

REPORT ON DENMARK'S APPLICATION OF THE COMMISSION DECISION OF 20 DECEMBER 2011 ON SERVICES OF GENERAL ECONOMIC INTEREST

June 2016

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Introduction

According to the Commission Decision of 20 December 2011 on services of general economic interest, each Member State shall submit a report on the implementation of the Decision to the Commission every two years with a description of the application of the Decision in the sectors covered. According to Article 9 on Reports, this report must be submitted by 30 June 2016.

In order to obtain the necessary information, the Ministry of Business and Growth has asked all ministries to submit relevant contributions on the compensation mechanisms that the individual authorities administer and which they have deemed to fall within the scope of the Decision.

This report is a follow up to the report that Denmark sent to the Commission in June 2014 and should be read in conjunction with that report.

In the light of this, the following contributions to the report have been prepared:

- A. Public service compensation provided to social housing companies (**Ministry of Housing, Urban and Rural Affairs**)
- B. Compensation for public service in the form of pilotage in certain Danish ports (**Ministry of Business and Growth**)
- C. Public service compensation provided to hospitals (**Ministry of Health and Prevention**)
- D. Public service compensation provided to airports (**Ministry of Transport and Building**)
- E. Compensation for public service in the form of maritime transport (**Ministry of Transport and Building**)

Section A on the social housing sector follows the Commission's guidelines for the report. The other sections on pilotage and the hospital, air transport and maritime transport sectors are less comprehensive, which is partly due to the fact that the compensation provided is not always considered to be covered by the Commission Decision of 20 December 2011. The Danish report only contains information on compensation mechanisms that are considered capable of falling within the scope of Article 2 of the Commission Decision of 20 December 2011. Other compensation mechanisms for businesses that provide services of general economic interest, e.g. aid for land transport, are therefore not described in the report.

A. Public service compensation provided to social housing companies

1. Status report

In its previous reports, Denmark provided a detailed account of the Danish rules concerning social housing companies. Originally, there were the reports from 2008 and 2013, submitted as a follow up to Commission Decision 2005/842/EC. As part of the follow up to the Commission Decision of 20 December 2011 on services of general economic interest (2012/21/EU), Denmark submitted a report in June 2014 in accordance with Article 9 of the Decision covering the period from 2011 to the end of 2013. The present report consequently covers the period from 1 January 2014 to 31 December 2015.

It can generally be stated that, in the period mentioned, there have been no fundamental changes in the way in which Denmark has applied the Commission Decision of 2011 and the scope remains the same. Please therefore see the description of the Danish aid system etc. contained in the previous reports from December 2008, April 2013 and June 2014.

However, the following adaptations were made to the aid system in the period 2014-2015:

- a. Government guarantee when changing type of loan
- b. Aid for land purchase loans [*grundkøbslån*]
- c. Regulation of the use of the National Building Fund's resources
- d. Aid for the demolition of entire estates

Government guarantee when changing type of loan

According to the Danish rules on the financing of social housing construction, it is the Minister for Immigration, Integration and Housing who, after negotiating with the Finance Minister and the Minister for Business and Growth, decides on the type of loan to be used in the financing of social housing construction etc.

The previous rules meant that, when the Minister decided that a different type of loan should be used, the loan financing process for individual subsidised construction projects had to start from scratch for all the cases that were about to have loans disbursed. The process could take two to three months, and meant that the disbursement of the loan had to be postponed accordingly. Therefore it was necessary to set a relatively long deadline of two to three months for when the new type of loan should be used in the financing of the subsidised new construction. Thus the desired adjustment to the current market conditions was delayed.

In order to increase flexibility and speed in the adaptation of the financing to market conditions in connection with decisions to use a new type of loan for the financing of subsidised new construction, the rules were amended by Act No 402 of 28 April 2014 in such a way that the State guarantees the loan until the mortgage deed securing the loan is registered.

Aid for land purchase loans

Purchase sums in social housing construction are subject to a ceiling that sets an upper limit on how expensive the construction is allowed to be per square metre. The total purchase costs comprise land costs (land purchase price, site preparation, connection costs, etc.), contractor costs, consultancy and financing costs and charges, etc. The aim of the maximum amount is to avoid expensive construction out of consideration for the rent.

