

Commission Decision (EU) 2016/2394 of 26 May 2014 on State aid granted by Hungary to ValDeal Innovációs Szolgáltató Zártkörűen Működő Részvénytársaság (case SA.33186 (2012/C) (ex 2011/NN)) (notified under document C(2014) 3193) (Only the Hungarian text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2016/2394

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on State aid granted by Hungary to ValDeal Innovációs Szolgáltató Zártkörűen Működő Részvénytársaság (case SA.33186 (2012/C) (ex 2011/NN))

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1) (a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above<sup>(1)</sup> and having regard to their comments,

Whereas:

1. **PROCEDURE**

- (1) On 12 August 2008, the Commission initiated the monitoring of the Hungarian aid scheme ‘The use and application of Research and Technological Innovation Fund’ HU 21/2004 (SA.15588 (MX 23/2008)) (hereinafter ‘the Scheme’), which upon the accession of Hungary was considered to be existing State aid<sup>(2)</sup>. The monitoring exercise concerned State aid awarded on the basis of the Scheme in the period between 2004 and 2006.
- (2) Three beneficiaries were selected for in-depth analysis<sup>(3)</sup>, including ValDeal Innovációs Szolgáltató Zártkörűen Működő Részvénytársaság (ValDeal Innovation Services Closed Limited Company) (hereinafter ‘ValDeal’). In all three cases, irregularities were revealed.
- (3) One of the monitored companies voluntarily repaid the aid with interest during the monitoring phase. Consequently, the Commission's investigation into that beneficiary was discontinued.

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- (4) In the monitoring procedure (SA.15588), the Commission requested information with respect to ValDeal on 12 June 2009, 21 January 2010, 30 August 2010, 22 December 2010 and 17 February 2011. The Hungarian authorities submitted information on 17 September 2009, 30 March 2010, 26 October 2010, 6 December 2010, 8 December 2010, 2 February 2011, 24 February 2011 and 1 April 2011.
- (5) Considering that the Commission's concerns with respect to the two remaining beneficiaries, including ValDeal, had not been fully addressed by the Hungarian authorities, the case was transferred to an NN file on 16 June 2011 and registered under number SA.33186 (2011/NN).
- (6) In October 2011, the beneficiary other than ValDeal voluntarily repaid the aid with interest. Consequently, the investigation concerning that beneficiary was discontinued<sup>(4)</sup>.
- (7) In view of the above, the present decision concerns exclusively the issue of State aid granted to ValDeal (hereinafter 'the measure').
- (8) The Commission requested information with respect to ValDeal on 9 February 2012 and 18 April 2012. The Hungarian authorities submitted information on 1 September 2011, 19 October 2011, 29 February 2012, 12 March 2012, 18 June 2012, 26 June 2012, 4 July 2012 and 12 September 2012.
- (9) A meeting with the Hungarian authorities and representatives of the beneficiary took place on 6 September 2011 on the premises of the Commission departments in Brussels.
- (10) By letter of 18 April 2012, the Commission departments informed the Hungarian authorities that based on the information available at that time, aid to ValDeal could not be considered aid for an R & D project. However, the Commission departments considered that on a preliminary basis, aid to ValDeal could be compatible under Article 4 of Commission Regulation (EC) No 70/2001<sup>(5)</sup> (hereinafter 'the SME Block Exemption Regulation'). Therefore, the Hungarian authorities were invited to verify whether the measure fulfilled all the requirements of that regulation and to submit the supporting information. Finally, the Commission departments informed the Hungarian authorities that in the event that the aid amount actually received by ValDeal was higher than the aid amount permissible under the SME Block Exemption Regulation, the difference would have to be recovered, together with the applicable interest calculated in accordance with the rules on the method of calculating the reference rate in recovery procedures<sup>(6)</sup>.
- (11) By letter of 18 June 2012, the Hungarian authorities informed the Commission departments that aid to ValDeal should not be assessed under Article 4 of the SME Block Exemption Regulation, without adding any further explanation.

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- (12) On 19 December 2012, the Commission decided to open a formal investigation procedure. The Commission decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union*<sup>(7)</sup>. The Commission called on interested parties to submit their comments.
- (13) On 22 February 2013, the Hungarian authorities submitted comments following the opening decision. Two interested parties, ValDeal and the European Business & Innovation Centre Network (EBN)<sup>(8)</sup> submitted comments on 13 March 2013 and 14 March 2013 respectively.
- (14) On 5 April 2013, the comments of the interested parties were transmitted to the Hungarian authorities who, by letter of 8 May 2013, confirmed that they did not have any further observations to make.
- (15) By email of 18 June 2013, the Hungarian authorities were asked to submit a detailed timeline for the repayment of the aid, to which they replied the same day. On 26 June 2013, the Hungarian authorities submitted a table with the eligible costs. Since this submission contained information that was not clear in the light of their past submissions, on 5 July 2013, a request for information was sent. Following two requests for deadline extension, the Hungarian authorities submitted their reply on 7 October 2013.
- (16) Following informal requests for clarification by the Commission departments, the Hungarian authorities indicated, by email of 12 February 2014, that part of the aid had been passed on by ValDeal to certain customers in accordance with *de minimis* thresholds and cumulation rules.

## 2. DESCRIPTION OF THE SCHEME AND OF VALDEAL

### 2.1. Description of the Scheme

- (17) The legal basis of the Scheme is Act XC of 2003 on the Research and Technological Innovation Fund (a Kutatási és Technológiai Innovációs Alapról) and Government Decree No 133/2004 of 29 April 2004 on the management and application of the Research and Technological Innovation Fund.
- (18) The budget of the Scheme for 2006 was HUF 7 909 784 000 (approximately EUR 31,25 million<sup>(9)</sup>). The Scheme was financed exclusively from the State budget<sup>(10)</sup>.
- (19) The aim of the Scheme was to support, amongst others, R & D activities in Hungary without focusing on certain sectors or limiting the size of beneficiaries. The forms of the aid were grants, soft loans and interest subsidies. According to the legal basis of the Scheme, besides R & D aid, aid could also be made available for risk capital, training, employment, investment (regional aid), and *de minimis* measures.

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- (20) One of the beneficiaries of the aid received under the Scheme was ValDeal. The company received R & D State aid from the 2006 budget of the Scheme for the R & D project 'Development of the Hungarian model of integrated innovation management' (hereinafter 'the Project'). ValDeal supposedly carried out 11 % industrial research and 89 % experimental development.

