

THE NEW STATE AID REGULATION

Introduction by Luk Zelderloo, S.G. of EASPD

On 29 August 2008, the new general block exemption regulation on state aid has come into force in the whole of 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. For our sector, especially the section on training and employment aid to disadvantaged and disabled persons is of great importance.

Although media often report differently, we, as a network of European service providers, can confirm that the European Commission consulted EASPD and other main 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 inclusive employment of people with disabilities on the open labour market. The General Block Exemption Regulation (GBER) allows at the same time 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. At the same time, 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. 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 the disabled workers,... can all be covered by authorities. Another positive thing is that interim labour 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 EC 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 later in this newsletter).

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



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STAR RECOMMENDATIONS

Key recommendations for policy makers when designing a strategy aiming at more and better jobs for people with disabilities.

EASPD evaluated over twenty EU funded projects on employment of people with disabilities and these four set of recommendations were extracted from the findings of these projects. For more information, www.employmentforall.eu

Stakeholder cooperation is about shared responsibilities. All actors should be involved and the different perspectives and roles should be valued. Only when aiming at partnership it is possible to make a difference.

Targeted actions. The first generation of policies developed specialised and specific legislation and approaches. Sheltered workshops are a good example of this, special training centres and special schools are set up through this approach as well. The 2nd generation of actions were based on the 'mainstreaming' concept. By generating awareness mainstream actors will include in their policies and approaches a disability perspective. The 3rd generation of actions and legal initiatives is built on the knowledge we need both... disability perspective in the mainstream and specific, focused measures. This translates in to an individualised approach.

Availability of support: both employers and employees should receive the needed support.

Research aiming at evidence-based improvement. Data should be available enabling assessment of initiatives and approaches. Benchmarking with other sectors and countries is only feasible when comparable data are collected.

The General Block Exemption Regulation on state aid by Jelle Reynaert, Policy Officer EASPD

All state aids are controlled by the European Commission

(EU member) state aids are controlled by the European Commission in order to prevent distortions in the internal market. Such distortions could occur when countries overfund certain national companies to obtain a better position in the European market. To keep control over such state aids, the European Commission needs to be informed about all state aid schemes 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).

In 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 those 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.

From September 2008 on however, all general exemption regulations in the field of state aids are 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 aids. The conditions imposed by the GBER needed to be as straightforward as possible because the text will be applied directly by numerous national administrations in all Member States including, in case of litigation, national judges.

Throughout this newsletter, we will provide a better insight of the content and background of the GBER.

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>

The new General Block Exemption Regulation: when and how?

The new General Block Exemption Regulation was adopted by the European Commission on July 7th and published in the Official Journal on August 9th 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 consolidates into one text and harmonises the rules previously existing in different separate Regulations, and enlarges the categories of state aid covered by the exemption. The GBER will enter into force 20 days after publication in the Official Journal.

EASPD clearly applauds the Commission striving towards reducing 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.



Bruce Roch, Innovation & Diversity Manager, Adecco Group France



For Adecco, world's leading HR company, the main focus is to take into account people and their skills. We then work on the best ways to create strong access

to employment, through all kinds of contracts that will suit both individuals and employers. When it comes to people with disabilities, the main difficulty is ignorance of employers. Once we make them realize that people with disabilities -of all types- have the required skills, we have convinced clients who will not hesitate anymore, who will underline their HR, Diversity and Corporate Social Responsibility commitment and become promoters of their initiatives towards their own stakeholders. If subsidies are a bias to include someone, this is good, although it won't be the major reason: skills have to be there first. So training, coaching, mentoring will become key success factors. The state aids become bonuses.

Still the new text adopted by the Commission has some important impacts, underlining the importance of state aids in some cases. For example, state aids are requested to bridge some cost gaps for those who would require position adjustments and tailor made solutions to be able to work, such as dedicated work environment within the company, specific transportation solutions or part time to full time assistance. We also have to take into consideration state aid and penalties (eg quota policies in some of our largest EU countries). It raises awareness as quotas have direct impacts on profit & loss of businesses, therefore leading to initiatives towards employment. This is the first phase which should lead to normality in employing people with disabilities for their skills only, as a second step, which is fortunately more and more the case in various industries. Intermediaries on the labour market, as Adecco, have a role to play to highlight and strengthen the skills of individuals and enforce the employment of people with disabilities on the labour market. This brings pride for our HR oriented company.

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.

Moreover, recent case law of the Commission and the Court of Justice shows that increasingly more 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

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

The GBER aims at simplifying the treatment of state aid measures clearly favouring job creation and boosting 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 26 state aid measures which fulfil 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 State 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 intensities and the notification ceilings. This means that for example higher amounts of training aid and employment aid, amongst others, 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 he would not have engaged in without the aid (incentive effect). This could play an important role in convincing employers to hire people with disabilities.



What measures are included in the GBER?

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 (special facilities for employees with wheelchairs, or information technology for visually impaired workers) incurred by companies when hiring disabled workers (more detailed information is available later on in this newsletter). 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/family life balance, the GBER now foresees the possibility to subsidise employers for as regards 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 small and medium-sized enterprises (SME) aid, regional aid, environmental aid, aid for Research & Development (R&D), innovation aid and aid for promoting women entrepreneurship.

What are the major 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 BER (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 50% to 60%). Moreover, the applicable notification threshold has been doubled to €2 million, allowing for higher aid amounts to be granted.

- The existing rules concerning employment aid, previously contained in the so-called employment BER (Commission Regulation n° 2204/2002) have been clarified and simplified in the GBER. The Regulation includes substantially increased aid possibilities in favour of disabled workers, with higher aid intensities (EASPD lobbied intensely for an increase from 60 to 75%) and a notification ceiling which has doubled (€5 million/year to €10 million/year, also 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.

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.

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

Alain Alexis, DG Competition, Head of Unit, Unit 3: State aids. Policy and scrutiny

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.

New state aid regulation: The viewpoint of Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e. v.

Thomas Umsonst, European and International Affairs, Bundesarbeitsgemeinschaft Werkstätten für behinderte Menschen e. v. (DE)

Workshops for adapted work are not affected by the revised regulation in any fundamental regard. In the European Commission's perception, workshops for adapted work offer social services of general interest as defined by the respective national legal system.

Workshops for adapted work cannot be conceived of as firms or companies with a purely profit maximising interest. Most workshop employees have a special legal status which is different from that of employees in ordinary employment settings. By the way, this special legal status is unknown to the European Commission.

As to the scope of application of the regulation, only employees with disabilities in ordinary employment settings are concerned. This regulation is part of European competition law. New funding possibilities might therefore be offered to integration projects and/or their respective supporting institutions.



The GBER in detail

Below, those abstracts that are of importance for the sector are taken from the text of the GBER. For the full version, please check: EN: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:214:0003:0047:EN:PDF>

ART. 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;

ART. 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.

Carlotta Besozzi – Director -
European Disability Forum

GBER has introduced some important changes if compared to regulation currently in 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 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.



More information?

- Newsletter edited by Stéphanie Duhaut
- Don't hesitate to **contact** the EASPD Office
Oudergemselaan 63
B - 1040 Brussels
T + 32 2 282 46 11
F + 32 2 230 72 33
info@easpd.eu
- **Visit** the policy section at the **EASPD website** and check out the EASPD position papers: **www.easpd.eu**
- Check out EASPD's website dedicated entirely to employment of people with disabilities:
www.employmentforall.eu.
- **Become a member** of the EASPD Policy Impact Group!



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.



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