

REPUBLIC OF BULGARIA
DEPUTY PRIME MINISTER
AND MINISTER OF FINANCE

Outgoing ref. No: 91-00-585

Sofia, 22 December 2011

TO
MR ALEXANDER ITALIANER
DIRECTOR-GENERAL
DG "COMPETITION"
EUROPEAN COMMISSION

Ref.: Our ref. No 91-00-585 of 5 October 2011

Subject: Report on State aid granted in the form of public service compensation under Article 8 of the Commission Decision of 28 November 2005

Dear Mr Italianer,

Pursuant to the requirement in Article 8 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 (OJ L 312 of 29.11.2005), I enclose for your attention a report on behalf of Bulgaria concerning the public service compensation that was granted during the 2009-2011 period.

Encl.: See text of letter

Yours sincerely,

(s.) Simeon Dyankov

REPORT FROM BULGARIA

Pursuant to Article 8 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

This report contains information compiled on the basis of the information and statistical data received from the bodies providing services of general economic interest in Bulgaria, concerning the measures taken by the Bulgarian authorities for the 2009-2011 period in accordance with the provisions of the Commission Decision of 28 November 2005 and outside the scope of that Decision.

I. Measures taken in accordance with the provisions of the Commission Decision

A. The Bulgarian News Agency (BTA), "News services" objective (existing aid in accordance with the Treaty of Accession of Bulgaria and Romania to the EU – Appendix to Annex V, list of existing aid measures referred to in point 1(b) of the existing aid mechanism provided for in Chapter 2 of Annex V); date of approval by national State aid monitoring authority 16.12.2003, measure valid until 31.12.2010.

1. Compliance with the Commission Decision

1.1. Entrustment of responsibility – Article 4 of the Decision

A. Legal form for the granting of compensation for SGEIs to the Bulgarian News Agency (BTA), "News services" objective:

- National Assembly decision of 26.9.1994 (Official Gazette No 56 of 12.7.1994) adopting the statute of the BTA as a national public autonomous news organisation, defining the basic functions to be satisfied by the Agency when operating SGEIs and determining the Agency's sources of financing, which, besides private funding, will consist of State budget appropriations for the funding of activity under the "News services" objective;
- State Budget Act of Bulgaria for 2009, 2010 and 2011;
- Decrees of the Council of Ministers implementing the State budget for 2009, 2010 and 2011;
- Bulgarian News Agency Act (OG No 99, 2011).

In its capacity as the State-run national public news organisation, the BTA operates in Bulgaria in keeping with its functions of delivering comprehensive and objective information free of charge to State bodies and organisations about events and developments at home and abroad, disseminating official State and government documents and expanding Bulgaria's presence in international communications networks.

1.2. Scale of compensation

For the period in question, the following sums were granted in compensation:

- 4.185 million leva for 2009;
- 4.185 million leva for 2010;
- 1.0 million leva for 2011.

- Compensation amounts are received monthly in accordance with a grant allocation schedule that is presented in advance by the Ministry of Finance.

- Compensation is payable under the following main expenditure objectives:

- a) Use of the technical and economic services of foreign agencies. The BTA is the sole Bulgarian news organisation to receive the services of the world's news agencies – Reuters, Associated Press, AFP, Deutsche Presse Agentur, the European Pressphoto Agency and ITAR-TASS. Through the BTA's contracts with global agencies, funds are disbursed every quarter on the basis of invoices submitted by the relevant contractual partners.

- b) Expenditure on the BTA's news bureaux at home and abroad, and on BTA correspondents' travel abroad in connection with events of importance for Bulgaria.

The BTA's network of domestic correspondents consists of 35 journalists and contributors, as well as 19 photo-journalists.

- c) Support from national and international media and communications links that are crucial to the BTA's activity.

- d) Membership of and activity as part of the European Alliance of Press Agencies (EAPA), the Association of the Balkan News Agencies (ABNA) and other bodies.

- e) General agency expenditure – spending on materials and services, salary costs, insurance, missions, etc.

1.3. Overcompensation

The level of compensation is set annually, account being taken of the general rules governing the preparation of the State budget so that the BTA's forecast and actual expenditure are included. The BTA's financing is mixed – in addition to a subsidy there is private revenue from activities that are not covered by the requirements for the operation of SGEIs.

The amount of the State subsidy is booked in separate analytical accounts, which makes it impossible for funds to be spent on financing for other Agency activities.

Checks on the disbursement of funds are carried out by the Court of Audit.

1.4. Monitoring and annual reports

The aid administrators are informed of their responsibility, under Article 7 of the Commission Decision of 28 November 2005, to store all data for at least ten years.

2. Statistical information on SGEIs

Undertakings granted compensation for the operation of services of general economic interest outside the scope of the Commission Decision of 28 November 2005

A. The Bulgarian Postal Service EAD (existing aid in accordance with the Treaty of Accession of Bulgaria and Romania to the EU – Appendix to Annex V, list of existing aid measures referred to in point 1(b) of the existing aid mechanism provided for in Chapter 2 of Annex V; date of approval by national State aid monitoring authority 18.11.2004, measure valid until 31.12.2010). Aid is evaluated in accordance with the Communication from the Commission on services of general interest in Europe (OJ C 17 of 19.1.2001).