## 2.2. Description of ValDeal and the project implemented

### 2.2.1. ValDeal's activities in the framework of the Project receiving aid

- (21) ValDeal, a small enterprise established in 2006<sup>(11)</sup>, received a non-repayable grant of HUF 472 508 090 (approximately EUR 1,86 million) for the Project. The total cost of the Project was HUF 1 001 134 111 (approximately EUR 3,95 million) and ValDeal's own contribution was HUF 528 626 021 (approximately EUR 2,08 million)<sup>(12)</sup>. The Project implementation period was from 1 December 2006 to 30 November 2010<sup>(13)</sup> and the aid was paid in several instalments.
- (22) The objective of the Project was to develop an innovation management system specific to Hungary and the Central and Eastern European region which 'systematically monitors scientific/technology projects, inventions and start-up companies to identify those which have the highest potential for commercialisation and helps them create business cases and licence portfolios that are attractive to potential investors, or helps these projects increase their revenues by capturing new markets, introducing new product lines or simply turning new ideas into businesses'<sup>(14)</sup>.
- (23) The first step in the Project was to buy licensed innovation management know-how from the IC<sup>2</sup> Institute of the University of Texas and the German INNO AG, which have long-standing experience in business incubation, innovation management and commercialisation of intellectual property. ValDeal also bought innovation management training for its staff from the University of Texas.
- (24) The Scheme obliged ValDeal to provide several services to its customers free of charge. Clause 1.1 of the grant contract reads as follows:

The Beneficiary (ValDeal) undertakes that (...) during the period of the Project it will, for free and without accepting any consideration, scout, identify, and analyse at least 100 innovative technologies or products, and select the appropriate possibilities for utilisation.

- (25) ValDeal claimed that the subject of its R & D consisted in the adaptation of the purchased know-how to the Hungarian and Central Eastern European business environment. On the basis of this adapted model, ValDeal provided free innovation management services to 60 'ideas' (of which 18 were undertakings, the others being ideas of individual researchers) selected out of a sample of 600 through a contest that ValDeal had organised.

- (26) ValDeal summarised its activities in the Project as follows: ‘the tasks can be grouped as follows: taking over the American and European innovation management know-how; collecting, screening, evaluating research results, product, technology and service ideas, selection of projects with a high potential; business development, licensing, commercialisation of know-how; development of integrated innovation management services; training; dissemination and communication of the results; sustainability of the results’<sup>(15)</sup>.
- (27) As regards the services provided by ValDeal to the inventors or companies, they typically consisted of the following: ‘development of homepage; development of creativity; generation of ideas; open innovation; identifying product, technology and service ideas; monitoring research results; identifying innovative companies or enterprises with potential for innovation; tender/grant application writing and management; training; intellectual property protection; mediation, matching of R & D capacities; interim management; marketing and market research; communication; elaboration of business plans, feasibility studies; domestic and international networking; networking with business angels and investors; search for investors; managing investment processes; collection and distribution of good/best practices’<sup>(16)</sup>.
- (28) According to ValDeal, the adaptation of the original model was necessary to take account of the differences between the conditions in Hungary and in more developed European countries or the US. The most typical differences, according to ValDeal, are the following: in Hungary ‘there is no innovation-friendly social and economic environment; there is no institutional seed capital; the national innovation system is not effective; there is no policy-level institution responsible for the strategic organisation and efficient operation of innovation; there is no available manpower trained for innovation management; there is no qualified technology transfer and innovation manager capacity/competence in the knowledge centres; the number of international innovation cooperations is very low’<sup>(17)</sup>. ValDeal also mentions that the innovation culture in Hungary is different. For instance, ‘project owners do not have appropriate information about the relevant market and competitors’; ‘project owners, in most cases, are not suitable for managing the company [...], they often do not accept that the scientific management of the project should be separated from general and business management’; IPR management is not appropriate; or in certain cases, there is an ‘almost total lack of business ethics’<sup>(18)</sup>.

#### 2.2.2. *IPR protection sought by ValDeal*

- (29) An argument that ValDeal put forward in order to demonstrate the R & D content of the Project is that it has sought intellectual property rights

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(hereinafter: 'IPR') protection for its research results<sup>(19)</sup>. In this regard, ValDeal mentioned two types of IPR protection that it had received:

- Firstly, ValDeal mentioned that it had registered two trademarks with the Hungarian Patent Office (hereinafter: 'HPO'): one for its graphic sign (registration No 191345) and another for the composition of words '*ValDeal Integrated Innovation Management Model*' (ValDeal Integrált Innovációmenedzsment Modell) (registration No 206941).
- Secondly, ValDeal made a voluntary registration<sup>(20)</sup> of its Integrated Innovation Management Model with the HPO. According to the HPO website, the voluntary registration of works does not create legal protection equivalent to copyright or any other intellectual property right. It merely serves as evidence to prove that on the date of the registration by HPO, the work or related legal achievement which the applicant claimed to be its own existed with the registered content<sup>(21)</sup>.

### 2.2.3. *Similar EU-funded projects*

- (30) In further evidence of the R & D content of the Project, ValDeal submitted some examples of EU-funded projects (see below) and argued that they were all similar R & D projects funded by the Fifth Framework Programme (hereinafter 'FP5') or the Sixth Framework Programme (hereinafter 'FP6')<sup>(22)</sup>, and therefore ValDeal's project should be considered an R & D project. ValDeal referred to the following projects as examples:
- 'Creative trainer' — This project aimed to develop a creativity and innovation management course with the support of the Commission's Lifelong Learning Programme. The objective of this programme was to stimulate learning experiences and develop the education and training sector across Europe<sup>(23)</sup>. In light of that information, 'Creative trainer' does not appear to be an R & D project.
  - 'WOMENTOR' — The project aimed to support women entrepreneurs' participation in European research projects and was also financed from the Lifelong Learning Programme. Therefore, it does not appear to be an R & D project either.
  - 'ImMediaTe' — The project aimed to set up a sectoral platform for SMEs in the digital media and creative sectors in order to provide them with coaching and training on how to develop a digital business and on digital business financing. The project was funded under the EU Competitiveness and Innovation Framework Programme<sup>(24)</sup>, which aims to encourage the competitiveness of European enterprises in general, including the promotion of better take-up and use of ICT, the promotion of the increased use of renewable energies and energy efficiency, supporting innovation activities, providing better access to finance and providing business support services. In light of the information, the ImMediaTe project also appears to be mainly a training project.

- ‘NIMCUBE’ — The project aimed to develop sophisticated IT solutions for measuring, managing and optimising the re-use of knowledge and innovation by companies. The project was indeed financed under FP5. However, unlike ValDeal's project, the NIMCUBE project aimed at the development of new technical solutions, i.e. software.

### 3. **DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE**

- (31) The Commission decided on 19 December 2012 to initiate the formal investigation procedure. On a preliminary basis, the Commission concluded that the measure constituted aid within the meaning of Article 107(1) TFEU for the following reasons:
- (32) Firstly, ValDeal received a grant from the 2006 budget of the State aid scheme HU 21/2004; hence, the measure was considered to be financed from State resources.
- (33) Secondly, ValDeal received State aid in order to carry out activities whose costs other market participants had to fully bear on their own. This is notwithstanding the fact that in the framework of the measure, ValDeal provided its services for free. Therefore, the measure threatens to distort competition by conferring a selective advantage on ValDeal.
- (34) Thirdly, the measure clearly affects trade between Member States. ValDeal bought innovation management know-how from the US University of Texas and the German INNO AG; hence the measure was liable to affect trade between Member States. In addition, ValDeal also intended to provide the services to companies established in other Central and Eastern European countries.
- (35) The Commission had doubts about the compatibility of the aid with the internal market. In particular, it doubted whether the aid to ValDeal could be considered compatible with the internal market under the R & D&I Framework of 1996, or alternatively, under other instruments.

