

AIMS AND QUESTIONS OF THE FUNDS UTILIZATION

Practical experiences in implementation of State Aid rules

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Introduction

In Hungary the National Strategic Reference Framework of the Structural Funds is connected to the Government's new development programme, the New Széchenyi Plan. The Structural Funds available for Hungary are dedicated for this programme that is based on the mutual risk taking of enterprises, local governments and the state.

The New Széchenyi Plan – in harmony with the Europe 2020 strategy and the Structural Funds objectives and priorities – has the following three main objectives:

- Increasing employment
- Promotion of long-term growth
- Strengthening of Hungary's competitiveness

The above objectives are translated into seven areas of intervention, so called break-out points for the Hungarian economy:

1. Healing in Hungary – Health industry
2. Renewal of Hungary – Green economy development
3. Home project – Housing
4. Enterprise promotion – Development of the business environment

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5. Science – Innovation – Growth
6. Employment
7. Transport – Transit economy

The break-out points integrate sectors of the Hungarian economy with the aim to contribute to the appearance in the medium term of products and services that are competitive in Europe as well as globally. In order to exploit and create interlinks among the sectors, the New Széchenyi Plan tries to bring a complex solution for entrepreneurs.

The New Széchenyi Plan relies on open planning and co-operation with enterprises in favour of developing the business environment and the competitiveness of our economy. Our aim is to place the entrepreneur into the centre of economic policy-making, so as to increase the competitiveness of enterprises and accomplish the plan of creating one million new, tax-paying jobs.

The more detailed description of the break-out points can be found in Annex 1.

Legislative background

Apart from the EU legislation in Hungary Government decree 37/2011. (III.22.) on the procedure related to State aid within the meaning of European competition law and on the regional aid map (further Government Decree on Prior Notification) regulates the procedures relating to the prior notification of State aid. Responsible body for State aid control is the State Aid Monitoring Office (further: Office) within the Ministry of National Development.

Notification to the European Commission can only be made through the Office, EU Decisions are also communicated by the Office to the aid grantors, including the Managing Authorities.

In Hungary the aid schemes are legal acts (Ministerial decrees in case of Structural Funds) encompassing all State aid categories relevant to the Operational Programmes.

The aid schemes managed by the National Development Agency (NDA) are granted either:

- under the General Block Exemption Regulation or the „de minimis” regulation,

- or are notified to the EU ex-ante through the State Aid Monitoring Office.

Aid categories that have to be notified to the EU are included in the legal act after receipt of EU ex-ante approval (e.g. cultural aid in Regional OPs and Social Infrastructure OP (SIOP), JEREMIE risk capital in Economic Development OP (EDOP)).

The role of the NDA in the prior notification procedure

The NDA has a prior notification obligation towards the State Aid Monitoring Office in the following cases:

- Drafts of aid schemes subject to prior notification to the EU
- Drafts of aid schemes exempted from prior notification obligation to the EU by the General Block Exemption Regulation or „de minimis” regulation
- Drafts of Calls for Proposals

This means that in Hungary the State Aid Monitoring Office has to be notified ex-ante of each aid scheme to be launched even if it is not subject to prior notification to the EU because it falls under the General Block Exemption Regulation (GBER) or the „de minimis” regulation. After an aid scheme is approved by the Office, the Calls for Proposals based on the aid scheme also have to be submitted to the Office for its ex-ante approval. The Office may suggest modifications if it is of the opinion that certain conditions of the Call for Proposals are not compatible with the approved aid scheme. The grant awards (individual aid) from existing aid schemes, however, do not have to be notified ex-ante to the Office.

Reporting

Member States’ records on State aid schemes are run by the State Aid Monitoring Office.

Aid grantors (including the Managing Authorities) are obliged to submit aid data for the Office prescribed by the Government Decree on

Prior Notification in the following cases:

- Annual reporting obligation towards the Monitoring Office on aid awarded within the year until 30 April each year.
- In the case of aid granted under the Temporary Framework² in relation to the financial crisis (2008-2010) annual reporting obligation on aid awarded within the year.

The annual reporting obligation concerns all types of aid schemes: those subject to prior notification to the EU as well as those under any block exemption regulation.

State aid categories under Structural Funds in Hungary

The National Development Agency manages aid schemes based on existing Operational Programmes approved by DG Regio and DG Employment. The Managing Authority for International Programmes also manages some other aid schemes, e.g. Swiss, Norwegian, EEA Funds but in this presentation we concentrate on Structural Funds Operational Programmes only.

State aid by the NDA is mostly awarded in the form of grants. Other possible forms are guarantee schemes, loans, interest rate subsidies, risk capital, subsidised leasing.

Aid categories to be granted by NDA are summarised in Annex 2.

State aid aspects in Calls for Proposals/Grant (incentive) agreements

The attention of applicants has to be drawn on State aid/"de minimis" rules and regulations. In order to create transparency activities subject to State aid control are listed separately within eligible activities. Aid intensity under State aid rules is set for costs eligible under State aid rules. Average aid intensity is calculated on project level.

