



STATE AID

The New General Block Exemption Regulation

Booklet

State Aid - The New General Block Exemption Regulation

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The General block exemption Regulation on State Aid

Direct links to the text of the GBER:

EN: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:EN:PDF>

FR: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:FR:PDF>

DE: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:DE:PDF>

State Aids

State Aids in the EU are controlled by the European Commission in order to prevent distortions in the internal market, which could occur when countries overfund certain national companies to obtain a better position in the European market. In order to be able to control state aids, the European Commission needs to be informed about all aid schemes granted at national level. There are only a few exceptions when there is no need to inform the Commission: these exceptions were regulated in the past through the so-called Block Exemption Regulations (BER).

Through a Block Exemption Regulation, the Commission declares that certain categories of state aid are compatible with the Single Market and shall not be subject to the requirement of prior notification laid down in Article 88(3) of the EC Treaty. Consequently, Member States may implement state aid measures which fulfill the conditions of the Regulation without having gone through the notification procedure.

One of the 'old' Block Exemption Regulations was Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State Aid for employment. It was issued to provide an exception to EC competition rules (Art. 87-88 of the Treaty) for state subsidies to stimulate employment for disadvantaged and disabled workers.

As of September 2008 however, all general exemption regulations in the field of state aids have been reformed into one General Block Exemption Regulation (GBER) in order to give more coherence to the Regulations, to remove excessive barriers that were imposed on countries and to prevent fraud on the distribution of state aid schemes. The conditions imposed by the GBER have been simplified and rendered as straightforward as possible given that the text is applied directly by numerous national administrations in all Member States including, in case of litigation, national judges.

The new General Block Exemption Regulation in practice

The new General Block Exemption Regulation was adopted by the European Commission on 7th July and published in the Official Journal on 9th August 2008. It gives automatic approval for a range of aid measures and so allows Member States to grant such aid without first notifying the Commission. The Regulation authorises aid in favour of SMEs, research, innovation, regional development,

training, employment and risk capital. As well as encouraging Member States to focus their state resources on aid that will be of real benefit to job creation and Europe's competitiveness, the Regulation reduces the administrative burden for public authorities, the beneficiaries and the Commission. This new GBER harmonises and consolidates into one unique text the rules previously outlined

in separate Regulations, and enlarges the categories of state aid covered by the exemption. The GBER entered into force on 29th August 2008.

EASPD applauds the Commission for striving towards a reduction the administrative burden

of the current state aid regime, but at the same time hopes that reducing bureaucracy will not include over-generalised rules that cannot be adapted to the specificities of the disability sector in Europe.

What is the purpose of the General Block Exemption Regulation (GBER)?

The GBER aims at simplifying the treatment of state aid measures in favour of job creation and competitiveness. In so doing, the Commission encourages Member States to shift existing aid budgets towards better targeted aid that is of real benefit to the European economy and society as a whole. The state aid measures which fulfill the conditions laid down in the GBER are considered to be compatible with state aid rules without requiring prior notification to the Commission, as would otherwise be foreseen by the EC Treaty. This should significantly reduce the administrative costs for the beneficiary, the Member States and the Commission. It should also allow the Commission to focus its attention on the most distortive types of aid.

The number of block exempted measures has nearly tripled compared to the existing regulations. There are now 26 support measures covered by the GBER, as compared to only 10 in the existing Regulations.

Moreover, for a series of aid measures covered by existing instruments, the Commission has substantially increased the aid intensities¹ and the notification ceilings. This means that, for example, higher amounts of training aid and employment aid can be granted as compared to the past.

The GBER also contains a series of conditions which aim to ensure that the aid

measures will indeed lead the beneficiary to undertake a project or activity which they would not have engaged in without the aid (incentive effect). This could play an important role in convincing employers to hire people with disabilities.

¹ 'Aid intensity' means the aid amount expressed as a percentage of the eligible costs.

What measures are included in the GBER?

Relevant measures for the disability and social services provision sectors are in the chapter dedicated to Social aid: beyond aid allowing subsidising employees working on new investments in SMEs or in assisted regions, the GBER approves aid that helps disabled or otherwise disadvantaged workers to find mainstream jobs. It also allows compensating, to the extent they constitute state aid, additional costs (such as special facilities for employees with wheelchairs, or information technology for visually impaired workers) incurred by companies when hiring disabled people. The Regulation also favours aid for training workers, to the benefit of both employers

and employees. Last but not least, in order to ensure a better work/life balance, the GBER now foresees the possibility to subsidise employers for child care and parent care costs incurred by their employees, including, in certain circumstances, costs relating to parental leave.

Apart from what is considered to be social aid, there is also aid for small and medium-sized enterprises (SMEs), regional aid, environmental aid, aid for Research and Development (R&D), innovation aid and aid for promoting women entrepreneurship.

Main differences between the old block exemption Regulations on employment aid and training aid and the new General Block Exemption Regulation

The GBER provisions relating to training aid largely build upon the provisions of the existing Training Aid Block Exemption Regulation (Commission Regulation n° 68/2001). However, the new text allows for a higher basic aid intensity to be provided in favour of general training for employees (increase from 51% to 60%). Moreover, the applicable notification threshold has been doubled, to €2 million, allowing for higher aid amounts to be granted.

intensities (from 60% to 75%) and a notification ceiling which has doubled (from €5 million per year to €10 million per year – this was one of the requests of EASPD). The GBER also allows for the salary of severely disadvantaged workers to be subsidised for an increased period of two years. Overlaps between employment aid with other types of aid, mainly with regional aid and SME investment aid have been removed.

The existing rules concerning employment aid, previously contained in the so-called Employment Block Exemption Regulation (Commission Regulation n° 2204/2002) have been clarified and simplified in the GBER. The Regulation includes substantially increased aid possibilities in favour of disabled workers², with higher aid

national law or having a recognised limitation which results from physical, mental or psychological impairment.

