

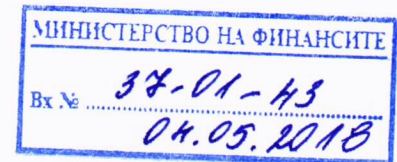
M.N.



EUROPEAN COMMISSION

Competition DG

State aid: General Scrutiny and Enforcement
Access to finance, R&D&I and Environment



Brussels, 04/05/2018
COMP/H2/SC/jj(2018)042420

Permanent Representation of
Bulgaria to the European Union
Square Marie-Louise 49
1000 Bruxelles

Subject: SA.49742 (2017/PN) - Public funding in water supply and sewage sector - Bulgaria

Dear Madam, dear Sir,

The Bulgarian authorities have pre-notified their plans to fund through public resources (ESIF resources from OP Environment 2014-2020, State and municipal budget, other international financial instruments) investments into the water supply and sewerage sector infrastructure, arguing that it will not constitute State aid within the meaning of Article 107(1) TFEU.

We understand from your submission that the infrastructure for drinking water and the collection and treatment of urban waste water is owned by the State or by the municipalities. Further, the territory of Bulgaria is divided into 51 designated territories according to art. 198a of the Water Act (WA). In each of these territories, pursuant to art. 198o(2) WA, only one water and sewage operator (hereinafter referred to as "the operator") can operate. This operator provides the supply of drinking water and the collection and treatment of waste water in the territory concerned, as well as carrying out activities related to the construction, maintenance and operation of water supply and sewerage systems. The exception to this is provided by art. 198o(6) WA, whereby in some of these 51 territories there are additional operators, who serve separate consumers (but not the whole territory); you refer to these operators as "atypical". Further, water supply and sewage services can be attributed to an operator either through a contract awarded to the operator according to WA provisions, or through a concession pursuant to the Law on Concessions. The majority of the operators in Bulgaria are state- or municipal-owned companies, who are awarded these water and sewage contracts pursuant to the WA provisions. In the territory of Sofia the operator is a concessionaire, who has been awarded a concession contract following the provisions of the Law on Concessions.

Based on the information you have provided so far, our preliminary understanding is the following:

As regards the ownership of the water supply and sewerage infrastructure we agree that the conditions of para.211 of the Commission Notice on the Notion of State Aid as referred to in Article 107(1) TFEU (NOA) appear to be fulfilled.

In relation to the provision of water supply and sewerage services, in the territories where the operator is a state or municipal company, who is awarded a contract pursuant to the WA, and there is no "atypical" operator, there appears to be no competition either on or for the market. These territories therefore seem to qualify as a series of legal monopolies within the meaning of para. 188 NOA, provided that the Bulgarian authorities ensure that all cumulative conditions listed therein are met. We would like to draw your attention in particular to the requirement of para. 188(d) NOA, which requires the exclusion of cross-subsidisation in case the operator is active in other product or geographic markets which are open to competition. Moreover, we would also draw your attention the fact that the qualification of these legal monopolies is based on the situation as described by your authorities at present and any change might lead to changes in this assessment.

In the territory of Sofia, where the operator is awarded a concession, it is evident that at least competition for the market exists; therefore the conditions set in para.188 NOA for a legal monopoly are not met. We are therefore unable to conclude at this stage that the public funding of the water supply and sewerage sector in Sofia does not amount to State aid.

Finally, as regards the so-called "atypical" operators, we would like to draw your attention to the fact that at present we do not possess enough information on their status and activities to allow us to take any preliminary position.

This position is not a definitive position of the Commission itself, but only a preliminary view of the services of DG Competition, based on the information available at present and pending any additional comments you might wish to make. Should you want to inform us of any new particulars that might be relevant for this preliminary assessment, we would ask you to submit any further comments and evidence in writing to DG Competition.

Yours faithfully,

e-signed

Vanessa NOZAR

Deputy Head of Unit H.2.

Contact:

Stefana Cholakova, Telephone: +32 229-75136, stefana.cholakova@ec.europa.eu