

## INTERPLAY BETWEEN STATE AID AND STRUCTURAL FUNDS THE HUNGARIAN EXPERIENCES

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### **Dear Participants and Colleagues,**

I would also warmly welcome you at the State aid event of the Hungarian Presidency in Budapest and I do hope that during this conference we will have enough time to discuss the most important issues in the field of State aid law. I recognize many familiar faces amongst you, which means that we know each other and this topic well. We suppose that this two day meeting enables the State aid community to cover most of the actual issues and provides an opportunity for frank debates.

Today we have heard some thoughts about the future and the past as well. I believe that my presentation on the interplay between State aid and Structural Funds will provide you a concise overview on both fields of EU law.

As you have heard State aid control in Hungary roots back in mid 90's when the Europe Agreement prescribed to all would be Member States to apply the competition law of the European Communities. The years before the accession to the EU (EC at that time) were quiet busy for the State Aid Monitoring Office (SAMO). On the one hand, we had

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to review the Hungarian legal system for being in line with the State aid acquis and we had to launch the Structural Funds. Both tasks required strategic planning and training of civil servants. And when we talk about planning, we have to remember, that in 2003 national authorities had far less possibilities to grant State aid, which limited their spending of community sources.

These years were part of a very formative era in the Hungarian central administration. New bodies were established and new procedures, structures started to work. Many of you can remember those days, when multiple deadlines were on us and we thought that the job ahead of us will never be done.

In 2003 SAMO was involved in the planning of the National Development Plan and the operative programs. We checked all the descriptions of the OP's and tried to categorize all measures from State aid point of view. Besides that, we provided advice to the Managing Authorities on the details of State aid rules and helped them to fill in the so-called State aid tables. These tables summarized the measures from a State aid perspective whether they were relevant or not and which rules were to be applied. Parallel to this activity we set up the national legal State aid rules for the OP's. This task was not easy as OP's were linked to different ministries and many stakeholders were involved in the law-making. I remember that these months could be described as "learning by doing". We formed small case teams for each OP and had daily contact with the managing authorities making joint efforts to convince the corresponding Directorate General of the European Commission that we were on the right track. However, working in the central administration means also that you have to report to the politicians on all progress and try to hide or explain delays. The launch of the first National Development Plan was a hot topic in 2003.

However, after the planning and legislative part had been done, we could not have a rest as the bulk of the work arrived to our desk in the form of dozens of call for applications. Once we received more than 30 of them on a single day! In addition we had to apply our new procedural code<sup>2</sup> to all of these notifications. In the first years after the accession

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<sup>2</sup> Government Decree No 85/2004. (IV. 19.) on procedures relating to State aid measures within the meaning of Article 87(1) of the EC Treaty and on the regional aid map.

to the EU we learned that the devil lies always in the details and many problematic cases and questions arose only after you thought the job had been done. In the meantime we had to keep an eye on the jurisdiction of the Community Courts and the Commission's decisions. I recall that we had some debates on the Hungarian Railway Company, whether it is an efficient operator in the sense of the Altmark judgement.<sup>3</sup>

I believe that these first years as a Member State gave us some experience, which were quiet well used when the government started the planning for 2007-2013. This first full programming period allowed us to rethink the problems of the past and incorporate some new ideas. The application of the notion of State aid gave us a lot of work especially in cases where multiple beneficiaries were involved or infrastructure development was at stake. It was not easy to decide where the advantage is and what the exact amount is. However, we had to adhere to the new State aid rules and in some cases we had to wait until they were published. Our experience helped us to overcome some critical points (i.e. when we heard that instead of one there would be seven regional Operative Programs, OPs) and we could use the earlier drafts during the legislative procedure. Life was easier from one aspect, namely at least we knew the persons concerned. Yet, the lack of State aid tables meant bigger responsibility on the national authorities and especially on the SAMO. The number of call for applications increased, but due to Technical Assistance we could improve the staff both in quantity and quality (meaning we could participate at State aid seminars organized by the most well-known European training institutions and set up a very up to date State aid library).

Thus, when the second programming period begun with the strategy-making we had to re-start the process with some major changes in the regulatory framework. In the meantime we had some new contacts at the Managing Authorities, therefore our training exercise remained still important. SAMO has been and is keen about updating the civil servants on the new State aid rules and jurisprudence. If we look at the Structural Funds it is essential, that the colleagues at the managing authorities have some State aid background as well. This is even more

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<sup>3</sup> Judgment of the Court of 24 July 2003. *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht*. ECR [2003] Page I-07747.

important when we have complex OPs and call for applications with multiple choices among the rules. This allows avoiding a big deal of problems and questions, and let us proceed faster when modifying the OPs and the corresponding national legal base. And we had modified many times the OPs for different reasons. First, the community State aid rules developed (General Block Exemption Regulation,<sup>4</sup> Regulation 1370/2007/EC<sup>5</sup>). Second, during the implementation turned out that something is missing or might be beneficial to be included in the program. Meanwhile, we had a lot of discussion about the complex questions, for instance, how to quantify advantage in cases when the beneficiaries are consortiums or how to avoid aid when developing infrastructure or industrial parks.

Since 2008 in the State aid world everything has been about the economic and financial crisis. New rules came into force, the old ones were relaxed a bit. This had of course a big impact on the Hungarian Structural Funds as well. Planning and law-making was on our agenda again and the interpretation of the new rules was not always straightforward (i.e. cumulation of limited amount of aid with other types of aid). New notifications at national level were required to apply the Temporary Framework,<sup>6</sup> which was also modified several times during 2008-2009. Concerning the crisis measures, the notifications were carried out by the SAMO directly and a specific chapter was introduced in our national procedures to cover the necessary steps and rules of the aid granting bodies, including the Managing Authorities. The limited amount of aid was introduced in almost all OPs and thus we have to check and align the national rules again. Following the fall of 2009 extended reporting obligations to the Directorate General

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<sup>4</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (Text with EEA relevance) *OJ L 214, 9.8.2008, p. 3–47*

<sup>5</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, *OJ L 315, 3.12.2007, p. 1.*

<sup>6</sup> Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis, as amended *OJ C 16, 22.1.2009, p. 1–9.*

Competition were added to the complexity of our work. The fact that decisions on the phasing out of the Temporary Framework were taken rather late last year, made us to work in a rush.

To conclude, I would mention that you can never underestimate the importance of the planning phase and personal contacts. If you apply straightforward and not too complex call for application in the majority of cases the absorption of Structural Funds will increase. As State aid rules are by their nature hard to understand for 'outsiders', the government has to find always the more simple or optimal solutions. Bearing in mind the 10 years time period that can be monitored and the growing number of State aid complaints lodged at the Directorate General for Competition, minimising the irregularities and systemic risks in the Spending of Structural Funds is a must.

I hope that in the future we can work together with the colleagues at the Managing Authorities and at the Directorate General for Competition as smoothly and in a good ambiance as in the past years. We have learned during this time that cooperation is essential to achieve our main objective, spending Structural Funds in the most effective way.

Thank you for your attention!

