

FRAMEWORK ON TRAINING AID

(98/C 343/07)

(Text with EEA relevance)

I. INTRODUCTION

1. One of the major challenges facing the Community is finding ways of improving the employment situation. Despite a gradual upturn in economic activity, there are still around 18 million unemployed people in the Community. Employment was at the centre of the discussions of the Amsterdam European Council and promoting a 'high level of employment' has become, by virtue of the Amsterdam Treaty, a matter of common concern to Member States. The new title on employment which is to be inserted in the EC Treaty requires Member States to develop a coordinated strategy for employment and for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change. This objective of a high level of employment must also be taken into consideration in other Community policies and activities.
2. The important part played by training, both in enhancing the Community's competitiveness and in creating and maintaining jobs, was stressed back in 1993 in the White Paper on growth, competitiveness and employment. European Councils in subsequent years, and in particular those of Essen, Cannes and Madrid, have encouraged Member States to promote investment in training as a significant competitiveness factor and as a catalyst of renewed growth and the re-establishment of a socially acceptable level of employment. At the special European Council on employment held in Luxembourg on 20 and 21 November 1997, Member States' Governments agreed to put the new Treaty provisions on employment into effect. The Council Resolution of 15 December 1997 on the employment guidelines for 1998⁽¹⁾ laid down a set of recommendations which will have to be given effect in every Member State through national action plans. The Council of Cardiff confirmed that approach.
3. Numerous studies have shown that the existence of a skilled workforce is a major factor in firms' location decisions. Training is therefore important, not only to the worker, who becomes more employable and less likely to be made redundant, and to the firm, for which it is a performance-enhancing factor, but also to the economy of the regions, a highly skilled workforce being an undeniable asset when it comes to attracting new investment.
4. The work to be done to improve the functioning of the labour market and to reduce the skills gap calls for a proactive approach by all concerned: Member States, firms, individuals and the two sides of industry. The Commission has itself set in train various initiatives, both of a Community nature and as a complement to national action, in the training sphere. It has also endeavoured to integrate the training dimension and its favourable approach thereto into the other Community policies, including competition policy. At the special European Council on employment, held in Luxembourg on 20 and 21 November 1997, it was confirmed that 'the Commission will ensure that the control of State aid does not constitute an obstacle to labour market policy measures compatible with the Treaty'.
5. The measures taken by Member States cannot be confined to improving initial training, vocational training and the training of the unemployed. Businesses cannot adapt to structural and technological change simply by making people redundant and recruiting more skilled labour from elsewhere. Preventive policies should be developed to encourage workers to improve their skills and adaptability and induce firms to invest in training their workforce. Such policies must seek to prevent the least skilled from sliding into unemployment by ensuring, on the contrary, that they are retrained and acquire transferable skills. The financial resources needed are considerable and government support may constitute a necessary incentive in the interests of the Community as a whole. This is, moreover, one of the essential bases of the support given by the Structural

⁽¹⁾ OJ C 30, 28.1.1998, p. 1.

Funds to investment in human resources as part of the economic and social cohesion policy.

account of any beneficial effects of the aid which may justify a distortion of competition.