In order to achieve a versatile housing mix, Act No 221 of 3 March 2015 gave the large urban municipalities with significant population growth (Copenhagen, Aarhus, Odense, Aalborg and Frederiksberg) the opportunity to provide an additional land purchase loan with a view to

establishing social housing in planned residential areas where the land costs did not permit the construction of social housing below the ceiling.

The additional land purchase loan is only intended to cover the difference between 'normal' land costs for social housing construction and the total land costs pertaining to the area in question. A 'normal' land cost is defined as 20 % of the ceiling, excluding energy surcharges, that is applicable to social family housing at the time of commencement.

Among other things, one condition for granting permission to provide land purchase loans is that the amount of empty social housing for families and young persons in the municipality does not exceed 2 % at the time permission is granted.

There is a total limit of DKK 500 million within which the said municipalities may provide land purchase loans.

Regulation of the use of the National Building Fund's resources

In Act No 222 of 3 March 2015, funds were set aside so that the National Building Fund could continue to support renovation, community development measures, infrastructure changes, demolition and new construction in the social housing sector. The legislative proposal gives effect to the housing accord of 28 November 2015 between the Government (the Social Democrats and the Danish Social Liberal Party), the Danish People's Party, the Socialist People's Party, the Red-Green Alliance and the Conservative People's Party as regards the use of the resources of the National Building Fund.

The legislative proposal does not change the fundamental elements of the aid system. It is merely a prioritisation of the resources of the National Building Fund and a setting of financial limits for renovation work, demolition, infrastructure changes, community development measures, etc.

Aid for the demolition of entire estates

Under the previous rules, the National Building Fund could only support demolitions for the purpose of the continued existence of a housing estate. However, there are a number of estates where the situation is such that there is no prospect of them being able to continue. Therefore, Act No 223 of 3 March 2015 allowed the National Building Fund to support the demolition of entire social housing estates. Because the entire estate is being demolished and the aid is therefore not a loan that can be continued, it is provided as a grant.

Like the National Building Fund, housing organisations and municipalities are also now allowed to support the demolition of entire estates.

2. Scope and statistical information

The previous reports also contained a description of the scope and a range of statistical information about the aid schemes that were covered by the Commission Decision of 2005 and are now covered by the Commission Decision of 2011.

2.1. Scope

As mentioned, there has been no change in the scope relative to the Commission Decision of 2011. The scope continues to cover

- social housing organisations (that own social housing for families and young persons)
- autonomous institutions (that own social housing for young persons).

Please also see Denmark's latest report from June 2014 (section 2.1) and the previous reports from April 2013 (section 2.1) and December 2008 (sections 1.1.2 and 2).

2.2. Statistical information

The reports from 2008, 2013 and 2014 contained a range of statistical information about the public aid provided for construction and housing covered by the Commission Decisions of 2005 and 2011 respectively. The information concerned the years 2006 to 2013.

The present report contains data concerning the application of the Commission Decision of 2011 in the years 2014 and 2015 (see Tables 1 and 2 below).

New construction, etc.

According to Table 1, the municipalities granted public aid amounting to DKK 867.5 million and DKK 908.9 million in 2014 and 2015, respectively, for the construction of social housing for families and young persons. The total amount above does not include social housing for the elderly, including sheltered housing, because this housing is not covered by the Commission Decision.

Table 1: Aid for new construction etc. provided by the State and municipalities in the period 2014 to 2015

DKK millions	2014	2014	2014	2015	2015	2015
Aid scheme¹	DKK millions	Number of dwellings	Aid per dwelling in DKK thousands	DKK millions	Number of dwellings	Aid per dwelling in DKK thousands
Family housing	421.7	977	431.6	686.3	1 664	412.5
Youth housing	370.1	1 219	238.1	213.4	978	218.2
Renovation of youth housing	155.6			9.1		
Total	867.5			908.9		

Operation

As mentioned in the previous reports from 2008 and 2013, the said schemes are supplemented by special operating aid schemes, which are primarily administered by the National Building Fund.

According to Table 2, the National Building Fund provided a total of DKK 2 274.0 million and DKK 2 901.2 million in aid to social housing estates in 2014 and 2015 respectively. Social housing estates may consist of housing for families, young persons and the elderly. The amounts paid for the two first types of housing, which, as mentioned, are covered by the Commission Decision, are therefore somewhat lower than the figures given.