#### 3.1. **Compatibility under the R & D&I framework**

##### 3.1.1. *R & D content*

- (36) The Commission concluded that none of the above-mentioned services provided by ValDeal could be considered innovations because there were already offered by IT service providers, lawyers, patent agents, consultants, ‘business angels’ etc. and were available in different forms on the market. In fact, it appears that the Project consisted of testing the effectiveness of an innovation management know-how/model supplied by third parties and simply adjusting it to the Hungarian business environment (including translation into Hungarian).

- (37) In addition, ValDeal claims that the adaptation of the purchased innovation management know-how/model consisted in giving more importance to certain management services, like personal coaching of inventors, on which there is less emphasis where the business culture is more developed. However, the Commission considered that essentially ValDeal provided the very same services as those comprised within the purchased innovation management model.
- (38) Rather than carrying out actual, genuine R & D, ValDeal's activities mainly aimed at stimulating R & D and innovation by other entities, i.e. ValDeal's customers. ValDeal itself submits that '60-80 R & D intensive jobs have been created'<sup>(25)</sup> in the companies to which it provided its services.

3.1.2. *IPR registration*

- (39) According to the Community Trade Mark Regulation, 'A Community trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings'<sup>(26)</sup>. In other words, the main purpose of a trade mark is not to protect the R & D results of a company but to distinguish it from other entities. Therefore, a trade mark by itself cannot serve as proof that the company owning it has carried out R & D activity within the meaning of the R & D&I Framework of 1996.
- (40) The Commission stated also that the fact that ValDeal has not or could not register any patents or other intellectual property rights other than a trademark for its work results is a strong indication that the project did not achieve research results that would meet the criteria for patent protection.
- (41) While it is true that a company may decide to protect its patentable knowledge or invention as know-how or a business secret instead of formally registering a patent for it, ValDeal's generic claim that it would develop its own know-how through the implementation of the project is not sufficient to prove that such project involved genuine R & D within the meaning of the R & D&I Framework.

3.1.3. *Similar EU projects*

- (42) Firstly, the Commission examined the projects in question and found that, except for one, none of them was financed under FP5 or FP6: they were financed under wider programmes for training, education and competitiveness which, according to the Hungarian authorities, presented certain analogies with ValDeal's project.
- (43) Secondly, the NIMCUBE project, which might have involved R & D, aimed to develop new IT solutions, and therefore was not similar to the project carried



out by ValDeal. Therefore, the Commission considered that any similarity between the above-mentioned projects and that of ValDeal did not prove that ValDeal's activities would qualify as R & D projects within the meaning of the R & D&I Framework.

### 3.2. **Compatibility under other instruments**

(44) In the opening decision, the Commission invited comments on possible alternative grounds for compatibility.

#### 3.2.1. *Compatibility with Commission Regulation (EC) No 1628/2006<sup>(27)</sup> (hereinafter 'Regional Aid Block Exemption Regulation')*

(45) In the opening decision, the Commission recalled that, according to Article 4 of the Regional Aid Block Exemption Regulation, aid for initial investment is exempt from the notification requirement if it fulfils the following general and specific conditions

(46) The first general condition is that aid is granted in a region eligible for regional aid. The whole territory of Hungary was and is an assisted region eligible for regional aid. ValDeal's principal place of business is in Budaörs, a city situated in Pest County, which is in the region of Central Hungary (Közép-Magyarország). Until 31 December 2006, Pest County was an assisted area under Article 87(3)(a) TEC<sup>(28)</sup>. Therefore, the first general condition appears to have been fulfilled.

(47) The second general condition is that the aid intensity does not exceed the regional aid ceiling in force at the time when aid is granted. ValDeal claimed having received an aid intensity of 47,03 %. The aid ceiling for Pest County in 2006 was 40 %, to which a bonus of 20 % could be added for beneficiaries qualifying as small enterprises<sup>(29)</sup>, resulting in a maximum aid intensity of 60 %. According to the Hungarian authorities, ValDeal was a micro-enterprise in 2006, i.e. the year when it was established, and a small enterprise in 2007<sup>(30)</sup>. The assessment of this condition requires a recalculation of the eligible costs in the light of the specific conditions referred to below.

(48) As regards the specific compatibility conditions of aid for initial investment, Article 4(2)(b) of the Regional Aid Block Exemption Regulation provides that, if immaterial assets are taken into account for the calculation of the eligible costs, they (i) should be used exclusively in the establishment receiving the regional aid; (ii) be regarded as amortisable assets; (iii) be purchased from third parties on market terms; and (iv) be included in the assets of the firm and remain in the establishment receiving the regional aid for at least 5 years, or 3 years in the case of SMEs, such as ValDeal. While there was evidence that ValDeal bought the know-how on market terms, the Commission had no information on whether conditions (i), (iii) and (iv) were fulfilled and, therefore, invited interested parties to provide information in this respect.

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- (49) Moreover, Article 4(2)(a) of the Regional Aid Block Exemption Regulation provides that the investment must be maintained in the recipient region for at least 5 years (3 in the case of SMEs) after the whole investment is completed. The Project was completed on 30 November 2010 and ValDeal continued to carry out its activities in the Central Hungary region until 30 November 2013. Therefore, this specific condition appears to have been fulfilled.
- (50) Finally, according to Article 4(2)(c) of the Regional Aid Block Exemption Regulation, where the aid is calculated on the basis of material or immaterial investment costs, the beneficiary must provide a financial contribution of at least 25 %. ValDeal contributed 52,97 % of the total project costs. Therefore, this specific condition appears to have been fulfilled.
- (51) In conclusion, the Commission invited interested parties to provide information regarding (i) whether the aid to ValDeal could be assessed under the Regional Aid Block Exemption Regulation and, in particular, (ii) whether the intensity of such aid complied with the applicable aid intensities taking into account the eligible costs which are relevant under the above-mentioned Regulation.
- 3.2.2. *Compatibility with Regulation (EC) No 70/2001 (hereinafter 'SME Block Exemption Regulation').*
- (52) According to Article 4 of the SME Block Exemption Regulation, aid for investment in tangible and intangible assets is compatible with the internal market and exempted from the notification requirement subject to the condition that the investment takes place in an area that qualifies for regional aid at the moment the aid is granted and the aid intensity does not exceed the ceiling of regional investment aid determined in the approved regional aid map by more than 15 percentage points in areas covered by Article 107(3) (a) TEC, provided that the total net aid intensity does not exceed 75 %. The higher regional aid ceilings only apply if the aid is granted under the condition that the investment is maintained in the recipient region for at least 5 years and the beneficiary's contribution to its financing is at least 25 %.
- (53) As mentioned above, the whole territory of Hungary is and was an assisted area eligible for regional aid. Pest County, where the principal place of business of ValDeal is situated, was an Article 107(3)(a) area until 31 December 2006, with an aid ceiling of 40 %. Therefore, in December 2006, the SME Block Exemption Regulation allowed for a maximum of 40 % + 15 % = 55 % aid intensity in Pest County provided that the investment was maintained in the recipient region for at least 5 years.
- (54) In conclusion, the Commission invited interested parties to provide information on whether (i) State aid to ValDeal could be deemed compatible under the SME Block Exemption Regulation; and (ii) the intensity of aid granted to ValDeal did not exceed the aid ceilings for the possible initial

investment aid in question, with special regard to the calculation of the relevant eligible costs.