6. Most public financing in the training sphere does not fall within the scope of the competition rules. However, where Member States introduce financial and tax incentives to encourage firms to invest in training their workforce, steps must be taken to make sure that those incentives do not run counter to the objectives of competition policy, seeking as it does, like the common training policy, to ensure the competitiveness of businesses. It is for the Commission, in pursuance of the state aid rules in Articles 92 and 93 of the Treaty, to examine training measures which are liable to constitute aid within the meaning of Article 92(1) of the Treaty and to ensure that they are compatible with the common market.
7. Training costs are increasingly forming part of the costs that have to be borne by firms if they are to remain competitive. Technical progress, the introduction of new technologies and the pace of change in the research and technological development field mean that firms have to train their staff continuously. A training aid measure which is intended to reduce, for certain firms, the costs they normally have to bear, in their own interest, in order to improve their employees' skills, confers on them an advantage over their competitors and is therefore liable to distort competition.
8. Where a measure constitutes State aid within the meaning of Article 92(1), it must be notified in good time to, and be approved by, the Commission before being implemented. The sole purpose of this system is to ensure that aid is vetted by the Commission so that measures which cause distortions of competition contrary to the common interest are not implemented⁽²⁾. When assessing a measure's compatibility with the common market, the Commission will take
 9. Training usually has positive external effects for society as a whole. One firm's expenditure on training is not only of benefit to the workers who are trained but increases the pool of skilled workers from which other firms may draw. Overall, investment in training increases the competitiveness of Community industry and the attractiveness of the Community as a place in which to set up in business. A firm will not take these secondary effects into account when deciding whether to invest in training, and it is possible that the total outlay of firms on training is lower than the socially optimum level, especially since, from the firm's point of view, investment in training involves the risk that, once trained, its workers might leave for another firm. The smaller the firm, the greater this risk tends to be, and this is one of the reasons why such firms are unwilling to invest in training. The risk is also proportionate to the transferability of the skills acquired. It may be concluded from this that most training aid measures are not simply operating aid, and the Commission is favourably disposed towards them to the extent that the distortions of competition to which they may give rise are justified or counter-balanced by their contribution to a Community objective which market forces alone would not make it possible to attain. Thus, in its state aid policy, the Commission has generally given sympathetic consideration to training aid.
 10. In order to render the Community control of training aid more transparent and ensure equality of treatment, the Commission has drawn up this Framework indicating how it will assess the compatibility of such aid with the common market. The criteria set out herein seek to ensure that only training aid which contributes to the achievement of Community objectives is approved, that such aid does not exceed the necessary incentive level, and that it does not amount to disguised operating aid.
 11. This Framework therefore pursues a number of objectives:

⁽²⁾ On 7 May 1998 the Council adopted on the basis of Article 94 of the Treaty, Regulation (EC) No 994/98 (OJ L 142, 14.5.1998, p. 1) which empowers the Commission to exempt from the prior notification requirement certain categories of aid meeting criteria which ensure their compatibility with the common market. The categories of aid in question include training aid.

— to clarify the interpretation of Articles 92 and 93 of the Treaty with regard to the notion of training aid in order to ensure greater legal

certainty and transparency in the light of the prior notification requirement in Article 93(3),

they afford their employees the opportunity to acquire such skills.

— to ensure consistency, first between the competition rules and the implementation of other Community policies, particularly in the field of training and employment, and secondly between the rules on training aid and those laid down for other types of aid (notably in other guidelines or frameworks),

— to increase the transparency of the approach which the Commission will follow in assessing the compatibility of training aid.

12. Part II describes the types of measure which may constitute aid as covered by the competition rules of the Treaty. Part III defines the scope of the Framework. Part IV sets out the principles on which the Commission will base its assessment of the compatibility of measures constituting aid. In the light of these principles, which make it possible to reconcile the objectives of an active employment policy with a level playing field for all businesses, the Commission lays down a series of thresholds of intensity below which aid may be considered to be compatible with the common market. The differences between the thresholds proposed reflect the different degrees of externality and necessity of the aid according to the transferability of the training, the size of the firm and the area in which it is situated.

14. Being general measures, many training measures are not caught by Article 92(1) of the Treaty. Most training forms part of the tasks traditionally carried out by the State and by and large benefits people and workers everywhere. The financing by the State of this sort of training does not favour certain undertakings or the production of certain goods within the meaning of Article 92(1). The decision-making practice of the Commission and the case-law of the Court of Justice illustrate in what circumstances a measure is in the nature of a 'general measure' and is accordingly excluded from the scope of Article 92(1) of the Treaty. Examples are:

— schooling and initial training (such as apprenticeships and day release schemes),

— the training or re-training of unemployed people, including traineeships in enterprises,

— measures directly targeted at workers or even at certain categories of worker, affording them the opportunity of receiving training unconnected with the firm or industry in which they work (e.g. the 'learning account' system),

— general tax incentive schemes (e.g. tax credits) which are open to all firms investing in employee training and apply automatically.