² In the context of the New general Block Exemption regulation, a 'disabled worker' means any person who is recognised as disabled under

Note: The fact that a state aid measure is not covered by the GBER does not imply that it is going to be prohibited by the Commission: measures falling outside the scope of the GBER will merely remain subject to the standard obligation of prior notification to the Commission. The objectives and effects on competition of such measures will be assessed, by the Commission, on the basis of guidelines, frameworks and other instruments.

The new General Block Exemption Regulation in brief: a useful tool

Commission Regulation (EC) No 800/2008 General Block Exemption Regulation

Declaring certain categories of aid compatible with the common market

What is a General block exemption Regulation?

- It is an act by which the European Commission declares that certain categories of state aid are compatible with the Single Market
 - This because they do not distort competition
- It allows Member States to grant aid without having to notify the Commission first as set out in article 88(3) of the EC treaty.

The GBER encourages Member States to focus their resources on aid that will be directly benefiting job creation and competitiveness of the EU.

- It must therefore be as straightforward as possible as the text will be directly applied by national administrations in the Member States
- State aid measures not included in the GBER are not prohibited by the Commission: they just continue to be subjected to the standard obligation of prior notification
-

Previous Regulations:

- Previously block exempted measures were covered in 4 different Regulations
- They included a total of 10 support measures only
- Mainly covered areas such as regional aid, investment and R&D aid for SMEs, training and employment aid

Novelties introduced by the new GBER:

- The GBER was introduced in the spirit of simplifying rules and creating a user-friendly and coherent set of legislative rules
- It incorporates into a single text the BERs adopted as of 2001:
 - Investment aid and R&D aid for SMEs;
 - Aid favouring employment
 - Training aid
 - Regional aid
- It also incorporates aid not yet block exempted
- These additional areas covered by the GBER are prominent in the revamped Lisbon agenda and central to reach the Commission's objectives for growth and jobs. They are:
 - Aid favouring environmental protection
 - Aid in the form of risk capital
 - R&D aid for large companies
 - Innovation aid
 - Aid for newly created SMEs and for enterprises newly created by female entrepreneurs

➔ In more detail... the GBER covers 26 categories of authorised aid:

- SME investment and employment
- Small enterprises newly created by female entrepreneurs
- Consultancy in favour of SMEs
- SME participation in fairs
- Provision of risk capital
- Research and development
- Technical feasibility studies
- Industrial property rights costs for SMEs
- Research and development in the agricultural and fisheries sectors
- Young innovative enterprises
- Innovation advisory services and innovation support services
- Loan of highly qualified personnel
- Training
- **Recruitment of disadvantaged workers in the form of wage subsidies**
- **Employment of disabled workers in the form of wage subsidies**
- **Compensating the additional costs of employing disabled workers**
- Regional investment and employment
- Newly created SE in assisted regions
- Several measures for environmental protection
- Investment in energy saving measures

► **Benefits of the GBER:**

- Reduces the administrative burden both for the Commission and the National administrations
- Promotes more and better targeted aid
- Will allow the Commission to focus its attention to the most distortive types of aid
- Substantially increases the aid intensities and the notification ceilings
- Strong incentive effect: will lead beneficiaries to engage in projects or activities they would not have engaged in without the aid

► **Benefits of new GBER for the social services provision sector:**

- Member States now have more possibilities to support employers employing people with disabilities:
 - > **Higher levels of aid available**
 - > **Broader scope of the Regulation**

• **Social aid:**

- Approves aid that helps disabled or disadvantaged people to find a mainstream job.
 - The GBER allows for the compensation of the additional costs that companies bear when hiring disabled workers:
 - E.g., special facilities for employees with wheelchairs, or special technology for visually impaired employees;
 - Allows aid for training workers: this benefits both the workers themselves as well as the employers;
 - Foresees the possibility to subsidise employers for child or parent care costs, including costs related to parental leave, in order to achieve a better work/life balance.

• **Training aid:**

- Provisions on training aid build largely upon the old training aid BER. However:

- Basic aid intensity to be provided for the general training of employees increases from 50% to 60%;
- Notification threshold has doubled to €2 million;

◊ This allows for higher total amounts of aid to be granted.

- **Aid for recruitment of disadvantaged workers:**
 - Aid intensity can reach 50% of eligible costs;
 - Eligible costs: wage costs for a maximum period of 12 months following recruitment of disadvantaged, or 24 months in case the worker is severely disadvantaged
- **Employment aid:**
 - Existing rules from the previous BER have been simplified and clarified;
 - Increased aid possibilities in favour of disabled workers:
 - Higher aid intensities -> increased to 75%
 - Doubled notification ceiling: from € 5 million to € 10 million
 - Salary of severely disadvantaged workers can now be subsidised for a period of 2 years
- Aid for compensating additional costs of employing **disabled workers:**
- Aid intensity of up to 100%
- Eligible costs are all costs which are additional to those that the employer would have incurred if employing workers who are not disabled, such as:
 - Costs for adapting premises;
 - Costs for employing staff with the only purpose of assisting the disabled workers;
 - Costs for adapting or acquiring equipment;
 - For **sheltered employment**, costs for constructing, installing or expanding the premises.

Definitions:

- A **disadvantaged worker** is anyone who:
 - Has not been regularly employed in past 6 months;
 - Does not have an upper secondary educational or vocational qualification;
 - Is over the age of 50;
 - Lives as a single adult with one or more dependents;
 - Works in a sector/profession that has a strong gender imbalance, and belongs to the underrepresented group;
 - Is a member of an ethnic minority and needs to develop their linguistic knowledge/ vocational training/ professional experience;
- A **severely disadvantaged worker** is anyone who:
 - Has been unemployed for at least 24 months;
- A **disabled worker** is anyone who:
 - Is recognised as disabled under national law;
 - Has a recognised limitation resulting from physical, mental or psychological impairment

To summarise:

Measures included in the new General Block Exemption Regulation that favour employment of disabled workers:

- Aid for employment in the form of wage subsidies: up to 75% of eligible costs = wage costs over **any period** during which the worker is employed;

- The worker should be entitled to continuous employment for a minimum period consistent with national legislation
- Aid for compensating additional costs of recruiting a disabled worker: e.g. for adapting premises, employing support staff, adapting/acquiring special equipment: up to 100%
- If the employer provides **sheltered employment**, 100% of the costs for constructing, installing or expanding the premises and any admin and transport costs deriving directly from the employment of disabled workers will be compensated.