- (55) The Commission also stated that ValDeal did not misuse the aid it received as it carried out the same activities as those described in its tender documents.

#### 4. **POSITION OF THE HUNGARIAN AUTHORITIES<sup>(31)</sup>**

##### 4.1. **Compatibility with R & D&I Framework**

- (56) In their response to the opening decision, the Hungarian authorities maintained that ValDeal's activities qualified as an R & D project, because they fell into the experimental development category, and that the aid was lawful as it involved the following alleged R & D tasks:

- preparation of analyses about European practice,
- as a human research component, an assessment of how the project host can be motivated to cooperate,
- as an educational and research task, methodological research about how to develop well-prepared entrepreneurs,
- developing a number of methods of and tools for collecting, evaluating and screening projects, not yet available in the toolkit of innovation services in Hungary,
- identifying the services needed for innovation management, studying best practices and developing services for the Hungarian model of services.

- (57) The Hungarian authorities argued that ValDeal made a commitment (1) to test the developed methodology; (2) to carry out the experimental development of the integrated innovation management model (i.e. test-level collection, evaluation and screening of projects on the basis of the acquired know-how); and (3) to confirm the viability of the new services in the test application of selected projects.

- (58) The Hungarian authorities also argued that the R & D nature of the project would be confirmed by the fact that the project fully complied with the criteria in Section 149 of the Frascati Manual<sup>(32)</sup>.

- (59) Finally, the Hungarian authorities argued that ValDeal provided innovation services for small and medium-sized companies and private individuals in the course of the project. In accordance with the requirements of the Programme, these services were provided free of charge. Based on the statement prepared by ValDeal, the value of these services at the prevailing market prices totalled HUF 323 797 000<sup>(33)</sup>.

- (60) In the opinion of the Hungarian authorities, the advantage transferred in the form of services provided free of charge does not mean an economic advantage for ValDeal. This would reduce the amount of the State aid granted to ValDeal to HUF 148 711 090, i.e. the difference between the total government participation and the aid that benefited its customers.

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#### 4.2. **Compatibility with Regulation (EC) No 1628/2006 (Regional Aid Block Exemption)**

- (61) In the alternative, the Hungarian authorities agreed with the conclusion of the opening decision that the aid could have been compatible investment aid under the Regional Aid Block Exemption Regulation (EC) No 1628/2006.
- (62) Under the Regional Aid Block Exemption Regulation, the aid intensities are calculated either as a ratio of the eligible tangible and intangible costs or, if the investment project creates jobs directly, as a ratio of the wage costs of the person employed assessed for 2 years, or via a combined application of the above two methods provided that the amount of the grant does not exceed the most favourable value obtained on the basis of these two methods.
- (63) The Hungarian authorities claimed that the total costs of the project were HUF 842 027 000 and that the aid to ValDeal was HUF 148 711 090, corresponding to an aid intensity of 17,66 %<sup>(34)</sup> (below the ceiling of 60 % provided for in the above mentioned regulation). However, in the letter of 7 October 2013, the Hungarian authorities informed the Commission that the costs of the project amounted to HUF 823 320 683 (instead of HUF 842 028 250)<sup>(35)</sup>. Therefore, the Commission will base its decision on the latter information.
- (64) The Hungarian authorities argued that both the general and the specific conditions set out in Article 4 of the Regional Aid Block Exemption Regulation were fulfilled.

#### 4.3. **Compatibility with Regulation (EC) No 70/2001 (SME Block Exemption)**

- (65) The Hungarian authorities did not formulate any clear explanation as to how Regulation (EC) No 70/2001 could be applied in this case. The Commission understands that, as the maximum aid intensities are lower than those allowed for in the Regulation (EC) No 1628/2006, the Hungarian authorities did not consider it necessary to provide supplementary evidence.

#### 4.4. **Compatibility under the Treaty**

- (66) The Hungarian authorities also claimed that the aid granted may be compatible with Article 107(3)(c) of the Treaty, arguing that ValDeal's project was aimed at closing an obvious market gap, but could not be carried out with funds provided at market rates. In this view, the amount of the aid was limited to, and did not exceed the level needed for, the realisation of the goal.
- (67) The R & D&I Framework of 2006, which was adopted on 22 November 2006 and entered into force on 1 January 2007, contained a new aid category for innovation advisory services and innovation support services in line with Article 107(3)(c) of the Treaty. Since the grantor's commitment was made on 19 December 2006 and the new framework was intended to recognise the

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eligibility of innovation advisory services, the compatibility of aid could be assessed, according to the Hungarian authorities, directly under the Treaty.

- (68) In this respect, the Hungarian authorities observed that the development of an innovation management model in accordance with the Hungarian and EU regulations and the sociocultural context of East-Central Europe required the development of an appropriate business model and practice where innovation is driven by market demand and relationships with customers. ValDeal's project has developed a number of methods of and tools for collecting, evaluating and screening projects, in order for them to be used consistently in the future. Those services were not yet available in the toolkit of Hungary at the time of the grant.

## 5. POSITION OF INTERESTED PARTIES

### 5.1. Position of ValDeal

- (69) ValDeal maintained its opinion that the Project involved genuine R & D activities, eligible under the 1996 R & D&I Framework. ValDeal argued that the activity qualified as experimental development indicating that, while the individual tasks carried out under the project would not qualify as R & D projects in isolation, they could, if taken together, contribute to an R & D purpose.
- (70) In particular, ValDeal underlined that it applied an existing methodology to local undertakings and projects and carried out experimental development on a new integrated innovation management model. On a test basis, ValDeal collected, evaluated and screened a wide range of Hungarian projects, checking for their viability. Therefore ValDeal claims that the company performed a unique activity within the Hungarian market. The main difference between ValDeal's services and those provided by its competitors was that the latter were active in only one of the segments of ValDeal's operations.
- (71) Based on the know-how acquired, ValDeal claimed that it had developed a new innovation management model and methodology that could be consistently applied in a manner that matched the Hungarian legal environment and sociocultural conditions. In particular, the methodology of project collection had to be adapted to the Hungarian realities as, due to the different characteristics of the US market, start-up projects in Hungary were less suitable for selection. Moreover, the project screening methodologies needed to be further improved, as the American model had marketability (market utilisation) in its focus, while its East Central European counterpart, due to the different sociocultural context, gave higher importance to the entrepreneurial spirit and personality of project hosts. Sociocultural differences and economic context had also led to an in-depth adaptation of the training and model educational agenda.