As part of its mandate to provide a universal postal service, the operator organises and accounts for its activity in conformity with the applicable international accounting

standards – both as regards the company generally and in the form of analytical accounts. Universal postal service revenue may not be used to cover expenditure on other services or activities.

For the period from the start of 2009 until the present, the company did not apply for compensation for expenditure on the provision of a universal postal service and did not receive compensation from the State budget. This is because it recorded a positive financial result in the execution of its mandate.

B. 1. Subsidy for the Bulgarian State Railways EAD (BDZh) activity of passenger transportation – *State aid file No 109/2007*.

Assessed as existing aid in a letter dated 18 July 2007 from DG TREN, reference No AK/mh D (2007) 314815, in accordance with Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ C 156 of 28.6.1969), as amended by Regulation No 1893/91, and Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway. The existing aid measure applied until 31 December 2009.

BDZh is allocated the public transport subsidy to compensate for the economic disadvantage incurred by the company by virtue of its mandate to operate a public transport service.

The legal basis for the granting of assistance is as follows: the State Budget Act and Council of Ministers Decree (CMD) implementing the State budget for 2009; the Railway Transport Act (OG No 97 of 28.11.2000, with subsequent amendments); the Order concerning the entrustment and execution of responsibilities for the operation of public rail transport services (CMD No 311 of 28.11.2000); Council of Ministers Decision No 474 of 2.6.2004 concerning the entrustment to BDZh of the responsibility for operating a public passenger transport service, and the contract concluded on 1.1.2004 between the Ministry of Transport and BDZh for the operation of public rail transport services. The contract is valid for 5 years and specifies the types of service for which BDZh is to receive a subsidy – rural, suburban and regional passenger transport and the carriage free of charge or at a reduced rate of certain passenger categories that are defined in CMD No 295/2001.

The company keeps a separate analytical account in respect of the passenger transport services that are concerned by its public service obligation. BDZh receives compensation for journeys made free of charge or at a reduced rate in proportion to the passenger services that are actually delivered and on the basis of documentary evidence. Every three months the carrier sends the Ministry of Transport a consolidated statement of services delivered.

The subsidy granted for 2009 was 171.0 million leva.

2. Compensation for reduced rates or exemptions for specific categories of passengers using the public railways and public urban and intercity motorised transport services – *State aid file No 153/2007*.

Recognised as existing aid pursuant to Annex V, Chapter 2, paragraph 4, of the Treaty of Accession of Bulgaria and Romania to the EU; confirmed in a letter dated 20 August 2007 from DG TREN, reference No AK/ch D (2007) 318429, and assessed in accordance with the conditions for the granting of compensation for public transport services by rail, road and inland waterway. The existing aid measure applied until 31.12.2009.

The legal basis for the granting of assistance is as follows: the Automotive Transport Act (in force from 1999); the War Veterans Act (1999); the National Education Act (1999); the War Invalids and War Victims Act (2005); the Ministry of Interior Act (2006); the contract between the Ministry of Transport and BDZh for the operation of public rail transport services (1.1.2004); the State Budget Act and the CMD implementing the State budget for 2009.

Some 94.5 million leva in funds was planned for 2009 – 72.0 million leva for automotive passenger transport and 22.5 million leva for rail transport. A total of 91.1 million leva was taken up.

3. Compensation paid to operators providing general-interest transport services in respect of passenger transport on unprofitable urban routes and rural routes in sparsely-populated mountainous and border regions – *State aid file No 181/2007*.

Registered as existing aid measure 181/2007 pursuant to Annex V, Chapter 2, paragraph 4, of the Treaty of Accession of Bulgaria and Romania to the EU; confirmed in a letter dated 20 August 2007 from DG TREN, reference No AK/ch D (2007) 318429, and assessed in accordance with the conditions for the granting of compensation for public transport services by rail, road and inland waterway. The aid measure applied until 31.12.2009.

The rules governing financial support by the State are in Section 4 of the Automotive Transport Act. The 2009 State Budget Act included 22.5 million leva in planned funding, 8.1 million leva of which was for inner-urban transport in the Sofia municipal area.

Administration goes through the municipalities, which allocate funding to individual carriers on a contract basis and with due regard for the requirements of the Order published by the Ministry of Finance establishing the conditions and procedure for the granting of passenger transport subsidies for unprofitable bus routes in inner-urban areas and mountainous and border regions.

The subsidy granted for 2009 was 20.9 million leva.

3. Additional remarks

When determining whether compensation for the operation of public services does or does not constitute State aid, the aid administrators are entirely bound by the CJEU

judgment in the Altmark case. Subsidies for health care establishments are determined in this way. Since 1 January 2010, compensation payments to undertakings entrusted with the operation of public transport services by road or rail have been determined by applying the criteria in the Altmark judgment and with due regard for the provisions of Regulation No 1370/2007.

Where the four cumulative criteria are not satisfied in full, an assessment is made on the basis of the Commission Decision of 28 November 2005 in order to determine whether the compensation constitutes State aid exempt of the notification requirement.

Where the public service compensation granted to specific undertakings for the operation of SGEIs falls outside the scope of the Commission Decision of 28 November 2005, it is evaluated under the Community framework for State aid in the form of public service compensation (OJ C 297 of 29.11.2005).

Follow-up checks of the recipients of State aid are carried out by the State Financial Inspection Agency. The budget and non-budget funds granted to economic operators are also subject to scrutiny by the Court of Audit.