Measures included in the new General Block Exemption Regulation that favour employment of disadvantaged/ severely disadvantaged workers:

- Aid schemes for recruitment: up to 50% of eligible costs = wage costs over a min. period of 12 or 24 months after recruitment respectively;
- The worker should be entitled to continuous employment for a min. period consistent with national legislation

The GBER in detail: abstracts from the text of the new General Block Exemption Regulation

Article 2: Definitions

→ Art. 2 § 18. '**disadvantaged worker**' means any person who:

- (a) has not been in regular paid employment for the previous 6 months; or
- (b) has not attained an upper secondary educational or vocational qualification (ISCED 3); or
- (c) is over the age of 50 years; or
- (d) lives as a single adult with one or more dependents; or
- (e) works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
- (f) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment;

→ Art. 2 § 19. '**severely disadvantaged worker**' means any person who has been unemployed for 24 months or more;

→ Art. 2 § 20. '**disabled worker**' means any person:

- (a) recognised as disabled under national law; or
- (b) having a recognised limitation which results from physical, mental or psychological impairment;

→ Art. 2 § 21. '**sheltered employment**' means employment in an undertaking where at least 50 % of workers are disabled;

Article 6

→ Art. 6 § 1 This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds:

- (h) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;
- (i) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;
- (j) aid compensating for additional costs of employing disabled workers: EUR 10 million per undertaking per year.

- **SECTION 9: Aid for disadvantaged and disabled workers**

Article 40

Aid for the recruitment of disadvantaged workers in the form of wage subsidies

2. The aid intensity shall not exceed 50 % of the eligible costs.
3. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment. However, where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.
4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.
5. Except in the case of lawful dismissal for misconduct, the disadvantaged worker shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts. If the period of employment is shorter than 12 months or, as the case may be 24 months, the aid shall be reduced pro rata accordingly.

Article 41

Aid for the employment of disabled workers in the form of wage subsidies

2. The aid intensity shall not exceed 75 % of the eligible costs.
3. Eligible costs shall be the wage costs over any given period during which the disabled worker is being employed.
4. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.
5. Except in the case of lawful dismissal for misconduct the workers shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts. If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.

Article 42

Aid for compensating the additional costs of employing disabled workers

2. The aid intensity shall not exceed 100 % of the eligible costs.
3. Eligible costs shall be costs other than wage costs covered by Article 41, which are additional to those which the undertaking would have incurred if employing workers who are not disabled, over the period during which the worker concerned is being employed.

The eligible costs shall be the following:

- (a) costs of adapting premises;

(b) costs of employing staff for time spent solely on the assistance of the disabled workers;

(c) costs of adapting or acquiring equipment, or acquiring and validating software for use by disabled workers, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred if employing workers who are not disabled;

(d) where the beneficiary provides sheltered employment, the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers.

Further reflections on the application of the new General Block Exemption Regulation to Sheltered Workshops

Competition rules apply to undertakings. According to settled case law, the concept of undertaking covers any entity engaged in an economic activity regardless of the legal status of the entity or the way in which it is financed. Any activity consisting in offering goods or services on a given market is an economic activity (for examples of activities which are considered as economic and activities which are considered as non economic see points 2.2 and 2.4 respectively of the Commission Staff Working Document SEC (2007) 1516 final). In this context, the fact that the activity concerned may be qualified as "social" is not relevant (see for instance Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 118, and Cases C-218/00 *Cisal* [2002] ECR I-691, paragraph 37, C-355/00, *Freskot* [2000] ECR I-5263). Furthermore, the mere fact that an entity is a not for profit does not mean that the activities which it carries on are not of an economic nature. The legal status of the entity providing the Social Service of General Interest (SSGI) does not affect the nature of the activity concerned. The relevant criterion is always whether or not the entity concerned pursues an economic activity.

Therefore if an entity engages in an economic activity and the activity concerned affects trade between Member States (for some examples on the condition of affectation of trade see points 2.9 and 2.10 of the

Commission Staff Working Document cited above - SEC (2007) 1516 final), competition rules apply to it. The same stands also for social services of general interest which are economic.

In this context, a service of general economic interest of social inclusion of disabled persons, which is defined as such by the State and with which the State entrusts certain undertakings, can fall within the scope of the Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State Aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67), if the conditions set out in this Decision are respected. Consequently, the compensations awarded to undertakings entrusted with a public service mission to people with disabilities, can be exempted from notification, as long as the undertaking in question have been properly entrusted with these missions; this entails the existence of an act of entrustment which clearly defines these missions and the parameters of the calculation of this compensation in order to avoid eventual overcompensations (on these conditions see articles 2 and 4 to 6 of the 2005 Decision and points 5 and 6 of the same Commission Staff Working Document). Concerning aid given to undertakings which recruit disadvantaged or disabled persons in the sense of article 2

points 18 to 21 of the General Block Exemption Regulation No 800/2008, can be exempted from notification, as long as the conditions set out in the first chapter of this

GBER, as well as the conditions set out in articles 40, 41 or 42 (depending on the nature of the aid in question) of the same Regulation are respected.