The municipalities may provide operating aid for purposes similar to those of the National Building Fund. The aid is typically provided as municipal co-financing of projects which are supported by the National Building Fund. It is considered that this is a case of an extremely limited amount of aid.

Table 2: Aid for social housing estates provided by the National Building Fund 2014-2015

DKK millions	2014	2015
<u>Loans</u>		
Operating loans ²	541.7	657.7

¹ The aid concerns social housing owned by social housing organisations and autonomous institutions. The aid consists of repayment instalment aid and a basic capital contribution. The repayment instalment aid is calculated as if it were paid out in the commitment year as a one-off grant. The breakdown of the basic capital contribution by housing type is estimated.

Loans to release property from reversion	1.4	18.5
Payments		
Operating subsidies [<i>Driftssikring</i>] ³	0.1	0.1
Resident advisers	0.0	0.0
Capital contribution etc.	721.4	1 201.0
Rent subsidies [<i>Huslejesikring</i>] ⁴	109.3	97.7
Rent contribution [<i>Huslejebidrag</i>]	86.8	76.4
Rent support [<i>Huslejestøtte</i>] (§ 91a)	172.9	193.8
Social and preventive measures	220.0	229.2
Repayment instalment aid, renovation	420.4	426.8
Total loans and payments	2 274.0	2 901.2

Sources: National Building Fund's annual reports 2014-2015.

Individual housing benefit

In addition to the above-mentioned forms of aid, the Act on individual housing benefit lays down rules on individual housing benefit for residents. This form of aid is paid directly to the residents, and for this reason the scheme is considered to fall outside the scope of the EU's rules on State aid (for more detail, see section 2 of the previous reports from 2008, 2013 and 2014).

² In connection with this, the municipalities provided operating loans of DKK 4.8 million in 2014 and DKK 11.5 million in 2015.

³ In connection with this, the municipalities provided operating subsidies of DKK 0.1 million in 2014 and DKK 0.1 million in 2015 and the State provided DKK 0.2 million in 2014 and DKK 0.2 million in 2015 in accordance with previous commitments.

⁴ In connection with this the State provided rent subsidies of DKK 7.1 million in 2014 and DKK 6.6 million in 2015.

B. Compensation for public service in the form of pilotage in certain Danish ports

The Danish pilotage market

The Danish pilotage market is primarily divided into transit pilotage and regional pilotage (see § 3 of Act No 352 of 12 April 2016 – the Pilotage Act). Transit pilotage is pilotage that passes through Danish waters without visiting Danish ports, while regional pilotage either commences or terminates in a Danish port. The market for transit pilotage is the larger of the two by turnover, which is due to the fact that the largest ships are in this market and they pay the highest rates (see below).

The largest actor in the Danish pilotage market is the state-owned pilotage company DanPilot. The state-owned pilotage service performs around 20 800 pilotage operations per year and has an annual turnover of around DKK 392 million. Until now, DanPilot has had an exclusive right to perform transit pilotage, while there is open competition in the area of regional pilotage. With the adoption by the Folketing (Danish Parliament) of bill L 176 A on 11 June 2014, DanPilot's exclusive right to perform transit pilotage will be phased out gradually and there will be full open competition by 2020.

Finally, in the area of regional pilotage, there is mandatory pilotage for ships with hazardous cargoes etc. This does not apply in the same way to transit pilotage, because under international agreements Denmark cannot impose mandatory pilotage on ships sailing through Danish waters. However, the International Maritime Organisation (IMO) recommends that ships carrying hazardous cargoes should use a pilot when passing through Danish waters, and the vast majority of ships follow this recommendation.

Fees

DanPilot's fees for regional pilotage subject to mandatory pilotage are laid down by regulation and are therefore fixed. The fee is calculated on the basis of a basic amount, a mileage fee, travel expenses and a supplement to the basic fee based on the ship's length, width and draft. The fees vary in such a way that it is more expensive for large ships to use pilots. Private pilotage companies can set their prices freely.

