

**PRIME MINISTER'S OFFICE
STATE AID MONITORING OFFICE**

File No: TVI/920/2 (2016)

**To:,
Head of Department**

**European Commission
DG COMP**

Electronic version only

Subject: The 2014-2015 reporting obligation laid down in Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest

Dear,

With reference to the reporting obligation laid down in Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest¹, we wish to report the following information, based on the data submitted by aid-grantors and the experience of the State Aid Monitoring Office, on behalf of the Hungarian authorities.

1. Description of the application of the Decision

1.1. Public service functions/sectors involved

1. Local-government asset management
2. Urban-management functions
3. Water-utility services, sewage collection and treatment
4. Maintenance of local-government buildings
5. Waste management
6. Chimney sweeping rendered as a public service
7. Funeral services
8. Public lighting
9. Landscape services
10. Administrative and service support activities linked to public security
11. Social services
12. Technical support for organisations performing institutions' operating tasks
13. Public IT services, public IT developments
14. Development of infrastructure required to perform public functions
15. Urban development
16. Arts and public cultural services
17. Telecommunications
18. Public and general education, extracurricular training
19. Facilities support services

¹ OJ L 7, 11.1.2012, p. 3.

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 permits.

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 Sections 7(1) and 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.

1.3. 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, while 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.

1.4. Exclusive or special rights

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

1.5. Aid instruments

According to the information received, aid-grantors mostly granted direct aid.

1.6. 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.

1.7. 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 ten cases where it did, either it was repaid by the beneficiary or deducted from the following year's compensation under the 10 % rule.

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

Aid totalling HUF 44 733 million was granted to 633 beneficiaries in 2014, against aid totalling HUF 22 669 million granted to 310 beneficiaries in 2015.

1.9. Other numerical data

1. Total amount of aid granted

	2014	2015
Total amount of aid (in EUR million) paid by the national central authority	HUF 19.168 million	HUF 7.440 million
Total amount of aid (in EUR million) paid by local authorities	HUF 25.564 million	HUF 15.229 million

2. Number of beneficiaries by sector

	Sector	Number of beneficiaries
1	Local-government asset management	2
2	Urban-management functions	4
3	Water-utility services, sewage collection and treatment	651
4	Maintenance of local-government buildings	6
5	Waste management	151
6	Chimney sweeping rendered as a public	6
7	Funeral services	2
8	Public lighting	1
9	Landscape services	1
10	Administrative and service support activities linked to public security	1
11	Social services	2
12	Technical support for organisations performing institutions' operating tasks	2
13	Public IT services, public IT developments	2
14	Development of infrastructure required to perform public functions	1
15	Urban development	1
16	Arts and public cultural services	7
17	Telecommunications	2
18	Public and general education, extracurricular	5
19	Facilities support services	3

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

The data submitted reveal that the beneficiaries are mostly small and medium enterprises. 36 of the beneficiaries qualify as large enterprises.

In the case of individual aid, the average amount of aid stood at approximately HUF 492 million in 2014 and HUF 250 million in 2015.

As regards aid schemes during the period under review, an aid amount of around HUF 488 million per beneficiary was paid out.

2. Problems encountered when applying the Decision

Most of the questions submitted to the Office by beneficiaries and aid-grantors concerned the starting date of the eligibility of costs. Given that the Decision does not allow for the eligibility of costs incurred prior to the Member State selection for providing services of general economic interest, project preparation costs are not eligible for aid granted under the Decision. The provisions of another legal basis, compatible with EU law, need to be applied to these cost items. The use of several aid categories, however, complicates applying the method of calculating the compensation for both beneficiaries and aid-grantors.

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.

During the Commission's consultation on the Notice on the notion of State aid², the Office assessed the EU state aid aspects of the planned measures, also taking into account the content of the consultation.

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 interest³, the Office issued 5 opinions in 2014 and 3 opinions in 2015.

We wish to point out that Hungary has no aid measure containing public service compensation that was approved by the Commission on the basis of the European Union framework for state aid in the form of public service compensation⁴.

We apologise for the delay in providing these data, caused by the complex nature of obtaining them and the time it took to check them.

If you have any further questions, please do not hesitate to contact my colleagues,.

Budapest, 15 July 2016

Yours sincerely,

Deputy Head of Department

² http://ec.europa.eu/competition/consultations/2014_state_aid_notion/index_en.html

³ OJ L 114, 26.4.2012, p. 8.

⁴ OJ C 85, 11.1.2012, p. 15.