Clarification by the European Commission, DG Competition

Written Question by Anne Ferreira (PSE) to the Commission

Subject: Sheltered employment opportunities for disabled people and the single market

In 2007 the European Year of Equal Opportunities for All gave the European Union an opportunity to reaffirm its commitment to non-discrimination against people with disabilities. This commitment extends to work carried out in the protected environment of workplaces designed to integrate disabled people into the workforce by providing:

- structured professional or occupational opportunities geared to each individual's degree of disability,
- medical and social services to support individual life plans tailored to the needs of people with a very high degree of dependence.

Facilities offering this dual support are provided by organisations operating in the European social economy sector and fall into the category of social services of general interest. This being so,

1. Would the Commission clarify the conditions on which facilities of this kind would (or would not) be subject to the rules applying to state aid and calls for tender in the single European market, even though they perform tasks in the general interest in accordance with each Member State's sovereign choice?
2. Would the Commission state to what extent these activities are exempt from European competition policy by virtue of their marginal economic impact, given that their purpose is to promote social integration?

Competition rules, including rules on State Aid, are applicable to *undertakings*. This concept encompasses all actors, including sheltered workshops, under the condition that they carry out an economic activity. It follows that this condition applies independently of the juridical status of the entity; of the way in which it is financed or of its social scope/purpose.

Any activity consisting in offering goods or services on a given market is an economic activity, and the fact that the activity may be qualified as social is not relevant.

Consequently, social undertakings are submitted to controls related to State Aid in so

far as they exercise an economic activity. However, financial compensations with the objective of carrying out a service of general interest are compatible with competition rules (and as such, not subject to the State Aid rules) if they fulfill the four conditions stated in the **Altmark Ruling (Altmark Trans GmbH and Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH)**:

1. The recipient undertaking must have public service obligations to discharge, and the obligations must be clearly defined;
2. The parameters on the basis of which the compensation is calculated must

- be established in advance in an objective and transparent manner;
3. The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;
 4. Where the undertaking which is to discharge the public service obligations, in a specific case, is not chosen pursuant public procurement procedure which would allow for the selection of the bidder capable of providing those services at the least

cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred.

If these four conditions are not met, the compensations constitute State Aid. This however does not mean that the compensations are incompatible with competition rules. These measure can in fact be compatible with the Treaty, without prior notification to the Commission, if they meet the conditions laid out in the Commission Decision of 28 November 2005:

This Decision sets out the conditions under which State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest is to be regarded as compatible with the common market and exempt from the requirement of notification laid down in Article 88(3) of the Treaty.

This Decision applies to State aid in the form of public service compensation granted to undertakings in connection with services of general economic interest as referred to in Article 86(2) of the Treaty which falls within one of the following categories:

- (a) public service compensation granted to undertakings with an average annual turnover before tax, all activities included, of less than € 100 million during the two financial years preceding that in which the service of general economic interest was assigned, which receive annual compensation for the service in question of less than € 30 million;
- (b) public service compensation granted to hospitals and social housing undertakings carrying out activities qualified as services of general economic interest by the Member State concerned;
- (c) public service compensation for air or maritime links to islands on which average annual traffic during the two financial years preceding that in which the service of general economic interest was assigned does not exceed 300,000 passengers;
- (d) public service compensation for airports and ports for which average annual traffic during the two financial years preceding that in which the service of general economic interest was assigned does not exceed 1,000,000 passengers, in the case of airports, and 300,000 passengers, in the case of ports.

The threshold of € 30 million in point (a) of the first subparagraph may be determined by taking an annual average representing the value of compensation granted during the contract period or over a period of five years. For credit institutions, the threshold of € 100 million of turnover shall be replaced by a threshold of € 800 million in terms of balance sheet total.

Compatibility and exemption from notification

State aid in the form of public service compensation that meets the conditions laid down in this Decision shall be compatible with the common market and shall be exempt from the obligation of prior notification provided for in Article 88(3) of the Treaty, without prejudice to the

application of stricter provisions relating to public service obligations contained in sectoral Community legislation.

Compensation

1. The amount of compensation shall not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit on any own capital necessary for discharging those obligations. The compensation must be actually used for the operation of the service of general economic interest concerned, without prejudice to the undertaking's ability to enjoy a reasonable profit.

The amount of compensation shall include all the advantages granted by the State or through State resources in any form whatsoever. The reasonable profit shall take account of all or some of the productivity gains achieved by the undertakings concerned during an agreed limited period without reducing the level of quality of the services entrusted to the undertaking by the State.

2. The costs to be taken into consideration shall comprise all the costs incurred in the operation of the service of general economic interest. They shall be calculated, on the basis of generally accepted cost accounting principles, as follows:

(a) where the activities of the undertaking in question are confined to the service of general economic interest, all its costs may be taken into consideration;

(b) where the undertaking also carries out activities falling outside the scope of the service of general economic interest, only the costs associated with the service of general economic interest shall be taken into consideration;

(c) the costs allocated to the service of general economic interest may cover all the variable costs incurred in providing the service of general economic interest, a proportionate contribution to fixed costs common to both service of general economic interest and other activities and a reasonable profit;

(d) the costs linked with investments, notably concerning infrastructure, may be taken into account when necessary for the operation of the service of general economic interest.

3. The revenue to be taken into account shall include at least the entire revenue earned from the service of general economic interest. If the undertaking in question holds special or exclusive rights linked to another service of general economic interest that generates profit in excess of the reasonable profit, or benefits from other advantages granted by the State, these shall be included in its revenue, irrespective of their classification for the purposes of Article 87. The Member State concerned may decide that the profits accruing from other activities outside the scope of the service of general economic interest are to be assigned in whole or in part to the financing of the service of general economic interest.

4. For the purposes of this Decision "reasonable profit" means a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking by virtue of the intervention by the Member State, particularly if the latter grants exclusive or special rights. This rate shall not normally exceed the average rate for the sector concerned in recent years. In sectors where there is no undertaking comparable to the undertaking entrusted with the operation of the service of general economic interest, a comparison may be made with undertakings situated in other Member States, or if necessary, in other sectors, provided that the particular characteristics of each sector are taken into account. In determining what constitutes a reasonable profit, the Member States may introduce incentive criteria relating, in particular, to the quality of service provided and gains in productive efficiency.