Universal service obligation

Under § 19 of the Pilotage Act, DanPilot is obliged to provide pilotage to ships that may want it or are subject to mandatory pilotage. This universal service obligation may entail additional costs, as capacity must be maintained to be able to fulfil the universal service obligation.

Compensation

As there is a desire both to operate DanPilot on equal terms with private pilotage companies and at the same time to fulfil the universal service obligation for pilotage in Danish waters, a public service contract has been entered into between the Danish State and DanPilot laying down the framework for how DanPilot may be compensated for any costs it may incur relating to the universal service obligation. A condition for DanPilot being able to receive compensation for fulfilling the company's universal service obligation (see § 19 of the Pilotage Act) is that DanPilot can substantiate net costs associated with it.

The public service contract has been entered into in accordance with EU rules on services of special economic interest.

C. Public service compensation provided to hospitals

1. Introductory observations

It is the opinion of the Danish authorities that there are no schemes in the Danish hospital service that fall within the scope of the Communication. This assumption is based on the fact that the Danish health service is publicly run and public expenditure on health is financed via taxation. In Denmark, an individual citizen's financial status, connection to the labour market and personal insurance situation have no relevance for access to the services of the public health service.

Planned hospital services are offered free of charge to persons resident in Denmark, and treatment in emergency situations is provided free of charge to anyone regardless of residency. Therefore the public hospital service is not an activity where the consumer (the patient), a health insurance fund or an insurance company pays a consideration in the form of a user fee that corresponds to the hospital service provided.

For the sake of completeness, however, please note that in some situations it may be the case that persons not resident in Denmark have to pay for hospital treatment, because, among other things, in connection with the implementation of parts of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, Denmark has brought the Health Act into line with the Directive so that, pursuant to § 78a, a regional council provides hospital treatment to patients from other EU/EEA countries in return for payment.⁵

The main features of the Danish health service are described below, followed by a few observations in relation to the Commission Decision of 20 December 2011.

2. The Danish health service in brief

Denmark's public health service consists of the primary and secondary health sectors.

The primary health sector consists of:

- Health professionals in private practice under the public health insurance scheme (general practitioners, specialist practitioners, physiotherapists, etc.)
- Municipal health schemes: home nursing care, municipal dental care and preventive health schemes
- The secondary health sector consists of the hospital service.

The Danish public health service is financed via taxation. An individual citizen's financial status, connection to the labour market and personal insurance situation have no relevance for access to the services of the health service. The State is responsible at the national level for setting the overall health policy values and targets for the public health service. On this basis, the Folketing (Danish Parliament) provides the regulatory framework for the health service in the form of legislation etc., and the finances of the sector are subject to overall social control through annual financial agreements. In addition, the State authorities, together with the regions, municipalities and

⁵ At the same time, persons from the Danish Realm (the Faeroes and Greenland) who are not resident in Denmark were put on the same footing. More detailed rules on this are laid down in Order No 1661 of 27 December 2013 on entitlement to hospital treatment etc. Please also note that a regional council (see § 6 of the Order) can provide treatment and demand payment for non-emergency hospital treatment from persons who have a connection to an EU/EEA country, Greenland or the Faeroes and who are not entitled to treatment under the rules of the Directive or the Regulation (Directive 2011/24/EU on cross-border healthcare services and Regulation (EC) No 883/2004 on the coordination of social security systems), provided the hospital treatment can be provided within the existing capacity and provided there are no private companies that can cover the demand for these services in the region concerned.

other partners in the area, exercise influence over the development of the health service through agreements, advice, information activities, etc.

The regions are responsible for the operation of the health service and the administration of public health insurance. The regions are therefore responsible for the bulk of the activities within the overall public health service. The individual regional councils prioritise efforts and determine the local service level within the framework laid down in legislation etc. In the area of health, the municipalities are responsible first and foremost for home nursing care, child dental care and dental care for the disabled and a number of health schemes for children and young persons. The municipalities also perform a number of administrative tasks for the health insurance scheme, such as issuing health insurance certificates. The individual municipal councils also prioritise efforts and determine the local service level within the framework laid down in legislation etc.