II. SCOPE OF ARTICLE 92(1) OF THE EC TREATY

13. This Framework concerns only measures falling within the scope of Article 92(1) of the EC Treaty, which provides that '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 shall, in so far as it affects trade between Member States, be incompatible with the common market'. The aid covered by this Framework is that which favours one or more firms or sectors of industry by reducing the costs they would normally have to bear when they want their employees to acquire new skills or when

15. In this connection it must be pointed out, however, that a measure which, while being theoretically general in scope, in practice favours one or more firms or sectors is in fact specific. This is the case, for example, where the authorities enjoy, when applying a general measure, a discretionary power which allows them to vary the amount of financial assistance according to the circumstances⁽³⁾. Such measures are liable to constitute aid within the meaning of Article 92(1) and must be notified pursuant to Article 93(3) of the Treaty.

⁽³⁾ See the Judgment of the Court of Justice of the European Communities in Case C-241/94 *France v. Commission* ('Kimberly Clark') [1996] ECR I-4551.

16. Aid falls within the scope of Article 92(1) only in so far as it affects trade between Member States. Training aid granted to firms or sectors whose activities do not or are not likely to form the subject-matter of trade between Member States (for example, certain local services) thus does not come under Article 92(1). Aid which satisfies the requirements of the *de minimis* rule as laid down by the Commission⁽⁴⁾ is also deemed not to affect intra-Community trade. Consequently, it does not come under Article 92(1) and does not need to be notified pursuant to Article 93(3).

only in so far as there is no conflict between the two. It nonetheless applies fully to the air transport sector.

19. This Framework applies to training aid whether the training be provided by firms themselves or by public or private training centres.

III. SCOPE OF THIS FRAMEWORK

A. Principles

17. This Framework applies to all training aid measures, notified or put into effect during its period of application, with the exception of those taken — for example to re-skill workers — as part of the rescuing and restructuring of firms in difficulty, which will be assessed in accordance with the relevant Commission guidelines⁽⁵⁾. As regards small and medium-sized enterprises, this Framework accordingly replaces the provisions on training aid contained in the Community guidelines on State aid for small and medium-sized enterprises⁽⁶⁾ currently applying.

18. In principle, this Framework covers all sectors of industry. However, for sectors considered sensitive by the Commission for which there are special Community rules on aid⁽⁷⁾, this Framework applies

20. Training aid as referred to in this Framework must be distinguished from employment aid, the compatibility of which with the common market must be assessed in the light of the pertinent guidelines⁽⁸⁾. Some employment aid measures may be justified to some extent by the fact that, when it takes on certain workers, the assisted firm has to bear additional training costs. This is the case, for example, with aid designed to encourage the hiring of certain categories of unemployed people who experience particular difficulty in entering the labour market. Where the purpose and direct effect of such aid is to stimulate employment by giving the employer a financial incentive to recruit people he would not otherwise have recruited, the aid is to be considered purely as employment aid. Training is a secondary consideration here, just one aspect of the recruitment process that is being assisted. In such a case, moreover, it is often impossible to say which part of the total aid package has been earmarked for training and separate it from the rest. Even if it includes a training component, employment aid will therefore be examined as such. If an aid scheme is involved, Member States may continue to use for notification purposes the standard form for employment aid, which contains a section on training⁽⁹⁾.

21. Only aid which is not linked to investment falls within the scope of the employment aid guidelines. Consequently, where investment-linked employment aid contains a training component, that component will be examined separately on the basis of the present framework.

⁽⁴⁾ OJ C 68, 6.3.1996, p. 9.

⁽⁵⁾ The guidelines on State aid for rescuing and restructuring firms in difficulty currently in force are those set out in OJ C 368, 23.12.1994, p. 12. For agriculture and fisheries: OJ C 283, 19.9.1997, p. 2.

⁽⁶⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁷⁾ This is currently the case with shipbuilding, synthetic fibres, the motor industry, fisheries, the steel industry and transport. As regards agriculture, the framework does not apply to the sectors concerned with the production, processing and marketing of agricultural products (Annex II to the EC Treaty). The framework does not apply to the coal and steel industry which is covered by the ECSC Treaty. However, it should be noted that the Decisions of the Commission of 24 June 1994 on the suspension of funding for certain ECSC social aid continues to apply until the expiry of the ECSC Treaty (OJ C 178, 30.6.1994, p. 21).