5. When a company carries out activities falling both inside and outside the scope of services of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services, as well as the parameters for allocating costs and revenues.

The costs linked to any activities outside the scope of the service of general economic interest shall cover all the variable costs, an appropriate contribution to common fixed costs and an adequate return on capital. No compensation shall be granted in respect of those costs.

Compensations to this type of undertakings can also benefit from Regulation 1998/2006 “de minimis” in case the amount of the compensation is lower than €200,000 over a period of 3 years.

This Regulation permits subsidies given to undertakings whose economic activity only has a marginal impact on competition and trade between Member States, and therefore are not concerned by State Aid Rules.

Finally, aid in favour of workers with disabilities employed by a social enterprise can be granted following Commission Regulation 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment. This Regulation has now been replaced by the new General Block Exemption Regulation which entered into force on 29th August 2008. This new Regulation actually increases the possibilities of granting aid in favour of people with disabilities, as well as in favour of undertakings that offered supported employment.

Regarding public procurement of social services of general interest, every public authority that decide to subcontract a service against remuneration must follow community rules on tender for public services or public services concessions.

It is advisable to distinguish two hypothetical cases:

- 1) The public authority issues a tender notice. In this case, they offer a fixed remuneration to the service provider. If the applicable ceilings are reached, Directive 2004/18/CE(8) would apply

to public procurement of social services. However, not all provisions outlined in the Directive apply to procurement of social services. In fact, according to art. 21 of the Directive only some specific rules apply to social services. The technical aspects, in particular must be defined at the beginning of the tender procedure and the results of this process must be published. In any case, all basic principles of community law, such as the obligation to treat all economic operators fairly and without discrimination and to act in a transparent manner will apply to all procurement procedures for cross-border social services. However, these principles do not require the application of all dispositions laid out in Directive 2004/18/CE, but only of the basic principles issued by the European Court of Justice (ECJ). It follows that a public authority that out sources the provision of a social service, already benefits from a bigger margin for manoeuvre than in other sectors.

If the amount if the tender to attribute does not reach the ceilings fixed by the Directive, the public authorities must follow the basic rules and principles of community law such as the principles of equal treatment, non-discrimination and transparency.

- 2) The public authority grants a service. In this case, it does not pay a remuneration to the service provider,

or it only pays a partial remuneration: it is basically the right of the concessionary to exploit the service in question that constitutes the remuneration. The concessionary therefore assumes the risk of operating the service. The Directive doesn't apply to concessions of public services. However, public authorities granting a service are obliged to follow the basic rules and principles of community law, particularly the principles of equal treatment, non-discrimination and transparency.

Moreover, article 19 (reserved contracts) of Directive 2004/18/CE

foresees an exceptions to the rules outlined in the Directive for tendering procedures of public procurement carried out by sheltered workshops and for tenders that have to be carried out in the framework of programmes of supported employment (travail protégés). The contracting authority can reserve the right of participation to a tender exercise to sheltered workshops with the aim of protecting them from the competition of other economic operators.

Answered provided by the European Commission,
Analysis by EASPD

Contribution of the new Commission Regulation to the employment of disadvantaged and disabled workers

The new General Block Exemption formally adopted by the Commission on 6 August 2008 (OJ L 214 of 09.08.2008, p.3) incorporates and simplifies the content of existing state aid instruments, including aid in favour of disadvantaged and disabled workers.

Under the new Regulation, Member States will have the possibility of granting aid to undertakings for the employment of disabled workers in the form of wage subsidies, as well as for compensating the additional costs of employing disabled workers.

In this context, the Commission has decided to increase substantially aid intensities: from 60% to 75% for the recruitment of disabled

workers. Moreover, such aid will be possible even if workers are employed for less than one year. If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly. For large amount of aid, the notification ceiling has been doubled from €5 million to €10 million. The new Block exemption also allows for the salary of severely disadvantaged workers to be subsidised for an increased period of two years.

The new General Block Exemption provides Member States with large possibilities of granting support for the employment of disadvantaged and disabled workers.

Mr. Alain Alexis,
DG Competition, Head of Unit, Unit 3, State aids Policy and Scrutiny

Interview on State Aid and General Block Exemption Regulation (GBER) with representatives from the European Commission

The General Block Exemption Regulation (GBER)

One of the main objectives of the reform of state aid rules, set out in the "State Aid Action Plan" adopted by the Commission in 2005³, is to create a simple, user-friendly and coherent set of legislative rules applying to those types of aid which is likely to promote economic development without unduly distorting competition (and so fulfils the conditions of compatibility outlined in Article 87(3) of the EC Treaty). Simplification can best be achieved with the adoption of "block exemptions" exempting Member States from the obligation of prior notification of the aid to the Commission.

On 6 August 2008, the Commission adopted the **General block exemption Regulation**⁴ (GBER), which gives automatic approval for a range of aid measures and so allowing Member States to grant such aid without first notifying the Commission. This new General block exemption Regulation consolidates into one text and harmonises the rules previously existing in five separate Regulations, and increases the number of categories of state aid covered by the exemption to 26. This Regulation is particularly important for Small and medium sized enterprises (SMEs) since all 26 measures covered by this Regulation

can be granted for SMEs, and some are even specially designed for them.

In this perspective, the GBER includes a series of aid measures already contained in pre-existing block exemption Regulations which is the case of aid for disadvantaged and disabled workers, previously included in the Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment⁵. As well as encouraging Member States to focus their state resources on aid that will be of real benefit to job creation and Europe's competitiveness, the Regulation reduces the administrative burden for public authorities, the beneficiaries and the Commission.

