



EUROPEAN COMMISSION

Brussels, 20/07/05  
C (2005) 2707

**Subject: N123/2005 Cultural Heritage Scheme to Promote Tourism, Hungary**

Dear Sirs,

## 1. PROCEDURE

- (1) By letter of 22 February 2005, registered on 14 March 2005, the Hungarian authorities notified a State aid scheme aiming at the conservation and display of Hungarian cultural heritage to promote tourism. The current notification concerns amendments to a previous Earmarked Scheme for Tourism, which is included on the existing aid list annexed to the Accession Treaty. Following the requests for additional information of 20 April 2005, further clarifications of the Hungarian authorities were submitted by letter registered on 25 May 2005 and 6 July 2005.

## 2. DESCRIPTION OF THE MEASURE

- (2) **Legal basis:** The measure is granted on the basis of Decree 14/2002 (XI.16.) of the Minister of the Prime Minister's Office on Rules of Use and Administration of the Earmarked Scheme for Tourism (*a Turisztikai célel•irányzat felhasználásának és kezelésének részletes szabályairól szóló 14/2002. (XI. 16.) MeHVM rendelet*) (Hereafter "the EST Decree"). The notification specifically concerns measures under Art (3)(i) and Art (3)(p) of the EST Decree.
- (3) **Objective:** The notified scheme aims at promoting tourism by conserving and displaying Hungarian national cultural heritage.
  - (a) Subsidies to be awarded under Article (3)(p) of the EST Decree aim at the conservation of Hungarian national cultural heritage. There are numerous historical monuments in Hungary that are of great cultural importance but their owners do not have sufficient funds to restore and preserve them. The scheme will provide support for the conservation of buildings that are classified as monuments under Law 2001/LXIV concerning the preservation of national heritage (*kulturális örökség védelmél•l szóló 2001. évi LXIV. Törvény*) and, at the same time, are tourist attractions. Such may include castles, palaces and historic thermal baths.
  - (b) Subsidies to be awarded under Article (3)(i) of the EST Decree will support the organisation of and participation at events of national and international significance that display and promote Hungarian national cultural heritage. The scheme will help organise events that are displays of Hungarian

folklore, gastronomy and tradition,<sup>1</sup> and/or are linked to venues that are classified as national monuments.<sup>2</sup> These events are targeted at the general public and are aimed at attracting tourists. The scheme will also support participation at national and international events that promote Hungary in general.

- (4) **Relation to other schemes:** The Hungarian authorities have previously informed the Commission about an Earmarked Scheme for Tourism, which was approved by the Hungarian State Aid Monitoring Office (*Támogatásokat Vizsgáló Iroda*) on 18 October 2002<sup>3</sup> and is included on the existing aid list annexed to the Accession Treaty.<sup>4</sup> The current notification concerns amendments to the previous scheme. The EST Decree was amended by Decree 2/2005 (II.18) of the Hungarian National Development Office (*Nemzeti Fejlesztési Hivatal*) that added cultural heritage conservation under Art (3)(p) into the scheme. In addition, the current notification also differs from the previously notified scheme in that subsidies to be granted under Art (3)(i) are now above the de-minimis threshold, while previously they were de-minimis.<sup>5</sup>
- (5) In addition, the Hungarian authorities notified under the Interim Mechanism (*Átmeneti Eljárás*) a National Cultural Program (hereafter NCP) (*Nemzeti Kulturális Alapprogram*) on the basis of Act. XXIII of 1993 on the National Cultural Program (*1993. évi XXIII. Törvény*), which the Commission approved on 13 August 2003. The Hungarian authorities have clarified that there is no overlap between the activities to be financed by the NCP and the currently notified scheme as the former supports events enhancing artistic creation (e.g. literature, exhibitions of fine arts, classical music), while the latter supports cultural heritage events aimed at the general public and of interest to tourists.
- (6) Finally, the Hungarian authorities have also explained that under the currently notified scheme activities falling under the Act II of 24 on Motion Picture can not be financed.
- (7) **Granting authorities:** The aid will be granted by the Hungarian Tourism Office (*Magyar Turisztikai Hivatal*).
- (8) **Beneficiaries:** The beneficiaries supported under Article (3)(p) of the EST Decree are legal persons such as businesses, associations without a legal personality (*jogi személyiség nélküli gazdasági társaságok*) and individual

---

<sup>1</sup> For instance, cooking competitions of typical Hungarian soups, Festival of sausages at Békéscsaba (*nagyszakácsi f•z• verseny, bajai halászlé•z• verseny, békéscsabai kolbászfesztivál*)