⁽⁸⁾ The employment aid guidelines currently in force being those set out in OJ C 334, 12.12.1995, p. 4.

⁽⁹⁾ OJ C 218, 27.7.1996, p. 4.

IV. ASSESSMENT CRITERIA FOR TRAINING AID

work place. Its transferability to other firms or other fields of work is very limited,

A. General principles

22. In certain circumstances, training aid prohibited under Article 92(1) may qualify for one of the exemptions provided for in Article 92(3).

— General training includes tuition which is not applicable only or principally to the employee's present or future position in the assisted firm. It is linked to the overall activities of the firm and provides qualifications which are largely transferable to other firms or other fields of work.

23. The main ground for exemption is that provided for in Article 92(3)(c), by virtue of which the Commission may authorise aid to facilitate the development of certain activities where it does not adversely affect trading conditions to an extent contrary to the common interest. Measures to improve the skills of a firm's workforce help to increase that firm's competitiveness and in so doing facilitate the development of certain activities. Training plays an essential part in introducing new technologies and stimulating innovation and investment. It may also help to create and maintain jobs. Training aid may thus fall within the exemption provided for in Article 92(3)(c).

The latter equip the workers concerned with additional skills directly transferable to other firms. They therefore effectively improve such workers' skills level, employability and adaptability and thus make a bigger contribution to the achievement of Community objectives in the fields of employment and human resource development.

26. Among the criteria to determine the transferability of the skills acquired through the training, the following can be mentioned as examples:

24. The main argument in favour of training aid is that it helps to correct certain imperfections in the market. This is particularly the case with vocational training as it has numerous external effects. The importance of the externalities of training is linked primarily to the transferability of the skills and qualifications training imparts. The Commission accordingly considers that a more favourable attitude is justified *vis-à-vis* continuing vocational training schemes which to a substantial extent actually benefit workers more than is strictly necessary for the purpose of their jobs and do not simply meet the specific needs of the firm.

— Recognition, certification or validation of qualifications and skills by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers. Training leading to a diploma, certificate, etc., recognised by a Member State or within the framework of systems for the certification and validation of work experience is presumed to be of a general nature,

— The fact that employees of different firms may avail themselves of the training or it is organised jointly by a number of independent firms.

25. In this connection, the Commission will draw a distinction between specific training and general training actions:

— Specific training involves theoretical and practical tuition directly and principally applicable to the employee's present or future position in the assisted firm. It is linked to a specific activity of the firm. Part of the training is normally given at the employee's

In this regard, it should be noted that in-company training, even if it directly responds to the contemporary needs of the company, can have a transferable character, if the skills it provides are largely transferable.

27. To approve an aid under Article 92(3)(c) of the Treaty, the Commission must ensure that the aid does not

adversely affect trading conditions to an extent contrary to the common interest. To qualify for exemption under this provision, a State aid must therefore have an incentive character and be proportionate to the objectives of common interest it aims to achieve. The latter condition is considered to be fulfilled if the intensity of the aid does not exceed the thresholds defined in point 32.

28. To determine the incentive effect, the Commission will consider whether training aid has the effect of encouraging firms to do more in the way of training than they would normally do or to spend more than they would normally spend on training. An aid measure which relates to a firm's normal operating costs (standard induction courses for new recruits and so forth), being intended solely to reduce either continuously or periodically the costs which the firm normally has to bear, is not an incentive and cannot as a rule be approved. The incentive effect will have to be demonstrated if aid for specific training is awarded to big enterprises outside areas assisted under Article 92(3)(a) or (c). In all other cases, the incentive effect will be presumed for the reasons set out in point 29.

29. Statistics show that there is a direct link between a firm's size and the probability that its employees receive training⁽¹⁰⁾. In general, the percentage of workers attending a training course increase with the size of the firm. In view of the substantial under-investment in training in small and medium-sized enterprises⁽¹¹⁾, the Commission considers that in this case training aid always has an incentive effect and that higher intensities are authorisable. In those areas where the standard of living is abnormally low or where there is serious under-employment (Article 92(3)(a)), the incentive effect will also be presumed, even for large enterprises, owing to the relatively greater external impact training may have there. It is in such areas that expenditure on training and the level of skills are the lowest⁽¹²⁾ and that the common interest in raising that level with a view to improving the employment situation and attracting new investment is the strongest. An increase in allowable intensities is therefore also justified. Inasmuch as the training and re-training of workers also plays an important part in industrial adjustment, the same approach is justified for the areas falling

within Article 92(3)(c). Finally, as far as general training is concerned, the incentive effect can always be presumed, given the important externalities of this type of training. On the other hand, where the worker being trained is required by contract to compensate his employer if he leaves the firm before a certain period has elapsed, the positive externalities will be reduced and the Commission will consider that a training aid measure is in principle unjustified.

