

State aid: Operator of Polish A2 motorway needs to repay around €210 million of undue compensation to Polish State

Poland notified the Commission in August 2012 that they had overcompensated Autostrada Wielkopolska S.A. (AWSA) for loss in revenue resulting from a change in national legislation on toll motorways. The compensation paid covered the period from 1 September 2005 to 30 June 2011.

In particular, it related to a change in Polish law, introduced in 2005, to exempt heavy goods vehicles with a valid vignette from the obligation to pay motorway tolls. Before, heavy goods vehicles had been liable to pay both motorway tolls and a lump-sum vignette fee. The change ended this double charging of heavy goods vehicles in Poland, which was in breach of EU transport rules ([Directive 1999/62/EC](#)). At the same time, Polish authorities decided to compensate motorway operators for their resulting loss in revenue. This compensation was agreed with each motorway operator individually.

In the case of AWSA, the terms of the compensation were set out in an annex to its original concession agreement with Poland. However, according to Poland, when applying the method under the agreement, an outdated study on traffic and revenues was used. Instead of using the most up-to-date study from 2004, AWSA relied on a study from 1999. The 1999 study had estimated a significantly higher level of traffic and revenue and thus led to higher expected profitability.

The Commission's in-depth investigation [opened in June 2014](#) confirmed that AWSA was entitled to receive compensation under its concession agreement with Poland to restore its expected financial situation just before the change of Polish law in 2005.

However, the Commission's investigation confirmed that the Polish authorities had relied on the outdated figures of 1999. This led to an overestimation of the revenue AWSA would have generated from tolls on heavy goods vehicles in the absence of the legislative change. The difference between the compensation actually paid and the estimates based on the updated 2004 figures amounts to an undue economic advantage to AWSA, in breach of EU State aid rules. This is because the compensation actually paid to AWSA went beyond the direct effects of the legislative change and improved its expected financial situation. Therefore, AWSA needs to repay PLN 895 million (around €210 million), plus interest.

Background

As a matter of principle, EU state aid rules require that incompatible state aid is recovered in order to remove the distortion of competition created by

the aid. There are no fines under EU State aid rules and recovery does not penalise the company in question. It simply restores equal treatment with other companies.

[Directive 1999/62/EC](#) on the charging of heavy goods vehicles for the use of certain infrastructures requires Member States to respect certain conditions when maintaining or introducing tolls and/or user charges on the Trans-European road network. In 2005, Poland brought its national law in line with the Directive by amending the national legislation on toll motorways (the Act of 28 July 2005 amending the Act on toll motorways and the National Road Fund and the Road Transport Act; Journal of Laws No 155, item 1297). The amendment abolished double charging on toll motorways by allowing heavy goods vehicles with a valid vignette to use these motorways without further charge.

On 30 June 2011, Poland introduced an electronic toll collection system “via TOLL” that replaced the vignettes. Since the system covers only selected roads and not the whole road network in Poland (as the vignettes did) there is no longer a risk of double charging. Thus, motorway operators in Poland could again charge all heavy goods vehicles entering toll motorways according to the rules set up in the concession agreements.

In December 2013, the Commission concluded that the compensation for the concession holder of the Polish A4 motorway Katowice – Krakow involved no State aid (case [N 541/2010](#)). While the basic principles of the compensation mechanism were the same as in the present case, its actual application did not raise any competition concerns in the case of the A4 motorway.

The non-confidential version of the decision will be made available under the case number [SA.35356](#) in the [State Aid Register](#) on the [DG Competition](#) website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).