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(72) As regards the impact on competition, ValDeal emphasised that the project was not aimed at supplying general management services; rather, it strove to create something truly unique, i.e. an integrated Hungarian model of innovation management along with the related innovation consultancy services. ValDeal claims that there was no market for such services at the time of the grant. In addition, by early 2013, a similar model, i.e. services aimed at the innovation-related business incubation of small and medium-sized enterprises, still did not exist in Hungary.

(73) ValDeal argued also that under the contract with the granting authority there was no legal obligation to file for patent protection. Furthermore, the company could not afford the fee of a patent report, nor was it allowed to spend aid for such purposes.

## 5.2. **Position of the European Business & Innovation Centre Network (EBN)**

(74) EBN is a European network of business and innovation centres (BICs) and similar organisations such as incubators. ValDeal is a member of EBN.

(75) EBN argued<sup>(36)</sup> that ValDeal carried out an experimental application in Hungary of a model developed in the United States, which involved the collection, evaluation and filtering of projects based on original know-how.

(76) In addition, according to EBN, ValDeal carried out a methodical analysis of European innovation management practices, including an in-depth examination of how project owners could be motivated to cooperate. It also performed research and education tasks and developed efficient and innovative methods and tools for project collection, evaluation and selection. Such an innovation management tool was still missing from the range of innovation services available in Hungary.

(77) EBN argued that it had evaluated the performances of ValDeal every year since 2008, and also conducted two in-depth on-site audits of ValDeal in 2008 and 2010. The evaluations and audits had concluded that ValDeal was in full compliance with the business and innovation centres criteria.

## 6. **ASSESSMENT**

### 6.1. **Existence of State aid**

(78) To be considered State aid under Article 107(1) TFEU, a measure must fulfil the following four cumulative criteria:

- (a) the measure must involve the use of State resources;
- (b) the measure must distort or threaten to distort competition;
- (c) the measure must confer a selective advantage on certain undertakings;
- (d) the measure must affect trade between Member States.

6.1.1. *Aid at the level of ValDeal*

- (79) Firstly, ValDeal received a grant from the 2006 budget of State aid scheme No HU 21/2004; hence, the Commission concludes that the measure involved State resources and was imputable to the State.
- (80) Secondly, ValDeal received State aid in order to carry out activities whose costs other market participants had to fully bear on their own. ValDeal was selected following a call for tenders organised by the Research and Technological Innovation Fund and received financing to develop and provide a series of innovation advisory services alongside the complemented services provided by consultancies, patent agents, ‘business angels’ and lawyers. Therefore, the measure conferred a selective advantage on ValDeal.
- (81) Thirdly, the measure has the potential to distort competition and affect trade between Member States, since the market in which ValDeal operates is open to competition from firms established in other Member States. Moreover, ValDeal bought innovation management know-how from the US University of Texas and the German INNO AG, and also intended to provide services to companies established in other Central and Eastern European countries.

6.1.2. *Aid at the level of ValDeal's customers*

- (82) As a result of the measure, ValDeal's customers benefited from free advisory services. Thus, while these customers did not directly receive State resources, they received an indirect advantage, within the meaning of Article 107(1) TFEU, since the very purpose of the measure was to provide free advisory services for inventors and companies.
- (83) The measure is clearly imputable to the State and involves State resources, which directly benefited ValDeal and its customers.
- (84) Secondly, ValDeal implemented a process through which the most deserving and promising companies were to be chosen as beneficiaries of free-of-charge advisory services. As a result, the project conferred a selective advantage on the selected beneficiaries and also had the potential to distort competition on the downstream markets where ValDeal customers were operating, by conferring a selective advantage on them.
- (85) Thirdly, the measure is likely to affect trade between Member States. Moreover, as mentioned above, ValDeal also intended to provide the services to companies established in other Central and Eastern European countries. In addition, the project aimed at improving the ability of ValDeal's customers to compete both at national and European level. Therefore, the measure clearly has affected trade between Member States.

6.1.3. *Conclusion*

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- (86) The Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU to ValDeal and its customers.

## 6.2. **Compatibility assessment**

### 6.2.1. *Aid to ValDeal*

— Qualification of ValDeal's activities as R & D projects

- (87) The R & D&I Framework of 1996 sets out definitions for the type of research that may be deemed compatible with State aid rules:

2.2. [...] In order to determine the proximity to the market of the aided R & D, the Commission makes a distinction between fundamental research, industrial research and precompetitive development activity.<sup>(37)</sup>

- (88) The Commission understands that ValDeal's project aimed at 'the development [of a] whole process, the creation of the model'. While ValDeal did use interaction with its customers to understand the Hungarian market and to adapt the acquired consultancy model to its specificities, the outcome of such an activity was the introduction on this market of an existing advisory model which integrated various services which were until then provided separately by different suppliers. In fact, ValDeal played the role of an integrator of services corresponding to the needs of its customers. Therefore, the claimed adjustments to the 'socio-cultural differences and economic impacts.' prevailing on the Hungarian market do not seem to be relevant to the question whether ValDeal's activities qualified as R & D projects.

- (89) The implemented model was meant to create and stimulate research and development and innovation within other entities, and not within ValDeal itself. The adaptation of the model to match the requirements of a specific market is not something specific to ValDeal, but ordinary economic behaviour on the part of any economic player looking to enter a market. The above-mentioned model seems to be a simple and usual customisation which is undertaken by any economic player aiming at performing on a specific market. The claimed 'realistic picture of the market value of the results of innovative projects as well as their marketability' that ValDeal was capable of providing to its beneficiaries was not in itself any different from the services rendered by similar consulting service providers, and in any case cannot be considered R & D.

- (90) While it could be true that at the time of granting the aid the Hungarian economic landscape was somewhat different from that of any other country, this argument is not sufficient to claim that the activities had R & D elements. Had ValDeal been active in a different country it would have had to adapt its value proposition anyway, similarly to any economic player. From this perspective, ValDeal did not act in a different way from any provider of services or goods. Its uniqueness stands in the capacity to integrate and



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coordinate several services the beneficiaries were looking for, or in the absence of the Project, services that they would not have contracted otherwise.

(91) Although ValDeal refers to the Frascati Manual, the nature of its activity was not that of research aimed at the identification of an innovative product, but a form of customisation of an existing product, combined with systematic analytical work carried out within the framework of its service supply activities. In particular, ValDeal acquired know-how from third parties and confined itself to adapting it to the Hungarian market.

(92) In the light of the above, the Commission concludes that, while fostering innovation by the final users of ValDeal's services, the activities at issue could not qualify as R & D projects within the meaning of the R & D&I Framework of 1996. Therefore, the Commission will assess whether the State aid can be considered compatible with the internal market under other policy objectives in accordance with Article 107 TFEU.