Operationally, the health service is organised either as public institutions and clinics or as professions that operate with public subsidies under agreements with the public authorities. The hospital service consists largely of regionally-owned hospitals. Under the Hospital Act, the regions must provide treatment via their hospital services free of charge. In addition to the regions' own hospitals, free treatment is provided at some private, non-profit specialist hospitals (see § 79(2) of the Health Act). As part of the fulfilment of its tasks, a region may cooperate with other regions and enter into agreements with private institutions (see § 75(1) and (2) of the Health Act). In some cases permission may also be granted for free treatment abroad.

On the other hand, providers in the primary sector – medical practitioners, dentists, physiotherapists, etc. – own and operate their own clinics, but they are financed to varying degrees by the regions under agreements between the public health insurance scheme and the various professional organisations. These health professionals are thus private businesses that are paid in accordance with collectively negotiated agreements by the regions for providing a substantial part of the regional health service. The public health insurance scheme provides free medical assistance from general practitioners and specialists and subsidises a number of other services. The only exemption from this is the limited number of persons who have chosen the special insurance scheme (health insurance group 2).

There is no definition or clear understanding either in Danish health legislation or in the EU of what treatment should take place in hospital. The hospital service in Denmark is organised into main functions (basic functions) and specialised functions which, in turn, are divided into regional functions and highly specialised functions. They all provide both inpatient and outpatient services. This organisation is achieved through special planning which is aimed, among other things, at ensuring high-quality professional treatment, end-to-end patient pathways and the best use of resources. The special planning shall also promote the necessary building up and maintenance of expertise, research and development to ensure the best treatment of patients. At the same time, the special planning shall ensure planning, coordination and cooperation between the actors in the health service.

A constant principle underlying the planning of the Danish health service that its services shall be delivered at the lowest effective cost (lowest effective cost principle). Continuous consideration is therefore given to, and planning is based on, whether, taking into account the maintenance of high quality and the other aspects mentioned, a particular service or treatment could be provided in specialist practice, for example, which in Denmark is generally less costly and requires less planning than the hospital service. More treatments may therefore be allocated to specialist practice in line with developments.

As far as hospital services are concerned, they will therefore typically be characterised by the fact that an implicit decision has been taken that a case requires a course of treatment requiring hospitalisation, services that require special expertise or equipment, or services that have particular planning requirements, including in relation to treatment pathways and training. In general, in accordance with modern medical knowledge and technological developments, emphasis is placed on operating the hospital service as efficiently as possible, keeping the number and length of hospitalisations as low as possible.

Overall, the division of labour therefore means that less complicated health services are provided outside of the hospital service, while more difficult, more complicated services are provided within the hospital service, including outpatient services, where it is possible to ensure the volume, quality, safety, sufficient competence and access for patients, even outside of normal working hours.

Outpatient treatment courses within the hospital service will therefore typically be characterised, for each patient, by a need to involve several specialists, possibly organised in multi-disciplinary teams, as is seen, for example, in the area of cancer. Such a set-up puts particular demands on planning, both with regard to ensuring sufficient capacity, including equipment, and ensuring efficient use of resources, including both financial resources and expertise.

3. Observations relating to the Commission Decision

It is the opinion of the Danish authorities that the financing of public hospitals in Denmark concerns services that cannot be regarded as covered by the State aid rules in Article 107. Consequently, it is considered that the Altmark Trans judgment and the Commission Decision of 20 December 2011 do not concern circumstances that correspond to the financing and organisation of the public hospital service in Denmark.

In Denmark, hospitals are predominantly financed through taxation and operated by the public sector within the regional system. As mentioned, hospital services are offered free of charge to persons resident in Denmark, since the consumer (the patient) does not pay consideration in the form of a user fee.

The regional hospitals belong to the regions and the financing of their operation comes directly from the budget of the individual region. This is not a case of a transfer of economic resources from one legal person to another, and the budget appropriation for hospital operation cannot be regarded as compensation.

On the income side, the regional budgets include grants from the State in the form of block grants. These go to the respective regions as such and not to the regional hospitals as State aid earmarked for hospital operation. The Commission Decision refers, among other things, to the calculation of the 'amount of compensation', 'reasonable profit' and 'control of overcompensation'. According to this, weight should be given to a reasonable return on (own) capital. However, these terms have no meaning in the Danish context, whether in relation to the regional hospitals or in relation to the regions as such, because none of them has any (own) capital which requires a return in relation to hospital operation, and because the financing of the operation of hospitals is not regarded as compensation. The Ministry of Health would also like to point out that, according to Article 168 of the Treaty, Member States are responsible for the organisation and delivery of health services and medical treatment.