<sup>2</sup> For instance, Haydn nights at the Fert•d Esterházy palace (*Haydn estek a fert•di Esterházy kastélyban*), celebration of traditional professions at the Buda castle (*Mesterségek ünnepe a budai Várban*)

<sup>3</sup> TVI-787, HU30/2002

<sup>4</sup> Existing aid list under the Appendix to the Annex IV of Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union

<sup>5</sup> In accordance with Commission Regulation (EC) No 69/2001 of 12.01.2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ L 10 of 13.01.2001, p. 30.

enterpreneurs (*egyéni vállalkozók*) in possession of eligible objects of national heritage. The beneficiaries of support for the organisation of events under Article (3)(i) are expected to be mainly local authorities (*önkormányzatok*), while the main beneficiaries of the support given for participation at events will be organisations and associations that represent the tourism industry as whole.

- (9) **Eligibility criteria:** In the current formulation of Article (4)(1) of the EST Decree, only those natural persons can benefit from support under this Decree that are Hungarian citizens and only those legal persons whose headquarters are on the territory of Hungary. However, as further detailed in paragraph 24-25 this is to be amended to remove such restrictions. In any case, natural persons are not included among the beneficiaries of the currently notified measures.
- (10) **Budget, duration and aid instrument:** The annual budget of the scheme is HUF 5 billion (€20.22 million<sup>6</sup>) with about 80% allocated to support given under Article (3)(p) of the EST Decree and 20% to support under Article (3) (i). The duration of the scheme is 2005-2009. The support will be given in the form of direct non-repayable grants. The exact aid amount per beneficiary is not known since it depends on the number and type of applications reflecting the actual needs each year. However, it is already known that some grants will be above the de-minimis threshold. The grants can cover up to 100% of eligible costs. Eligible costs for the subsidies to be awarded under Article (3)(p) of the EST Decree will cover restoration works, but not the normal maintenance of costs of these buildings.

### 3. ASSESSMENT OF THE MEASURE

#### 3.1. Article 87 (1) EC

- (11) The Commission has first examined whether the notified measure can be characterised as State aid within the meaning of Article 87 (1) EC, according to which “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.*”
- (12) **Presence of State resources:** The budget of the scheme is earmarked in the central State budget (*központi költségvetés*) and the subsidies are granted by the Hungarian National Tourism Office. The financial resources of the State budget clearly constitute State resources in the meaning of Article 87 (1) EC.
- (13) **Economic advantage to an undertaking:** Most beneficiaries are expected to be local authorities that are by definition part of the public administration, or associations that operate on a non for profit basis. In some cases these beneficiaries are not involved in economic activities, i.e. the municipalities and civil associations might act in the context of their legal obligation to

---

<sup>6</sup> Euro exchange rate of 30.03.2005: 1 €= 247.28 HUF (OJ C 153 of 24.06.2005, p. 1).

protect and promote cultural heritage on a non-commercial basis. Therefore, it is possible that part of the beneficiaries could not be considered as undertakings in the meaning of Article 87(1) of the EC Treaty.

- (14) However, some of the beneficiaries are expected to be businesses that are involved in commercial activities on existing markets, e.g. hotel providers operating historic baths. They therefore qualify as undertakings in the meaning of article 87(1) of the EC Treaty. The aid granted from the State budget will strengthen the position of these undertakings on the market, thereby conferring them an economic advantage. This is the case in particular for the undertakings that otherwise would have to bear the costs of renovation/restoration of their buildings and that directly benefit from the increased value of the renewed monuments.
- (15) **Selectivity:** All funds under this measure are granted individually and directly to certain companies/associations/public bodies applying for the aid. In addition, the scheme is specifically aimed at the tourism industry. The measure is therefore selective in nature.
- (16) **Effect on Community trade:** In principle, the restoration of existing monuments and landmarks of cultural and historical value does not necessarily in itself affect trade between Member States.<sup>7</sup> Nor does necessarily the organisation of and participation at cultural heritage events. However, in the case at hand, due to the specific tourism promotion objective of the notified measure, there will be an effect on tourism flows in the Community.<sup>8</sup> Therefore, the Commission considers that the measure will have an impact on intra-Community trade.
- (17) In the light of the foregoing, the funding in a significant part of projects being supported under the notified measure is considered not to constitute State aid within the meaning of Article 87(1) EC since the beneficiaries are considered not to constitute undertakings performing an economic activity. However, in the case of some projects, the funding by the scheme constitute State aid in the meaning of article 87(1) of the EC Treaty.