(93) In order to carry out such an assessment, the Commission acknowledges the arguments invoked by the Hungarian authorities whereby the aid at issue should be analysed at two levels. Firstly, at the level of ValDeal, the Commission will analyse the aid designed to cover the costs of its investments in tangible and intangible assets, linked to the purchase and use (subject to adaptation) of the relevant model for the provision of innovation advisory and consultancy services to SMEs. Secondly, at the level of ValDeal customers, the analysis will focus on the aid granted to those companies and private individuals which benefited from innovation advisory and consultancy services provided by ValDeal free of charge.

— Compatibility under different instruments

(94) The activities carried out by ValDeal fulfil the material requirements of Article 4 (i.e. general and specific) of Regulation (EC) No 1628/2006 (Regional Aid Block Exemption). Article 4 of the Regional Aid Block Exemption Regulation contains the following general and specific conditions in respect of the compatibility of aid granted to initial investments:

(1) general conditions:

(a) 'filing a request for aid prior to the commencement of operation': ValDeal filed its application for aid with the national authorities prior to the commencement of the investment project;

(b) 'the aid is granted in regions eligible for regional aid': The aid was granted in a region eligible for regional aid, as the Central Hungarian Region, where the premises ValDeal are located, was at the time when the aid was granted a region eligible for aid under Article 107(3)(a) TFEU;

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- (c) ‘the aid intensity in present gross grant equivalent does not exceed the regional aid ceiling which is in force at the time the aid is granted for the region in which the investment takes place. This can be increased by 20 % for small enterprises’: The ceiling of the aid was 40 % in the Central Hungarian Region, which, along with the increase allowed for small enterprises, reached 60 % aid intensity for ValDeal. In 2006, ValDeal was a micro-enterprise. Since 2007 it has been a small enterprise. The Hungarian authorities confirmed that at the time of granting the aid, ValDeal was a small or medium-sized enterprise. As demonstrated below (recitals 96-97), the aid intensity of the project implemented by ValDeal was below the ceiling provided for in the Regional Aid Block Exemption Regulation;
- (2) specific conditions:
- (a) ‘the investment must be maintained in the recipient region for at least three years in the case of SMEs’: A number of businesses have benefited from the results of the investment; the integrated Hungarian model of innovation management is available on an ongoing basis. ValDeal undertook to remain in operation until 30 November 2013;
  - (b) ‘to be eligible, immaterial assets must:
    - (i) be used exclusively in the establishment receiving the regional aid;
    - (ii) be regarded as amortisable assets;
    - (iii) be purchased from third parties under market conditions;
    - (iv) be included in the assets of the firm and remain in the establishment receiving the regional aid for at least three years in the case of SMEs’;

The know-how purchased by ValDeal met the criteria of intangible assets in the Regional Aid Block Exemption Regulation. The know-how was purchased from a third party and at market price. In addition, the know-how purchased and the capitalised experimental developments were used exclusively by ValDeal and exclusively in the facility established to implement the investment project;
  - (c) ‘where the aid is calculated on the basis of material or immaterial investment costs, or of acquisition costs in case of takeovers, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support’: The

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calculations pertaining to aid intensity confirm that the requirement for own resources was also satisfied.

- (95) In particular, following the opening of the procedure, the information acquired has enabled the Commission to identify and calculate the relevant eligible costs and to verify whether the intensity of aid granted to ValDeal exceeded the allotted aid intensities.
- (96) Firstly, the Commission notes that Hungary recalculated the costs of the project on the basis of the provisions of the above-mentioned Regulation (i.e. by taking into account the material and immaterial investment costs) and concluded that the total costs of the project amounted to HUF 823 320 683. Although the assumption of the Hungarian authorities was that all the above costs were eligible, the Commission is of the opinion that some of these costs, namely those relating to ‘know-how adaption’, are of an operating nature, and hence not eligible. Consequently, the Commission has deducted the ‘know-how adaptation’ costs, representing HUF 531 300 170, from the total costs. As a result of this deduction, the eligible costs as established by the Commission amount to HUF 292 020 513 in nominal value, i.e. HUF 267 015 826 in discounted value.
- (97) Secondly, the Commission notes that the aid benefiting ValDeal amounted to HUF 148 711 090 in nominal value, i.e. HUF 118 431 978 in discounted value. As a result, the intensity of the aid granted directly to ValDeal represents 44 % of the eligible costs (in discounted value), which is considerably lower than the maximum aid intensity allowed under the above-mentioned Regulation, i.e. 60 %<sup>(38)</sup>.
- (98) Therefore, having regard to the above-mentioned arguments, the Commission concludes that the aid at the level of ValDeal fulfilled all the conditions set out in Commission Regulation (EC) No 1628/2006.

#### 6.2.2. *Aid to ValDeal's customers*

- (99) The Commission notes that, in accordance with the grant decision of the Hungarian authorities, ValDeal's customers benefited from services which can be considered to be innovation advisory services and which were provided free of charge by ValDeal. The Hungarian authorities estimated the value of such aid on the basis of a tariff of HUF 15 000/day, reflecting the prevailing price conditions in the Hungarian market, and, on this basis, indicated that the aid in question amounted to HUF 323 797 000.
- (100) Although at the time of the grant the aid for such services was not regulated by the applicable R & D Framework, this type of aid was nevertheless covered by the new R & D&I Framework of 2006, which entered into force on 1 January 2007, i.e. a few days following the date of the grant<sup>(39)</sup>.

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- (101) On the basis of the above, the Commission will proceed to assess the compatibility of the aid directly under the Treaty, taking into account the specific criteria set out in the 2006 R & D&I Framework.
- (102) In accordance with Article 107(3)(c) TFEU, 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered compatible with the internal market. In its assessment, the Commission will examine whether (i) the aid at issue was designed to enable activities corresponding to an objective of common interest; (ii) the activities receiving aid were affected by a market failure; (iii) the form of aid constituted an appropriate instrument to achieve this objective; (iv) it had an incentive effect; and (v) it was proportionate and did not generate undue distortions of competition.

*Objective of common interest*

- (103) The Commission understands that, at the time of the grant, the lack of coordination between the suppliers of innovation advisory services hampered the supply of such services in an integrated form and prevented the development of demand.
- (104) In addition, the project was aimed at developing a number of methods of and tools for collecting, evaluating and screening projects which were not yet available in the toolkit of innovation services in Hungary. Thus, the project that ValDeal implemented contributed to fostering a market for integrated consulting services in a fragmented industry and to improving firms' capabilities to innovate in the medium and long term.
- (105) Moreover, the project promoted the transfer of knowledge in Hungary, which is in line with the Innovative Union flagship initiative of the Commission's current 'Europe 2020' programme<sup>(40)</sup>.
- (106) In addition, although not yet set up in the legislation at the time of the grant, the type of aid that ValDeal's customers benefited from corresponded to the category of innovation advisory services recognised and specifically regulated in point 5.6 of the R & D&I Framework 2006, which entered into force on 1 January 2007, i.e. a few days after the date of the grant at issue.
- (107) Therefore, given that the promotion of innovation is a major policy objective in order to foster sustainable growth within the EU, the aid at issue was designed to address an objective of common interest.