In the light of the above observations, it is Denmark's opinion that, in Denmark, there are no systems of public service compensation provided to hospitals that are covered by the Commission Decision of 20 December 2011.

D. Information relating to Denmark's application of Commission rules on State aid in the form of public service compensation – Bornholm Airport

Bornholm Airport is a regional airport located on the island of Bornholm. The airport is state owned and is operated by the Danish Transport and Construction Agency. The airport receives public service compensation via the Finance Act. In addition, the airport receives income from user payments for the use of facilities and other equipment as well as income from commercial activities such as handling. In 2015 Bornholm Airport had 259 440 passengers (arrivals and departures).

The public service obligation is a task that was entrusted to Bornholm Airport as a result of the agreement between the Danish Transport and Construction Agency and Bornholm Airport. It is considered that the airport would not be able to undertake the task to the same extent and on the same terms on a purely commercial basis. The compensation for the use of Bornholm Airport contributes to regional development as is a benefit to the citizens and society as a whole.

The agreement between the Danish Transport and Construction Agency and Bornholm Airport on its public service obligations lists the obligations that Bornholm Airport is obliged to fulfil. This concerns, for example, landing aids and facilities, security measures, access for all potential users and the necessary capacity. In addition, the agreement contains a compensation model according to which the airport is compensated. The compensation to the airport must not exceed what is necessary to cover the costs of meeting the public service obligations. In the case of overcompensation in one year, the overcompensation is deducted in the following year. The agreement is revised annually.

Bornholm Airport received DKK 182.3 million in State aid in the years 2008-2015. The amounts break down as follows:

Year	2008	2009	2010	2011	2012	2013	2014	2015
Amount in DKK millions	21.4	21.4	19.9	21.8	22.1	24.4	24.9	26.4

The allocation of public service compensation to Bornholm Airport has not given rise to any difficulties or complaints from third parties.

Please also note that no information has been included about Odense and Sønderborg Airports, because these airports do not receive aid in the form of public service compensation, but instead receive operating aid which is based on the Commission's guidelines on aid for airports and airlines. This information was included by error in the report in 2014.

E. Compensation for public service in the form of maritime transport

General observations

It is the opinion of the Danish Ministry of Transport and Building that at present there are no schemes in Denmark concerning the entrustment of public services in the form of maritime transport that are covered by the Commission's guidelines.

The Ministry of Transport and Building currently administers three contracts for services of general economic interest in the area of maritime transport:

- Contract of 24 June 2014 for the operation of the ferry route Bøjden-Fynshav
- Contract of 24 June 2014 for the operation of the ferry route Samsø-Kalundborg
- Contract of 13 February 2009 for operating ferry services to Bornholm

The compensation provided under the contracts is not covered by the categories referred to in Article 2 of the Commission Decision. This is due to the fact that the Ministry of Transport and Building conducts EU tenders in connection with the award of the contracts for socially-justified ferry operations, i.e. maritime transport of general economic interest. This ensures that the amount of compensation is subject to competition, so in each individual case no more compensation is paid than is necessary.

The provisions in Article 4 of the Commission Decision on limiting the content, duration and scope are included in the contracts. However, none of the contracts grant the operator special or exclusive rights. Two of the contracts were retendered in 2012/13 as EU tenders and contracts were entered into in June 2013.

It is the opinion of the Ministry of Transport and Buildings that the competition in connection with the tendering of the contracts, each of which was entered into after an EU public procurement procedure, has ensured that there is no overcompensation. Because contracts are entered into after a public procurement procedure, no provision has been included in the contracts that could require repayment of overcompensation.

In addition, all contracts for socially-justified ferry transport comply with the Cabotage Regulation (see Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)). This means that the contracts are entered into on a non-discriminatory basis in respect of all Community shipowners and that the compensation provided for the service concerned is available to all Community shipowners.

In the case of ferry transport, the Ministry of Transport and Building provided a total of DKK 222.2 million in compensation in 2012, DKK 224.4 million in 2013, DKK 227.0 million in 2014 and DKK 271.6 million in 2015.