### **3.2. Compatibility with article 87 of the EC Treaty**

- (18) In respect of such projects in which the funding does constitute State aid, it is recalled that that aid which fulfils the conditions set out in Article 87 (3) (d) EC may be deemed compatible with the common market. According to Article 87 (3) (d) EC, aid to promote culture and heritage conservation may be considered to be compatible with the Common Market, where such an aid does not affect trading conditions and competition in the Community to the extent that is contrary to the common interest.

---

<sup>7</sup> State aid N 560/2001 and NN 17/2002 – Brighton West Pier, United Kingdom – decision of 9.04.2002, OJ C 239 of 4.10.2002

<sup>8</sup> State aid N 503/1999 – Subvención para la restauracion del Monasterio de Santa Maria de Retuerta, Spain – decision of 27.10.1999, OJ C 33 of 5.02.2000

- (19) Regarding support under Article (3)(p) of the EST Decree, the objects eligible for support are classified as national monuments. Therefore, the measure under review aims at preserving the national cultural heritage of Hungary. Heritage conservation is a recognised area of mutual benefit for all European citizens under Article 151 EC. Since owners of monuments would not be able to finance conservation works solely from their revenue due to very high costs of the renovation and restoration works and the long term nature of such investments and also considering that the works have to follow prescribed guidelines as to materials and structure, it is considered that the aid is necessary in this case.
- (20) As to support under Article (3)(i) of the EST Decree for the organisation of cultural heritage events, these are typically festivals of non-commercial nature organised by Local Authorities. Their aim is to display traditional Hungarian food, professions and customs that form part of the cultural heritage of the country and to preserve these traditions for future generations. It is typically not commercially feasible to cover all costs by the revenues generated from tickets, sales and eventual sponsorships.
- (21) The measure is also considered to be proportionate: Most beneficiaries are public bodies, associations and non-profit organisations, therefore businesses benefit from the support only in a limited way. The support will be strictly limited to objects and events of cultural heritage significance and do not expand to the operational activity of the beneficiary. The Prime Minister's Office prepares bi-annual and annual reports regarding the schemes financed under the EST Decree. Therefore, the Commission considers that adequate mechanisms are put in place in order to ensure that the aid is limited to the minimum necessary to achieve the cultural heritage objectives.
- (22) On the basis of the above, the Commission has concluded that, in the limited number of cases when the measure at hand involves State aid, it preserves national cultural heritage without adversely affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87 (3) (d) EC.

### **3.3 Compliance with other provisions of the EC Treaty**

- (23) In the current formulation of Article (4)(1) of the EST Decree, only those natural persons can benefit from support under this Decree that are Hungarian citizens and only those legal persons whose headquarters are on the territory of Hungary. The Commission drew the attention of the Hungarian authorities to the likely incompatibility of these restrictions with the EC Treaty, in particular with Article 12 prohibiting any discrimination on the basis of nationality, Article 43 concerning the right of establishment and Article 49 on the right of provision of services. The Hungarian authorities have recognised the need to modify these provisions in order to bring them in line with the EC Treaty.
- (24) The Hungarian authorities have therefore undertaken in their letter registered on 06 July 2005 to introduce amendments as to allow legal persons who have their headquarter (*székhely*) located in another EU Member State or a country part of the European Economic Area (hereafter EEA) to also benefit from the

scheme. In addition, the EST Decree will also be amended so as to allow natural persons who are not citizens of Hungary but of another EU Member State, or a country part of the EEA, to benefit from the scheme. The Hungarian authorities have committed that no call for proposals will be published and grant awarded under the scheme before the above described amendments come into force.

#### **4. DECISION**

- (25) The Commission has decided, on the basis of the foregoing assessment, not to raise any objections to the measure at issue, considering that it does not in most cases, constitute State aid within the meaning of Article 87 (1) EC and, in the limited amount of cases, where State aid elements are involved, the measure would be compatible with the common market under Article 87 (3) (d) EC.
- (26) However, no call for proposals can be published and grants awarded under the scheme until after the EST Directive has been amended so as to comply with the EC Treaty with regards to non-discrimination on the basis of nationality, the right of establishment and freedom to provide services.
- (27) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within 15 working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/).

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
Rue de la Loi/Wetstaat, 200  
B-1049 Brussels

Fax No : (32) 2 2961242

Yours faithfully,

for the Commission

Neelie Kroes  
Member of the Commission