*Market failure*

- (108) After the economic transition in the 1990s, Hungary's public research institutions network was disrupted and a number of institutes were closed. In addition, at the time of the privatisation and restructuring of the Hungarian industry, only multinational companies were able to finance the acquisition of

relevant new knowledge from internal resources and to exploit the results of their R & D efforts on the market.

- (109) Among the causes for the low level of innovation by domestic undertakings, especially SMEs, the Hungarian authorities mentioned 'innovation costs too high' and 'lack of own resources'. Moreover, the Hungarian authorities also refer to an insufficient working relationship and collaboration between Hungarian owners of innovative projects and investors. The latter problem was mainly related to the insufficient financing of early-stage technologies, as at that time venture capital investors targeted mainly mid and late-stage companies with a lower level of risk. For instance, in the period 2000-2005 there was a yearly average of only 35 investments targeting innovative companies.
- (110) A National Innovation System (NIS) was implemented in order to tackle the above-mentioned limitations. Although most of the components of the system did exist and individually worked generally well, the system's performance as a whole was far from satisfactory. A number of the components did not work properly and the cooperation between them was rather poor. The overall performance being dependent on the quality of linkages and cooperation between those components, the outcome of the system was far from adequate.
- (111) One of the solutions for fostering the development of innovation in Hungary appeared to be the creation of business incubators. The first incubators were created in early 1990s and, by 2009, Hungary had around 40 incubators. The majority financed their activity from office rental fees, office services, facility management services and IT services. The incubators received companies on their sites in exchange for the rental of office space and the companies benefited from the incubators' economies of scale, allowing them to rationalise their fixed costs. However, the existing incubators did not provide business services in the fields of IPR consulting, international trade, innovation management and technology consulting. Hungary had no business angel network<sup>(41)</sup>, seed funds<sup>(42)</sup> or early-stage venture capital firms taking the risk of investing in early-stage companies. Finally, the incubators did not provide services for companies that intended to launch their businesses and/or expand internationally<sup>(43)</sup>.
- (112) In 2006, there were 14 companies that provided innovation management services in Hungary. The services they provided covered the following areas: screening, monitoring and evaluation of inventions, identification of innovative projects, services to attract venture capital funding, management of grants, setting up business plans, implementation of spin-off companies, licencing and intellectual property, management consulting, process and project management, mediation between business partners, training and education, organisation of innovation networks, provision of office space, and performance of research and studies.

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- (113) While each of ValDeal's competitors was active in at least one of the above-mentioned activities, ValDeal's project was aimed at covering all of them in an integrated form. Thus, it seems that the efforts and costs inherent in the development of an integrated service provisions model were too high as, due to a lack of effective coordination amongst the existing players, the model was unable to fill the gap in the market. For example, in order to cover all the services provided on an integrated basis by ValDeal, a firm had to win over at least four of ValDeal's competitors as partners.
- (114) Therefore, the Commission understands that, due to a coordination problem, there was no company or bridging institution in Hungary which could systematically evaluate the commercial potential of innovative products and/or technologies through a one-stop-shop type of service. It seems therefore that there was a major coordination problem in the market for innovation management services in Hungary.
- (115) In light of the above, the Commission concludes that the aid at issue was necessary as, at the time of the grant, there was a market failure in the form of a coordination problem affecting both the supply of and the demand for integrated innovation advisory services in Hungary.

*Appropriateness of the aid*

- (116) The Hungarian authorities tried to overcome the limitations preventing Hungarian start-up companies from having access to integrated innovation advisory services through the creation of the National Innovation System (NIS). Although the system was supposed to improve companies' innovativeness and competitiveness more generally, the regulatory approach did not lead to the expected outcome (see recital 110). Hence, the aid granted to ValDeal's customers in the form of free-of-charge integrated advisory services could be regarded as an appropriate means to address the above-mentioned market failure. It is also to be noted that the process of selection of the final beneficiaries implemented by ValDeal assured that the most deserving and promising companies were to be chosen.

*Incentive effect*

- (117) Firstly, the project ValDeal implemented was supported by both the government and ValDeal's resources, the latter participating with HUF 528 626 021.
- (118) Secondly, the Commission also notes that ValDeal did not misuse the aid, as it carried out the same activities as those described in its tender documents.
- (119) The evidence provided by the Hungarian authorities demonstrates that, without the aid, ValDeal would not have been able to provide free-of-charge innovation services based on an integrated model and stimulate the demand for such services, because the fragmentation of the Hungarian market prevented the development of the demand side and did not allow economies

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of scale. Therefore, the Commission concludes that the involvement of public resources in the project was meant to change ValDeal's behaviour, as well as the behaviour of its customers.

*Proportionality and impact on competition*

- (120) The project allowed ValDeal to implement a more efficient model integrating various components of innovation management services and helped ValDeal's customers to improve their commercial and management skills.
- (121) The Hungarian authorities submitted evidence demonstrating that in no case did the amount of aid corresponding to the services provided free of charge by ValDeal exceed EUR 200 000. They have verified and confirmed that the cumulation rules at company level were respected.
- (122) The Commission finds that the advantage to ValDeal customers that received aid corresponds to the maximum aid amounts applicable to innovation advisory services under the 2006 R & D&I Framework, which entered into force on 1 January 2007, i.e. only 10 days after the start of the project. Therefore, the Commission concludes that the assessment of the above-mentioned aid directly under the Treaty leads to the conclusion that the aid amounts granted to ValDeal's customers were proportionate in the light of the criteria that the Commission laid down in the 2006 R & D&I Framework.
- (123) The Commission also notes that, at the moment of the implementation of the project, ValDeal's competitors offered only specific components of the innovation advisory services supported under the measure. The fragmentation of the supply side and the lack of coordination between players means that ValDeal provided its integrated services in a market where no other competitor was able to provide fully fungible services. Therefore, the project implemented by ValDeal had only a limited impact on competition.

## 7. CONCLUSION

- (124) In the light of the foregoing, the aid to ValDeal is compatible with the internal market under Regulation (EC) No 1628/2006 and the aid to ValDeal's customers is compatible with the internal market under Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid which Hungary has granted to ValDeal Innovációs Szolgáltató Zártkörűen Működő Részvénytársaság and to its customers during the period of implementation of the project receiving aid 'The use and application of Research and Technological Innovation Fund' is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

*Article 2*

This Decision is addressed to Hungary.

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Done at Brussels, 26 May 2014.

