



REGERINGSKANSLIET

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Report on the implementation of the Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest

Background

Article 8 of the Commission Decision¹ requires the Member States to submit a report on its implementation to the Commission every three years. Sweden presented its last report in January 2009.

Another report should have been presented on 19 December 2011. The Commission sent a reminder to Sweden that it had not produced a report for that period and pointing out that the issue had been specifically mentioned in the Commission's invitation to the multilateral meeting on 24 October 2011. Sweden unfortunately failed to heed this reminder, taking the view that it was not necessary to produce a report because new regulatory provisions had come into effect. The Commission, however, insists that a report on the current period will provide valuable information. It therefore urged Sweden to submit a report by 16 July 2012.

¹ Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p.67).

Preliminary remarks

Our review of compensation for services of general economic interest ahead of this report identified a large number of different services of general interest. A large proportion of the services are not economic in nature, however, so state aid rules have not been deemed applicable. These are services that consist of the exercise of public authority, and ones not normally provided on a market, such as basic education, some culture policy-related activities, and so on. There are also services that are compensated in a way that fulfils the Altmark criteria; under current law, such compensation does not constitute state aid.

In this report we will present the information available in this area. In connection with the modernisation of state aid regulations we are currently planning measures which may lead to more detailed information being given in future reports.

A report follows of the compensation paid for services covered by the Decision. After that, we provide an overview of Swedish regulations used to manage state aid issues and other regulations relevant to public sector procurement of services of general interest.

Compensation granted for services covered by Article 2 of the Decision

Compensation for airports

With the aim of achieving transport policy goals, the State pays financial compensation to regional airports to ensure that they provide services of general interest. These consist of providing infrastructure capacity for regular air traffic in a given place. The system is regulated by Ordinance 2006:1577 on operating grants to non-state-owned airports and the Transport Agency's regulation on operating grants to non-state-owned airports (TSFS 2010:30).

Non-state-owned airports that meet certain conditions are entitled to an operating grant. Distribution of the grants is based on a number of parameters, with the different airports being allocated a standard value in the income and the cost side. The grant may never exceed the actual deficit. The aim is to make the design of the distribution model transparent and simple and at the same time to promote more effective airport operating grants.

Operating grants amounted to SEK 103 million per year between 2009 and 2011. Of this, about 80 per cent consisted of appropriations while 20 per cent was financed by the Civil Aviation Authority.

The Commission has issued guidelines on the financing of airports and state start-up aid to airlines departing from regional airports (2005/C312/01). In these guidelines (point 39) the Commission writes that funding of small regional airports (category D) is unlikely to distort competition or affect trade to an extent contrary to the common interest.

Where a Category D airport (maximum 1 million passengers a year) has been entrusted with a mission of general economic interest, the Commission has decided to exempt the public service compensation constituting state aid granted to them from the prior notification obligation and declared them compatible, as long as they comply with certain conditions (see point 41). None of the airports that received operating grants in 2009-2011 have more than 200 000 passengers a year; they are therefore classed as category D airports.

We should also mention the state-owned company Swedavia which owns and operates the basic national airport infrastructure, consisting of 11 of Sweden's biggest airports. If an airport is part of the national basic airport infrastructure it means that it cannot cease operations without the government's approval, even if it is operating at a loss. Unprofitable airports are financed by transferring resources from profitable parts of the operation. Swedavia funds its own operations, infrastructure and investments. All its revenue comes directly or indirectly from air traffic.

Legal framework for managing state aid in Sweden

In Sweden, the public sector acts through central government agencies and at local and regional level through municipalities and county councils. With some exceptions, state aid to the private sector is the preserve of central government.

Under Chapter 2 Section 7 of the Local Government Act (1991:900), municipalities and county councils may engage in business activity if it is conducted without a view to profit and is essentially concerned with providing communal amenities or services for local residents. Under Chapter 2 Section 8 of the Local Government Act, municipalities and county councils may take steps for the general promotion of enterprise in the municipality or county council. Individualised support may, however, be given to individual enterprises only where there are very strong grounds for doing so.

Where municipal aid is provided, each respective municipality and county council must notify the Government (or an agency indicated by the Government) under Section 6 of the Act (1994:1842) on the Application of the State Aid Rules of the European Community concerning all types of planned aid that may be subject to examination by the European Commission.

For aid provided to the business sector by Government agencies, the agency must notify the Government under Section 22 of the Ordinance (1988:764) on State Aid to the Private Sector of all types of aid that may be subject to examination by the European Commission. Such notification is to take place before action is taken.

Regulations of importance in the procurement of services of general interest

When procuring goods and services, Swedish authorities must comply with the Public Procurement Act (2007:1091) for procurement in the classic sector and the Act (2007:1092) on Procurement in the Fields of Water, Energy, Transport and Postal Services for procurements in the utilities sectors.

'Public procurement' in the Swedish Public Procurement Act refers to steps taken by a procuring authority to award a contract or enter into an agreement concerning goods, services or construction works. The procuring authorities must, then, comply with the Public Procurement Act during more or less all purchase, rental and leasing of goods and services. The principles of Swedish procurement rules are also applied under the threshold values of the EU Procurement Directives. Application of the procurement rules includes consideration of the Community's legal principles of free movement, transparency and non-discrimination. The procurement rules thus become a tool to ensure that compensation does not become a type of over-compensation.

In this context, we should mention the Act (2008:962) on Free Choice Systems, which came into force on 1 January 2009. Free choice systems under the proposed Act are an alternative to procurement under the Public Procurement Act and can be applied to ‘B services category 25’ according to Annex 3 to the Act. The Act on Free Choice Systems rests on the principle that the procuring authority, as principal for the activity, is responsible for provision of the services to users under current law. The authority signs a public contract with those suppliers that are qualified. In a free choice system under the Act, the price of services is always to be set out in the contract documents. It is thus impossible for suppliers to compete using the lowest price; instead, they compete on the quality of the services they offer.

The Act (2005:590) on Insight into Financial Links and Related Matters (‘the Transparency Act’), put simply, requires that companies covered by the Act divide their activities into three separate parts in their accounts, and that the company report transfers of funds, regardless of the form they take, between these three parts. Public activity that does not constitute economic activity must first be able to be distinguished from the activity covered by the state aid rules and other rules. After that, economic activity must be able to be divided into commercial activity protected from, or exposed to, competition.

The Transparency Act ensures that information about compensation for services of general interest is saved, and that it is possible to identify which costs and income arise from subsidised activity, including services of general economic interest and activity that is exposed to competition. This meets the conditions of Articles 5–7 of the Commission Decision.

The Swedish Competition Authority supervises the procurement laws, the Act on Free Choice Systems and the Transparency Act.