Beyond including new types of aid in order to stimulate Member States to provide such horizontal aid, the Regulation essentially harmonises, in line with the Commission's "Better Regulation" agenda, as far as possible, all horizontal aspects applying to the different aid areas concerned. These horizontal aspects are included in chapter I of the GBER, which proposes, amongst others, common definitions of standards concepts, common requirements as regards the transparency of aid, shared provisions on incentive effect, a comprehensive overview of the sectorial exclusions applying to the different types of aid and uniform requirements as regards transparency and monitoring. The regulation also contains a common approach as regards SME bonuses.

For aid to fall into one of the 26 GBER categories, it must fulfill certain conditions to make sure that the aid both leads to new activities that would not otherwise have taken place, and promotes economic development without unduly distorting competition. When

³ See

http://ec.europa.eu/comm/competition/state_aid/reform/reform.html.

⁴ Commission Regulation (EC) N° 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, OJ L 214, 9.8.2008, p .3.

http://ec.europa.eu/comm/competition/state_aid/legislation/block.cfm

⁵ OJ L 337, 13.12.2002, p.3

these conditions are met, the aid can be granted immediately by the Member State without prior notification to the Commission. Member States only have to inform the Commission – using a simple information sheet – and only after having granted the aid.

Aid measures not included in the GBER may still be allowed. They simply remain subject to the traditional notification requirement: the Commission will examine such notifications on the basis of the existing guidelines and frameworks.

Accumulation of different measures of the GBER is possible as long as they concern different identifiable eligible costs. Cumulating is not allowed for partly or fully overlapping costs if it would lead to exceeding the highest allowable aid intensity applicable under GBER.

The GBER applies to aid granted by Member States and not by the Commission. To obtain such aid the enterprises must contact the public authorities at national or regional/local level.

Aid for disadvantaged and disabled workers under the GBER

Beyond aid allowing subsidising employees working on new investments in SMEs or in assisted regions, the GBER covers aid that stimulates companies to hire disabled or otherwise disadvantaged workers (section 9 of the GBER). It also allows compensating, to the extent they constitute state aid, additional costs (special facilities for employees with wheelchairs, or information technology for visually impaired workers) incurred by companies when hiring disabled workers. Following categories of aid are eligible under the GBER:

- Aid for the recruitment of disadvantaged workers in the form of wage subsidies (article 40)

- Aid for the employment of disabled workers in the form of wage subsidies (article 41)

- Aid for compensating the additional costs of employing disabled workers (article 42)

The Regulation also favours aid for training workers (article 39) with higher aid intensity allowed when the training is given to disabled and disadvantaged workers.

The pre-existing rules concerning "employment aid", previously contained in the so-called employment BER⁶ have been clarified, simplified and improved in the new GBER:

The new GBER includes substantially increased aid possibilities in favour of disabled workers, with higher aid intensities (increase from 60 to 75 %) and a notification ceiling which has doubled (€5 million/year to €10 million/year). The precise duration of the period during which the wage costs of the workers can be subsidised was made clearer in the new GBER. Aid for the recruitment of disadvantaged workers can be granted during the first 12 months following recruitment. The GBER also allows for the salary of severely disadvantaged workers⁷ to be subsidised for an increased period of two years. The employment of disabled persons can be subsidised for an unlimited period.

Moreover, the definition of disadvantaged worker has been very much simplified in article 2 of the GBER, as compared to the lists of disadvantaged workers previously included in article 2(g) of BER 68/2001 and article 2 (f) of BER 2204/2002. Although no longer explicitly mentioned in the GBER, the previous categories of "disadvantaged" workers are likely to be included in the larger categories created under the GBER. Furthermore, in order to address workers who face extreme difficulties to find an employment, the GBER has set up the new

⁶ Commission Regulation n° 2204/2002.

⁷ See definition in article 2.19 GBER.

category of severely disadvantaged workers, characterized by their unemployment for 24 months or more (Article 2(19) of the GBER). As regards the definitions of disabled worker and of sheltered employment, they are in line with the pre-existing definitions.

Finally, with respect to aid for the recruitment of disadvantaged workers and the employment of disabled workers, the condition of a minimal recruitment period of 12 months has been made more flexible, allowing Member States to reduce it to the minimum employment period at national level.

Community State aid rules apply also to sheltered workshops. In so far as the sheltered workshops produce an economic activity, they are considered as undertakings and must therefore comply with Community State aid rules. This is also true even though in some Member States they might be considered as part of the social policy rather

How do state aid rules apply to Services of General Economic Interest (SGEI)?

For the purposes of application of State Aid rules, it has to be defined whether the nature of the activity concerned is economic and whether it affects trade between Member States.

Any activity consisting in offering goods and/or services in a given market is an economic activity. In this context, the fact that the activity concerned maybe qualified as "social" is not sufficient to exclude the application of the Treaty rules. The mere fact that an entity is non-profit making does not mean that the activities which it carries on are not of an economic nature. The legal status of the entity providing the SSGI does not affect the nature of the activity concerned. The relevant criterion is whether the entity concerned pursues an economic activity.

than classical economic activity. The GBER foresees the possibility to compensate the additional costs of employing disabled workers within sheltered employment: article 42 of the GBER includes as eligible costs "the costs of constructing, installing or expanding the establishment concerned, and any costs of administration and transport which result directly from the employment of disabled workers."

To conclude, with this new Regulation, the Commission makes it easier for Member States to direct their budgets to horizontal Lisbon objectives and in particular to facilitate recruitment and training of disadvantaged or disabled workers and employment of disabled workers. It is up to the Member States to make the most of these opportunities in order to promote, among other things, the long-term integration in active life of disabled or disadvantaged workers.

European Commission, DG Competition

For example, a non-profit association or a charitable organisation pursuing an economic activity will constitute an "undertaking", but only for the part of its activity which is economic. Competition rules will not apply to their non economic activities.