*For the Commission*

Joaquín ALMUNIA

*Vice-President*



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- (1) [OJ C 40, 12.2.2013, p. 53.](#)
- (2) Commission Decision C(2004) 3568/2 of 20 September 2004, ‘Measures that will be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty — Republic of Hungary’.
- (3) Hungary was informed of the selection of the three undertakings for in-depth analysis, including ValDeal, by letter of 12 June 2009.
- (4) The Commission informed the Hungarian authorities of the discontinuation of the investigation into the beneficiary concerned by letter of 19 December 2011.
- (5) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ([OJ L 10, 13.1.2001, p. 33](#)).
- (6) Articles 9 and 11 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 140, 30.4.2004, p. 1](#)).
- (7) [OJ C 40, 12.2.2013, p. 53.](#)
- (8) European Business & Innovation Centre Network is a European business association of which ValDeal is a member;
- (9) At the time of issuing this decision, the Commission used the exchange rate of 253,13 HUF/EUR of 19 December 2006.
- (10) The Hungarian authorities confirmed that no Structural Funds were used for the aid scheme.
- (11) According to the Hungarian authorities, ValDeal was a micro-enterprise in 2006, i.e. the year when it was established, and a small enterprise in 2007 (submission of Hungary of 12 March 2012).
- (12) The original grant contract had set aside a non-repayable grant of HUF 550 million (approximately EUR 2,17 million) for the originally planned total project cost of HUF 1 169 467 000 (approximately EUR 4,62 million). There is thus a difference of HUF 168 332 889 between the planned total projects costs and the actual total project costs.
- (13) The original implementation period planned in the grant contract was from 1 December 2006 to 31 January 2009. However, the grant contract was modified several times in order to extend the implementation period until 30 November 2010.
- (14) Submission of Hungary of 4 July 2012, ‘Background — ValDeal Innovation Management Programme’, p. 1.
- (15) Submission of Hungary of 24 February 2011, ‘Development of the Hungarian model of integrated innovation management — Final Report’, p. 8.
- (16) Submission of Hungary of 24 February 2011, ‘Development of the Hungarian model of integrated innovation management — Final Report’, p. 19.
- (17) Submission of Hungary of 24 February 2011, ‘Development of the Hungarian model of integrated innovation management — Final Report’, p. 3.
- (18) Submission of Hungary of 24 February 2011, ‘Development of the Hungarian model of integrated innovation management — Final Report’, pp. 20-21.
- (19) Submission of Hungary of 4 July 2012, section on ‘Responses to the questions of the European Commission — ValDeal Project’, p. 2.
- (20) The voluntary registration of works is governed by Regulation No 26/2010 of the Hungarian Minister of Public Administration and Justice.
- (21) <http://www.sztnh.gov.hu/kerdesek/gyik/onkentes.html>
- (22) Submission of Hungary of 19 October 2011, pp. 17-18, and submission of 12 September 2012.
- (23) [http://ec.europa.eu/education/lifelong-learning-programme/doc78\\_en.htm](http://ec.europa.eu/education/lifelong-learning-programme/doc78_en.htm)
- (24) <http://ec.europa.eu/cip>
- (25) Submission of Hungary of 4 July 2012, section on ‘Background — ValDeal Innovation Management Programme’, p. 2.

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- (26) Article 4 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ L 78, 24.3.2009, p. 1).
- (27) Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).
- (28) For the period 1 May 2004-31 December 2006, see the Commission's letter to Hungary of 7 July 2004, recognising the Hungarian regional aid map as existing aid: [http://ec.europa.eu/competition/state\\_aid/regional\\_aid/2004/hungary\\_en.pdf](http://ec.europa.eu/competition/state_aid/regional_aid/2004/hungary_en.pdf), and the attached regional aid map for that period: [http://ec.europa.eu/competition/state\\_aid/regional\\_aid/2004/hungary.gif](http://ec.europa.eu/competition/state_aid/regional_aid/2004/hungary.gif). For the period 2007-2013, see State aid N 487/06 — Hungary — Regional aid map 2007-2013, C(2006) 4009 final of 13 September 2006 (OJ C 256, 24.10.2006, p. 7).
- (29) Article 4(1)(b) of the Regional Aid Block Exemption Regulation.
- (30) Submission of Hungary of 12 March 2012.
- (31) Submission of Hungary of 13 March 2013.
- (32) Frascati Manual: Proposed Standard Practice for Surveys on Research and Experimental Development FRASCATI MANUAL 2002, ISBN 92-64-19903-9, © OECD 2002. The following are among the criteria that can help to identify the presence of R & D in service activities:
  - (1) 'links with public research laboratories': This criterion may be fulfilled by ValDeal's cooperation with the Budapest University of Technology and Economics and Corvinus University of Budapest;
  - (2) 'the involvement of staff with PhDs or PhD students': This criterion may be fulfilled by the participation of several staffers with PhDs in the implementation of the project;
  - (3) 'the publication of research findings in scientific journals, organisation of scientific conferences or involvement in scientific reviews': This criterion may be fulfilled by the 20 to 30 lectures that ValDeal delivered on the topic of the project at various conferences;
  - (4) 'the construction of prototypes or pilot plants (...)': The fulfilment of this criterion may be supported by the fact that between 2007 and 2010 ValDeal consistently developed and tested the model on over 500 projects.
- (33) The market price for the services provided free by ValDeal was calculated at a rate of HUF 15 000/hour (approximately EUR 60/hour).
- (34) The assumption of the Hungarian authorities was that all the costs of the project were eligible.
- (35) The initial submission included other items in the amount of HUF 18 507 567 which, though not directly related to the project, would qualify as experimental development.
- (36) Submission of European Business and Innovation Centre Network of 14 March 2013.
- (37) Official Journal C 45, 17.2.1996, pp. 5-16 (Annex I):
  - **fundamental research** [...] is an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives,
  - **industrial research** [...] is a planned research of critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services,
  - **precompetitive development activity** [...] is the shaping of the results of industrial research into a plan, arrangement of design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.
- (38) The arguments submitted by the Hungarian authorities on ValDeal's project compliance with the compatibility conditions of Regulation (EC) No 70/2001 were not substantiated enough to allow the Commission to make an in-depth assessment.
- (39) Section 5.6 of the 2006 R & D&I Framework reads as follows: 'Aid for innovation advisory services and for innovation support services shall be compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty if each of the following conditions are fulfilled:
  - (1) the beneficiary is an SME;
  - (2) the aid does not exceed a maximum of EUR 200 000 per beneficiary within any three year period;
  - (3) the service provider benefits from a national or European certification. If the service provider does not benefit from a national or European certification, the aid may not cover more than 75 % of the eligible costs;

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- (4) the beneficiary must use the State aid to buy the services at market price (or if the service provider is a non-for-profit entity, at a price which reflects its full costs plus a reasonable margin)'.  
(40) [http://ec.europa.eu/prelex/detail\\_dossier\\_real.cfm?CL=en&DosId=199719](http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=199719)  
(41) Risk Capital Guidelines 2006/C-194/02: 'Business angels' means wealthy private individuals who invest directly in young, new and growing unquoted business (seed finance) and provide them with advice, usually in return for an equity stake in the business, but may also provide other long-term finance.  
(42) Risk Capital Guidelines 2006/C-194/02: 'Seed capital' means financing provided to study, assess and develop an initial concept, preceding the start-up phase.  
(43) Sources: Bundik, 2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Decision (EU) 2016/2394.