At the level of the project in the grant agreement, parts of the project subject to State aid rules are listed as separate activities (separate

² Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (consolidated version) Official Journal C 83, 7.4.2009, p.1.

column in project budget). This way the relevant aid intensity/(ies) can be recorded in the monitoring system separately. Data for State Aid Monitoring Office is collected from grant agreements.

In the case of „de minimis” aid the beneficiary is obliged by law to run records and give a declaration to the MA on „de minimis” aid received within the year plus the preceding two years before the aid decision is taken. Aid cumulation is controlled by IT and via administrative measures.

Tasks of Managing Authorities in connection with State aid

The Managing Authorities define activities eligible for co-financing but subject to State aid rules and define the applicable State aid categories. Afterwards they prepare the rules of the aid schemes (ministerial decree and its modification) and notify it for approval to the State Aid Monitoring Office. In case the planned aid scheme is not exempted from prior EU Notification, the Office submits it to the EU Commission for approval.

Drafts of Calls for Proposals based on the aid schemes are also prepared by the Managing Authorities and if they contain State aid measures, they are submitted to the State Aid Monitoring Office for ex-ante approval.

No Call for Proposals can be published without an approval of the State Aid Monitoring Office. In Calls for Proposals the beneficiaries are informed on aid categories, amount of aid and of obligations (e.g. preservation of docs, declarations).

Managing Authorities also prepare reports on completion of the aid schemes for the Monitoring Office. They also ensure the compliance with the rules on cumulation.

Practical experiences

a) Management issues – complexity of projects

Within the European Commission DG Regio and DG Employment are responsible for Structural and Cohesion Funds. As to State aid, DG Competition bears the responsibility.

This mechanism leads to different system of concepts of Structural Funds and State aid, double EU control according to different rules and also establishes different methods for calculating aid intensity.

Structural Fund projects have to be approved as OPs by DG Regio/ Employment, after this they also have to be approved under a different set of rules by DG Competition. Management of the approval of the OPs would be much simplified if these two stages were combined or at least harmonised and constructions (aid schemes) would have to be accepted by the responsible DG's of the European Commission in only one round.

The integrated approach for project planning is seen as desirable by Structural Fund regulations (e.g. cost-benefit analysis), State aid rules, however, favour separation of expenditure according to State aid and non-State aid. The two approaches are in conflict. For a Member State as Hungary it is in our interest to secure Structural Funds assistance for as large a part of a project as possible because of the scarcity of own state resources. This leads to higher complexity of projects.

The aid intensity calculation method is sometimes problematic: e.g. in the case of environmental investments there is a condition to use a hypothetical reference investment with which the proposed investment should be compared, and aid intensity can only be the relevant percentage of the difference between the reference investment and the proposed investment. It is not clear, however, how the choice of the reference investment can be controlled.

The handling of cross-border and international aid schemes leads to even higher complexity. In case beneficiaries of a project are from Member States and third countries the State aid rules are not applicable to third countries, this way they can work with a higher aid intensity, which complicates the management of cross-border co-operation programmes because of conflicting interests.

Different Member States may even have different interpretation of State aid rules – use different aid intensities for example within the same contract. Professional expertise also differs in the Member States, e.g. in connection with the calculation of aid intensity, which results in everyday management problems.

b) Off-marking problems

- *State aid vs revenue-generating projects*

State aid cases are exempted by definition from the revenue-generating rules under Regulation 1083/2006/EC. In Hungary, however, we may have complex projects where only part of the project is subject to State aid.

Another aspect of revenue-generating projects is the case of public service entities vs undertakings performing a public service activity.

In some cases it is difficult to decide whether

- a beneficiary is an undertaking according to the State aid definition performing a public service (in which case it is subject to State aid rules but not subject to revenue-generating rules)
- or it is a public organisation, not an undertaking, performing a revenue-generating activity (in which case it is subject to revenue-generating rules, not State aid rules).

- *State aid vs financial simplification*

The EU guidance on financial simplification methods is not very clear about how State aid rules should be considered, it only mentions that the simplification methods may be used „without prejudice to State aid regulations”. According to the opinion of the State Aid Monitoring Office in Hungary where State aid is present no simplification is possible, only in the case of „de minimis” aid.

c) Handling of aid cumulation

It is not unequivocal, how the wording „same” eligible costs should be interpreted. One beneficiary may receive State aid from different aid operators, the wording for the same type of eligible costs may, however, be different making difficult the identification of aid cumulation.

Suggestions for improvement

- Procedural simplification – harmonisation of Structural Funds and State aid rules
- It is necessary to co-ordinate policy making between DG Competition and DG Regio/Employment.
- Use of average aid intensity in the case of complex projects
- State aid intensities are set for eligible cost categories and not for projects. One project, however, may combine several cost categories, which results in different aid intensities within one project. This is difficult to handle both for the beneficiaries and for the aid operators.
- Training: by the EU in order to facilitate unified interpretation of EU regulations and promote Member State best practice examples.
- High quality private trainings are sometimes too expensive for Member State administrations. There is a need expressed for the spreading of experiences, best practice examples gathered by the Commission during State aid audits in Member States.
- Following from the above Structural Funds Project implementation experiences should be considered when preparing or amending State aid community legislation.
- We would also welcome if State aid legislation would be adapted to the EU2020 strategy so that the State aid regulations support the achievement of objectives.