If an activity is economic and affects trade between Member States, competition rules apply to it. A public service compensation provided by a public authority to a service provider may constitute State aid if the criteria established by the Court of Justice in its Altmark ruling are not cumulatively met (see paragraph 3.1 of the Staff Working Document SEC (2007) 1516 final). On the contrary, if the Altmark criteria are fulfilled, the compensation concerned does not constitute State Aid and the public authority concerned may finance the SGEI in question according to the Altmark conditions.

But even when the Altmark conditions are not fulfilled, the fact that a public service

compensation constitutes State aid does not per se mean that it is not allowed, since that compensation may be considered compatible, if the conditions laid down in the Commission Decision of 28 November 2005 (OJ L312, 29.11.2005, p.67) or in the Community Framework for State Aid in the form of public service compensation (OJ C 397, 29.11.2005, p. 4) are fulfilled.

Those two instruments are part of the "SGEI Package" the Commission adopted in 2005. The Framework applies to aid which exceeds the ceiling of 30M Euros per year. These aids should be notified to the Commission. On the contrary, the aids which are below these ceilings and which fulfill the conditions set out in the said Commission Decision are exempted from notification.

Thus, the economic activities of associations and their financing could be covered by this exemption from notification on the basis of said Commission Decision or could be declared compatible by the Commission on the basis of the said Framework. For this purpose, what is needed is that the beneficiaries concerned provide the SSGI on the basis of an act of entrustment having entrusted them with this task and that the compensation granted does not exceed the actual costs for the provision of this SSGI.

An "act of entrustment" is one or more official acts carrying legal force in national law, which entrusts the entity to carry out the SSGI, by

defining the nature and the duration of the public service obligations, the parameters for the calculation of the compensation, as well as the safeguards for the avoidance of any overcompensation. It has to be pointed out that an approval given by a public authority to a service provider, authorizing them to provide some services does not correspond to the notion of act of entrustment. This is because it does not create an obligation for the operator to provide the services concerned, but simply allows them to exercise an economic activity by offering some services in the market.

Public authorities have a wide margin of discretion in the organisation and finance of their SGEIs. For the application of said Decision and Framework, what is important is to make sure that the compensation granted to the associations does not exceed the costs actually born for the provision of the SSGI.

It has also to be recalled that for small amounts of compensation, which do not exceed 200 000 Euros in any 3 year period, a compensation may be granted to an entity on the basis of the "De minimis" Regulation (Regulation No 1998/2006/EC of the Commission of 15 December 2006 concerning the application of Articles 87 and 88 of the Treaty to aid de minimis, OJ L 379, 28.12.2006, p.5), without any obligation of notification and without having to fulfill any of the conditions set out in the Commission SGEI Decision.

European Commission, DG Competition

The new General Block Exemption Regulation: implications for Social Service Providers

On 29 August 2008, the new General Block Exemption Regulation (GBER) on state aid has come into force in the EU. Together with the debate on the working time directive and the debate on social and health services of general interest, this regulation probably is one of those EU policies with the strongest impact on our sector.

This new Regulation on state aid will define how much and to which degree authorities (be it on the national, regional or local level) can offer state aid to companies or organizations. Especially the section on training and employment aid to disadvantaged and disabled persons is of great importance for our sector.

Although media often report differently, we can confirm that the European Commission consulted EASPD and other relevant stakeholders in the development of the new regulation. No less than 6 meetings and a lot more formal and informal contacts have taken place between the Commission services and EASPD. We believe the result is a solid regulation providing space to authorities at all levels to develop measures facilitating the employment of people with disabilities on the open labour market. At the same time, the General Block Exemption Regulation allows to have more traditional sheltered and social workshops play their role, with regard to the training and employment of people with disabilities.

One of the major changes as compared to previous regulations is the room that is ensured for supported employment as a method to lead people with disabilities to the open labour market. The European Commission confirms that all extra costs related to employing people with disabilities can be covered by state aid without distortion of the market mechanisms. Items such as training, disability specific support, transport, compensation of loss in productivity, costs for adapting premises, costs of employing staff for time spent solely on the assistance of disabled workers can now be covered by Aid. Another positive aspect is that interim work for

people with disabilities (very often a first step towards full employment) can be supported in a better way. In fact, there is only one overarching principle: the costs covered by state aid need to be related to disability. It does not matter whether the person with a disability is employed on the open labour market or in a sheltered workshop.

Probably the main achievement is that the European Commission now officially agrees that possible extra costs caused by employing a person with a disability do not distort regular market mechanisms. The new GBER thus corresponds with our request to implement a broad framework for member states and regional authorities that leaves some freedom to focus on strong and weak points in a certain region or sector. (see STAR recommendations).

The EC disability action plan 2008-2009 focuses on access to the labour market and effort by authorities to come to higher employment rates for people with disabilities. If understood and implemented in the correct way, the new GBER can be not only an instrument to control the internal market, but also a tool to improve the employment opportunities of disadvantaged and disabled people.

Luk Zelderloo
Secretary General, EASPD

The Point of View of People with Disabilities

The new GBER has introduced some important changes if compared to regulation currently into force: the percentage of aid intensity for wage subsidies, related to the support of employment of disabled workers has increased from 60% to 75%. The regulation has also removed the minimum requirement of 12 months contract to enjoy the subsidies, which was a disincentive to employment of disabled people.

The European Commission has nevertheless maintained the definitions proposed in previous regulations for “disabled worker” and “sheltered employment” (minimum 50% of disabled workers).

EDF proposed a more exhaustive list of extra costs, covered by the legislation, but the European Commission wanted to keep it a little bit shorter. Anyhow almost all main extra

costs linked to accommodation of workplace are covered.

Another positive aspect is that the state aid can go up to 100% of the costs incurred as well as the fact that wage subsidies can apply to disabled people in general. In addition all rules are grouped under the same regulation, including training for disabled people. The approach has also changed in a positive way

General Observations on State Aid

The European state aid rules apply to 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 in so far as it affects trade between Member States.