B. Eligible costs

30. Eligible costs in the context of a training aid project are⁽¹³⁾:

1. trainers' personnel costs;
2. trainers' and trainees' travel expenses;
3. other current expenses (materials, supplies, etc.);
4. depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
5. cost of guidance and counselling services with regard to the training project;
6. trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (1) to (5).

The eligible costs must be supported by documentary evidence, transparent and itemised. Under trainees' personnel costs referred to in (6) only the hours during which the trainees effectively participated in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

⁽¹⁰⁾ Eurostat, Statistics in Focus, Population and social conditions, 1996, No 7, Table 2.

⁽¹¹⁾ See the Commission Recommendation of 3 April 1996 concerning the definition of SMEs (OJ L 107, 30.4.1996, p. 4).

⁽¹²⁾ Eurostat, Statistics in Focus, Population and social conditions, 1996, No 7, Figure 1.

⁽¹³⁾ The Commission will ensure that in practice the definition of eligible costs is coherent with the rules establishing eligibility of expenditure under the Structural Funds, as defined in the Commission Decision of 23 April 1997 (OJ L 146, 5.6.1997).

C. Authorised intensities

31. Training aid is authorisable under Article 93(3) of the Treaty if it complies with the following permissible intensities in relation to eligible costs as defined in point 30.
32. The admissible intensity is 50 % for general training projects and 25 % for specific training projects. It is increased by 10 points (specific training) or 20 points (general training) for SMEs and by five points for assisted areas under Article 92(3)(c) and 10 points for assisted areas under Article 92(3)(a). This gives the following result:

Large firms	Specific training	General training
outside an assisted area	25	50
in an Article 92(3)(c) area	30	55
in an Article 92(3)(a) area	35	60
SMEs	Specific training	General training
outside an assisted area	35	70
in an Article 92(3)(c) area	40	75
in an Article 92(3)(a) area	45	80

33. The intensities mentioned in point 32 can be increased by 10 points when the beneficiaries of the training are categories of disadvantaged workers (low skilled workers, handicapped persons, older workers, women returning to the labour market and so forth).

34. Training aid measures may be cumulated only within the limits of the intensities indicated in points 32 and 33.

V. NOTIFICATION AND EXISTING SCHEMES

35. Measures identified in this document as not constituting state aid caught by Article 92(1) of the Treaty do not need to be notified to the Commission. However, all training aid schemes and all *ad hoc* training aid cases which fall outside authorised schemes and do not fulfil the conditions of the *de minimis* rule must be notified to the Commission, pursuant to Article 93(3) of the Treaty, in sufficient time to enable it to submit its comments on their compatibility with the common market.
36. This Framework is without prejudice to schemes already authorised by the Commission when the Framework is published, including measures co-financed by the Structural Funds. The Commission will, however, review such schemes pursuant to Article 93(1) of the Treaty. In this connection the Commission proposes to Member States as an appropriate measure within the meaning of Article 93(1):
- that they should notify to it is from 1 January 1999 any plan to grant aid under an approved scheme where the amount of aid to any one firm exceeds ECU 2,5 million gross grant equivalent over a period of three years; and
 - that they should notify to it all existing schemes which do not expire before 31 December 1999.
37. If Member States do not accept the appropriate measures proposed, the Commission will be obliged to initiate proceedings under Article 93(2) of the Treaty.

VI. DURATION AND REVIEW OF THIS FRAMEWORK

38. The Commission will use this Framework as a basis for assessing training aid for a period of five years from the date of its publication. Before that period expires, the provisions of this Framework will be evaluated and, if necessary, revised.