propose that the text should include an explanation why/in what common cases it might not be possible to define the exact amount to be recovered.
7. As regards paragraphs 76 and 77, the Hungarian authorities note that as non-compliance with the recovery deadline is usually not apparent right after the adoption of the recovery decision, a more flexible wording would be useful. Even though there cannot be retroactive extension, in practice the Commission does not initiate an infringement procedure immediately after the deadline elapses. We understand that the Commission does not want to encourage Member States to miss the deadline, but a reference to the loyal cooperation principle might solve this issue.
8. The Hungarian authorities believe that in paragraph 84 it should be clearly stated as a matter of principle that the aid must always be recovered from the real beneficiary and not the nominal beneficiary if it is passed on within a company group.

9. In point 86, the Hungarian authorities believe that the use of the term “group of undertakings” should be avoided as it does not fit the context. Undertakings are by definition single economic actors under the relevant jurisprudence, i.e. a group of entities under a common source of control is an undertaking, and in State aid law there are no groups of undertakings. As an alternative, we suggest the following phrasing: In the case referred to in paragraph 85, the recovery decision may order the Member State concerned to recover the aid not only from the ~~undertaking~~ **entity** which directly benefitted from it but also from the whole group of ~~undertakings~~ **entities** forming an economic unit (**an undertaking**) or from some of the legal entities belonging to it

10. It is unclear for the Hungarian authorities why paragraph 88 uses “may” to describe the Member State’s obligation to extend the recovery to another undertaking if the advantage is passed on. It should be stated here in what cases this obligation does not apply.

11. The Hungarian authorities suggest that paragraph 94 should specifically refer to the case when an undertaking is split into multiple ones, and therefore multiple successors are present. These situations should be handled from recovery point of view for example in a way that they are obliged to pay in proportion to the value of their assets. The text should refer to this.

12. Paragraph 99 and footnote 102 do not refer to the SGEI decision (Commission Decision 2012/21/EU) despite the fact that it may also be used as an option to avoid recovery if its criteria are met, similarly to the block exemption or the de minimis regulations.

13. The third indent of paragraph 123 suggests that in the case of recovery in kind, these assets should not be used for an extended period of time. Obviously, the beneficiary should not use them but if they are handed over as part of the recovery in kind and then sold at market price, the Hungarian authorities believe that the assets should be allowed to be used. The current text of paragraph 123 might imply that they should be removed from economic use, which is unreasonable.

14. As regards paragraph we believe that the text should clearly separate the situations where the State is a creditor of an undertaking an during the insolvency procedure it can make concession also taking into account the market creditor principle and the EU Insolvency Directive on the one hand and cases where the State is a creditor due to the recovery obligation imposed by the Commission’s decision and not having any kind of margin to reduce the amount to be recovered during the insolvency procedure no matter how other creditors behave.

15. In paragraph 127, the text suggests that the Member State may not be in a position as a creditor to start winding up procedures (“where it has that position”). The Hungarian authorities believe that because of the recovery obligation, the state is always a creditor, so it should be clarified what situations the Commission has in mind.

16. The wording of paragraph 145 suggests that new compatible aid may be granted to a beneficiary subject to a recovery obligation, but its payment must be suspended. This is against the Deggendorf principle, and it should be clarified in paragraph 145 that no new aid may be granted, and it is the payment of any aid already granted before the recovery obligation that has to be suspended.

17. Paragraph 148 should be phrased in a way that allows flexibility concerning the 2+2 month deadlines; the text should state that these are minimum deadlines only.
18. Paragraph 150 should specifically refer to the option of absolute impossibility as an alternative to actual recovery, coherently with the other parts of the text (specifically section 2.4.3).
19. A list of suggested corrections for the Hungarian version of the text is attached.

List of suggested corrections for the Hungarian version

Para	Text in the draft	Proposed text	Remark
11	„közvetlen hatás”	„közvetlen hatály”	terminológiai javítás
15	A Bizottság arra utasítja a tagállamot, hogy visszafizettetési határozattal fizettesse vissza a támogatást.	A Bizottság a visszafizettetési határozattal arra utasítja a tagállamot, hogy fizettesse vissza a támogatást.	a tervezetben szereplő szórend értelemzavaró
32	„Az Unió bíróságai szűken értelmezik a jogbiztonság elvét és azt a megközelítést fogadták el, hogy a visszafizettetést csupán kivételes körülmények esetén kell alkalmazni, amelyek fennállását eseti alapon kell értékelni.”	„Az Unió bíróságai szűken értelmezik a jogbiztonság elvét, és azt a megközelítést fogadták el, hogy a jogbiztonság elvére való hivatkozás csak kivételes körülmények között akadályozhatja meg a visszatérítetést, és annak fennállását eseti alapon kell vizsgálni.”	a tervezetben szereplő megfogalmazás nem egyértelmű és nincs összhangban az angol változattal
70	szakosodott közigazgatási eljárások	szakigazgatási eljárások	terminológiai javítás
91	„egy sor nyitott, nem együttes kritérium segítségével”	„ nem taxatív és nem együttesen teljesítendő kritériumok segítségével”	terminológiai javítás
109	„a visszafizettetési határozat szerint visszatérítésre kerülő támogatás a kamatot is magában foglalja, amely attól a naptól kezdve, amikor a támogatást a kedvezményezett rendelkezésére bocsátották, addig a napig, amíg az visszafizetésre nem került”	„a visszafizettetési határozat szerint visszatérítésre kerülő támogatás a kamatot is magában foglalja, amely attól a naptól kezdődően alkalmazandó, amikor a támogatást a kedvezményezett rendelkezésére bocsátották, addig a napig, amíg az visszafizetésre nem került”	megfogalmazásbeli pontosítás
115	„Ha egy visszafizettetési határozat jogorvoslati	„Ha egy visszafizettetési határozat elleni	tartalmi pontosítás

	kérelemmel még megtámadható, a tagállam elfogadhatja a visszatérítendő támogatás ideiglenes visszafizetését.”	jogorvoslati kérelmet még nem bírálták el, a tagállam elfogadhatja a visszatérítendő támogatás ideiglenes visszafizetését.”	
117	escrow-számla	letéti számla	terminológiai javítás
120	„mely lehetővé teszi a hatóságok számára a támogatás időközi kifizetésének elrendelését”	„mely lehetővé teszi a hatóságok számára a támogatás időközi visszafizetésének elrendelését”	terminológiai javítás
122	„létező jóváírás”	„létező követelés” vagy „fennálló követelés”	terminológiai javítás