It is important to stress that the legal form of the entity receiving the state aid is not important to determine whether or not the state aid rules apply. If an entity is engaged in an economic activity, then it is considered to be an enterprise and thus subject to state aid legislation. The mere fact that an entity belongs to the social profit sector, or does not intend to make profit is not enough to avoid those rules.

Temporary Agency Workers

According to Adecco, the world's leading HR company, the strategic goal is to give priority to people and their competences/skills. From this starting point, we are committed to creating favorable conditions for real access to employment, through different kinds of contracts according to the needs of both the individuals and the employers. When it comes to people with disabilities the main difficulty lies in the misconceptions of employers. Once

and there is no more reference to compensation due to "loss of productivity" in the Regulation.

EDF considers that the current regulation has considerably improved during its preparation if it is compared to the first draft proposal. It is nevertheless important to ensure that a correct interpretation of the articles contained in the regulation is done.

Carlotta Besozzi

Director of the European Disability Forum

Moreover, recent case law of the Commission and the Court of Justice shows that an increasing number of sectors are to be considered "economical" and thus subject to state aid legislation. It is sufficient that there exists (even in theory) a possibility that a commercial enterprise would offer the same services on the market, to conclude that there is a possible distortion on the competition.

Enterprises active in the social sector are thus in many cases also to be considered to be regular players on the market. This implies that the rules laid down in the Treaty or in Block Exemption Regulations must be followed, not only regarding the content of the aid, but also on a procedural level.

Karel De Corte

Flemish Authorities, Agency Economics,
Department of Economic support policy

we make them realise that people with disabilities, no matter what kind of disability, do have the required skills, then we will have persuaded clients that won't hesitate anymore, who will promote their engagement in terms of Human Resources, of diversity and of social responsibility and who will become real promoters of their initiatives towards their own stakeholders. If subsidies are taken into consideration in the decision to

employ someone, this is also positive even if it will not be the fundamental reason for doing so: skills come first. So from now on, training, coaching and mentoring will become key success factors while the state aids will become additional bonuses.

However, the new text proposed by the Commission has important repercussions reinforcing the importance of state aids in some cases. For instance, state aids are expected to bridge some cost gaps for those needing position adjustments and case-to-case solutions in order to be able to work, particularly in a special working environment within a company, specific transportation solutions or part / full time assistance.

Furthermore, we need to take into consideration state aids and penalties (e.g.

quota policies in some of the biggest EU countries). It raises awareness since quotas have a direct impact on profit and losses of companies and therefore are considered as initiatives in favour of employment. This is the first phase which should lead to a second one where employing people with disabilities based solely on their skills would be the normal procedure. Fortunately, this is more and more the case in various companies.

Intermediaries in the labour market, like Adecco, have a role to play not only by highlighting and strengthening the competences of every individual but also by enforcing the employment of people with disabilities in the labour market. This is what makes our HR company proud.

Bruce Roch,
Innovation and Diversity Manager, Adecco Group France

STAR Recommendations for policy makers when designing a strategy to increase the availability and the quality of jobs for people with disabilities

The following set of recommendations is based on an analysis over twenty EU funded projects on employment of people with disabilities. More information is available on www.employmentforall.eu

A/ Stakeholder cooperation: the multi-stakeholder approach represents a vital element in creating more and better jobs for people with disabilities on the open labour market as it is about shared responsibilities.

It means that all relevant people should be involved in the discussion and work. The discussion is open and values the roles and perspectives of each person. It is possible to make a positive change and create real career opportunities for people with disabilities only by aiming at creating a partnership with all involved.

Two main elements need to be taken into account when developing this approach:

- a) the stakeholder cooperation should be structural, ongoing and based on cooperation agreements and protocols respecting the diversity in perspective and role;
- b) the stakeholder cooperation should be developed on all levels of governance: local, regional and national.

B/ Targeted actions: need to be undertaken at all levels in order to raise the profile of people with disabilities and create real employment opportunities for them.

They represent the third *generation* of employment policies for people with disabilities:

The first generation of policies developed an approach based on specialised legislation for people with disabilities. Sheltered workshops are a good example of this type of legislation; special training centres and special schools were set up through this approach as well.

The second generation of policies were based on the concept of mainstreaming. Policy makers would include a 'disability perspective' in their mainstream policies, which would raise awareness of the disabled and the issues they face. This approach was not effective enough to create employment for people with all types of disabilities.

The third generation of policies tries to incorporate the two previous approaches while producing employment legislation. Legal initiatives are built on the knowledge already existing and acknowledging the fact that we need both perspectives: on the one hand, policies including disability in the mainstream policies and on the other hand, specific measures targeting people with disabilities and their needs. This translates in an **individualised approach**.

Targeted actions should focus on:

- a) Individual employment and career plans to be developed for people with disabilities;
- b) Work should generate a salary: a specific focus on the benefit trap;
- c) Learning the language of the employers: the professionals of the social sector and civil servants should be able to speak the language of employers;
- d) Authorities must set the standard by employing people with disabilities in their structures.

C/ Availability of support: represents an essential step in moving forward to employment.

In order to create an inclusive work environment, both **employers and employees** should receive the necessary support.

Employers need subsidies to cover for the additional costs such as lost in production, adaptation of the work environment, training and retraining of staff and employees arising from hiring a disabled worker.

Employees obviously need premises to be adapted and also accessible transport, training, easy to read material on rights, obligations and any other documents they have to work with and understand, job coaching, support to fill in any necessary paperwork, and so on.

D/ Research - aiming at evidence based improvement: it is crucial to involve researchers. Data should be collected in order to enable assessment of initiatives and approaches for the employment of people with disabilities on the open labour market. Benchmarking with other sectors and countries is only feasible when comparable data is available.

Finally, there should be a particular focus on:

- a) Measures targeted to unemployed people: this might have an impact on the number of disabled persons employed (generating more jobs for them);
- b) Correct implementation of models of best practice in countries where there is need for this;
- c) International exchange of models of employment and data available.



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