*Annex 1***The break-out points of the New Széchenyi Plan***Health Industry*

This includes healing, prevention and rehabilitation services, connecting administrative and back-up sectors, research basis, production and trading of health-conscious products. This is one of the most promising sectors among the break-out points.

Green economy

In the 21st century the country's success largely depends on how we are able to overtake the difficulties associated with the use of fossile energy carriers (rising prices, insecurity of available energy) by energy saving, energy efficiency, energy security and the use of renewable energy.

Housing

This area received not enough attention in the last few years (especially in the light of the financial and economic crisis), which generated problems and ad hoc – mostly ex-post – measures with alternating success. For this reason, and in accordance with EU aspirations as well, housing will again become a focal area in the new development plan.

Enterprise promotion

Enterprise promotion should be reconsidered and freshly started with special emphasis on development of the competitiveness of the Hungarian SMEs. Otherwise they will not be able to generate success on the international market and create new job opportunities.

Science and innovation

Innovation is one of the key elements of economic growth. By the middle of the decade we intend to generate an economic growth of 1,5-2 percent by the implementation of a science, technology and innovation policy based on our skills and resources, by strengthening the national and regional market of original products and services creating new values and by a conscious intellectual export.

Employment

This is the most important objective of the Hungarian government. Pre-condition for its success is the creation of new jobs, which necessitates the transformation of former economic and employment policy. Large-scale and comprehensive changes have to be made in several areas at the same time, changing the expectations and attitudes of the actors of the economy and society.

Transport development

Transport is the organic background facility of both economy and society. It can provide attainability, balance regional differences, allow for the mobility of persons, goods and services, multiply the effects of economic and regional development and it contributes to the GDP in direct. At the same time it imposes upon society significant costs that are not or are only in part reimbursed. Our primary objective is to maximize profits at the same time minimising social burdens.

Annex 2

Aid categories granted by NDA

EDOP	Economic Development OP
TOP	Transport OP
SROP	Social Renewal OP
SIOP	Social Infrastructure OP
EEOP	Environment and Energy OP
ROPs	Regional OP

Government Decree 85/2004. (IV. 19) means Government Decree on Prior Notification

Aid category	Legal ref.	relevant OPs
GENERAL BLOCK EXEMPTION	EC No. 800/2008	
<i>Regional aid</i>		
Regional investment and employment aid	art. 13	EDOP, EEOP, SIOP, SROP, ROPs
Aid for newly created small enterprises	art. 14	SROP, ROPs
<i>Aid for environmental protection</i>		
Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards	art. 18	EEOP
Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards	art. 19	EEOP
Aid for early adaptation to future Community standards for SMEs	art. 20	EEOP
Environmental investment aid for energy saving measures	art. 21	EEOP, ROPs
Environmental investment aid for high-efficiency cogeneration	art. 22	EEOP
Environmental investment aid for the promotion of energy from renewable energy sources	art.23	EEOP
<i>Aid for consultancy in favour of SMEs and SME participation in fairs</i>		
Aid for consultancy in favour of SMEs	art. 26	EDOP, SIOP, SROP, ROPs
Aid for SME participation in fairs	art. 27	EDOP, SIOP, SROP, ROPs
<i>Aid in the form of risk capital</i>		
Aid in the form of risk capital	art. 29	ROPs
<i>Aid for research, development and innovation</i>		
Aid for research and development projects	art. 31	EDOP, SIOP, SROP
Aid for technical feasibility studies	art. 32	EDOP, SROP
Aid for industrial property rights costs for SMEs	art. 33	EDOP, SROP
Aid to young innovative enterprises	art. 35	EDOP
Aid for innovation advisory services and for innovation support services	art. 36	EDOP
Aid for the loan of highly qualified personnel	art. 37	EDOP
<i>Training aid</i>		
Training aid	art. 39	EDOP, SROP, ROPs
<i>Aid for disadvantaged and disabled workers</i>		
Aid for the recruitment of disadvantaged workers in the form of wage subsidies	art. 40	SROP
Aid for the employment of disabled workers in the form of wage subsidies	art. 41	SROP
Aid for compensating the additional costs of employing disabled workers	art. 42	SROP
INVESTMENT AID	10/2008 NFGM Decree	TOP
CULTURAL AID	19/2007 MeHVM Decree 27/2007 ÖTM Decree	SIOP, ROPs
AID IN THE FORM OF RISK CAPITAL	ECCGuideline 2006/C 194/02 8/2007 MeHVM Decree	EDOP (JEREMIE)
PUBLIC SERVICE COMPENSATION	EC framework 2005/C 297/04 EC 2005/842	EEOP, SIOP, SROP
"DE MINIMIS" AID	EC No. 1198/2006	EDOP, EEOP, SROP, SIOP, ROPs, TOP
AID UNDER TEMPORARY FRAMEWORK re FINANCIAL CRISIS	Government Decree 85/2004 (IV.19.)	EEOP, SROP, ROPs

