

ESTABLISHING AND FUNCTIONING OF THE HUNGARIAN STATE AID CONTROL SYSTEM

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Dear Ladies and Gentlemen, dear Colleagues,

I would like to welcome you again in Budapest on the occasion of the Hungarian State Aid Day organised under the Hungarian Presidency. As it was mentioned earlier, the first excellent initiative to organise the State Aid Day was taken by the UK. The second State Aid Day was organised by the Czech Presidency two years ago. I hope that after the third State Aid Day the State aid experts will decide to have more regularly a conference where they can exchange their experiences.

What I would like to do today, is to tell a few words on the history of establishing the State aid control system in Hungary in the 1990's and to explain the asks of the State Aid Monitoring Office after the accession. I give an overview on the work we have done in the field of State aid control during the last years. Finally, I intend to summarize the challenges we are facing with.

A)

Let me first say a few words on the structure of the Hungarian State aid system. State aid can be granted mainly from the following main sources:

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1. Central budget: mainly in form of tax allowances and direct grants. These latter are generally channelled through multiannual aid schemes for regional aid, employment aid, training aid, for SMEs, etc. We do not have too much individual aid. But – as regards aid schemes for direct grants - aid grantors annually choose a special aim under the scheme taking into consideration economic policy and budgetary aspects and issue a call for applications for this specific purpose.
Example: We have a training aid scheme available for all the undertakings in one year, but in the next –due to budgetary constraints – it is available only for SMEs.
2. Specialized state bodies, like the Hungarian Development Bank or guarantee organisations.
3. More than 3000 independent local governments. They are mainly granting aid under the de minimis regulation.

B)

As regards the history of establishing the centralized state aid control system, it should be mentioned that under the Europe Agreement Hungary committed itself to apply criteria arising from the application of the State aid article of the EC Treaty. To fulfil this task, an administrative unit was established within the Ministry of Finance. But in the early years it did not have proper legal status. It obtained information via inter-ministerial consultation procedure or through informal channels. Its recommendations, proposals or comments lacked the mandatory character. It was not always and not sufficiently followed. Its opinion was one among the others without any special status.

In the meantime, in the framework of the accession negotiations, the candidate countries were more than kindly invited

- to establish the necessary legislative framework of State Aid control (in order to ensure prior notification system, which is a corner stone of the EU state aid control)
- to set up a State Aid Monitoring Authority
- which creates a creditable enforcement record, to show that the Monitoring Authority is in the position to assess cases and its assessment has been followed.

In order to comply with these obligations, in 2001 the Act on Public

Finance empowered the Minister of Finance to ensure that State aid in Hungary is granted in accordance with Community rules. A Government Decree on procedural rules relating to prior notification was also adopted. State Aid Monitoring Office (SAMO) has been established within the Ministry of Finance.

The Office was responsible for

- the ex ante control of aid plans (mainly received via notifications),
- certain aspects of ex post control mainly for preparing annual State aid Surveys for the European Commission).

I have to stress that although the Office was and is part of a Ministry, it has a special status. The obligatory opinion of the Office which is signed by the Head of the SAMO and not by the Minister. Moreover, the Office is not obliged to consult with any other part of the Ministry or the central administration before giving its opinion.

The mentioned legal framework assured a gradual adjustment to the EU requirements by the time of our accession.

However, there were certain problems within this system:

1. the independent local authorities did not fall under the scope of the prior notification decree
2. SAMO was not empowered to initiate the suspension or recovery of non-notified aid.
3. as the relevant acquis contained a few hundred pages in English, the aid grantors were often not well informed about the rules to be applied.

In order to redress these problems, the Act on Public Finance was amended in 2002. The generally applicable prohibition of State aid, subject to the exemptions listed in a Government Decree was incorporated in the Act on Public Finance. Due to this amendment the prohibition also applied to local authorities. The Decree on Exemptions contained all substantive rules of the Community acquis in a summarized form (some kind of State aid Code). The procedural rules were also part of the Decree. The Decree also created the legal basis for the suspension and recovery of illegal aid. With this modification the powers of the Monitoring Office had been significantly increased.

As of accession the EU law has become directly applicable in Hungary. The decision making power was transferred to the Commission. This change could have questioned the future existence of the Monitoring Office.

But this was not the case, at least not in case of Hungary. The smooth accession in the field of State aid showed that the national prior notification system is effective and necessary as well. The special knowledge and experience accumulated in the SAMO was necessary also after accession in order to ensure the effective functioning of the Hungarian State aid system (including the utilisation of the Structural and Cohesion Funds), and to avoid (or reduce the number of) Commission procedures and recovery cases.

It follows from the above, that the central coordinating body had to be provided with enough power to maintain the centralised notification system.

C)

So what happened after accession?

The general prohibition on State aid and the State aid Code was abolished due to the direct applicability of the EU rules. New procedural rules were introduced maintaining the prior notification obligation to the SAMO.

The Office remained part of the central government.

It shall be also noted that measures in the field of agriculture, fishery and forestry do not fall under the competence of SAMO. A similar unit exists in the Ministry for Rural Development. Its tasks and procedures are regulated by a separate Government Decree.

Not only aid plans subject to Commission approval are obliged to be notified to the SAMO but also aid plans supposed to fall under the *de minimis* or the general block exemption regulation. Moreover, the annually published calls for applications - which are normally aid granted from an existing aid scheme – are also subject to SAMO's scrutiny.

D)

What are the procedures in these different cases?

In case of *de minimis* aid, after checking the existence of the necessary requirements set by the *de minimis* regulation, SAMO approves the aid. The similar procedure applies to the aid plans falling under the general block exemption regulation with the difference that in block exemption

cases an information sheet has to be sent to the Commission. This sheet is filled out sometimes by the aid grantors, sometimes by SAMO, but it is always transmitted to the Commission by SAMO.

In case of aid plan subject to COM approval, on the request of the aid grantor the SAMO notifies the measure to the Commission, if according to the assessment of the SAMO, there is a chance that the Commission will approve it.

If the SAMO finds that the submitted aid plan tends to be incompatible, it asks for further information and/or modification, if there is a chance to make the aid plan compatible with the EU rules. If the aid grantor does not want to follow the recommendations of the SAMO or there is no chance to bring the proposed measure in compliance with the EU rules, the aid grantor can ask the Government to “overrule” the SAMO. If the Government instructs the SAMO, it informs the Commission on the measure planned informally or notifies it.

E)

Just to summarize the present tasks of SAMO:

- helps to design aid measures in order to ensure compliance with the EU State aid rules
- it assists the aid grantors in (pre)notification-procedures
- in formal investigation procedures, it gives assistance in preparing the Hungarian position
- it coordinates and helps in answering COM questions (complaints)
- in recovery cases, it coordinates the execution, but the aid grantor is responsible for the implementation of the recovery.
- It also collects data for the Scoreboard (annual report)
- SAMO represents Hungary in multilateral meetings organised by the Commission (prepares the Hungarian position)
- And in order to disseminate knowledge on State aid it informs and provides trainings for the aid grantors (beneficiaries, advisors) on the developments of State aid. We also have a Bulletin published together with the Pázmány University and we try to improve our homepage as well.

The Office has a staff of 13. Since 1999 it has assessed a few thousand cases.

	2006	2007	2008	2009	2010
Calls for applications	96	196	248	250	108
De minimis	96	264	207	118	110
BER	8	29	51	55	38
COM notification	9	8	14	19	12
Total	192	460	455	368	218

The main challenges for us, but also for the aid grantors, is the lack of knowledge concerning State aid rules, especially in case of indirect forms of aid. In borderline cases when it is not clear whether it is a State aid measure or not, it is difficult to advise the potential aid grantor to notify (or ask the Commission) or not to do that. Because if you ask the Commission, it almost always turns out that you have a State aid case.

If there is a change in the State aid rules (especially if it not expected, like in the case of the prolongation of the Temporary Framework), it is not always easy to convince the aid grantors that it is their interest to modify the legislation as soon as possible.

And of course, in the eyes of the potential aid grantors/beneficiaries, we are the bad guys who are not always able to give direct answers whether a measure is containing aid or not, especially immediately, via telephone, without having the details. Moreover, we are lacking the empatia in understanding the importance of the certain measure aiming at promoting certain part of the national or local economy. Sometimes we dare to block or modify measures with reference to some unclear and non-transparent EU State aid legislation. And finally, we find State aid everywhere, even in drafts that has nothing to do with State aid and nothing to do with the EU.

But we can live with that.

Thank you for your attention!