

GUIDELINES ON AID TO EMPLOYMENT

(95/C 334/04)

(Text with EEA relevance)

I. INTRODUCTION

1. Continued unemployment at unacceptably high levels is still the chief economic and social problem facing the Community today. Following a slight decline in unemployment between 1985 and 1990, slower growth has aggravated the employment situation for four years running. In the first quarter of 1995 there were some 18 million unemployed people in the Community, representing 11 % of the labour force.

Unemployment is distributed unevenly between social groups and between regions. More than one in five young people in the Community are unemployed, while the unemployment rate among women, at 12,6 %, is also above the average. Low-skilled workers are particularly affected by unemployment: it is estimated that three quarters of the unemployed fall into this category.

Experience in most Member States shows that, once people become unemployed, they can expect to spend a relatively long period looking for a new job because they will have become less employable. This phenomenon is responsible for an unduly high proportion of the long-term unemployed in Europe (over 40 % of total unemployed), the upshot being increasingly widespread social exclusion.

2. With the upturn in economic activity, it is expected that the coming years will see a positive trend in job creation. However, this trend will not be enough to reduce the unemployment rate to socially acceptable levels. It is now accepted that structural reasons lie behind the persistently high rates of unemployment in Europe, and this situation calls for specific policies to improve labour-market adaptability.

Although employment policy remains an area of national responsibility, the Community must play a major coordinating role in encouraging exchanges of information between Member States, promoting good practices and stimulating the quest for new solutions. The White Paper on growth, competitiveness and employment diagnoses the reasons for the inadequate employment performance in Europe and proposes guidelines for setting in place a production model capable of creating more jobs. These guidelines were taken up by the European Council, first in Brussels and then in Essen in December 1994. They were confirmed at the European Council meeting in Cannes. In particular,

the Member States have drawn up a package of recommendations covering five priority areas and have established a procedure for monitoring progress:

- boosting investment in education and training,
 - improving internal and external flexibility mechanisms in order to enhance the employment-content of growth,
 - reducing indirect labour costs, in particular by reducing direct taxation of labour,
 - improving the effectiveness of active policies, notably by redirecting public expenditure on passive income support for the unemployed,
 - stepping up measures to promote the employment of underprivileged groups in the labour market, such as the long-term unemployed, young people and older workers.
3. Against this background, tax and financial measures will have to play an increasing role in encouraging firms to hire workers experiencing utmost difficulty in entering the labour market. Although they might be less effective because of substitution or windfall effects, grants per job created for the long-term unemployed, for example, and targeted exemptions from social security contributions reduce labour costs at the bottom end and thus offset the difference associated with lower-than-average productivity.

The same type of measures may also give firms an incentive to invest more in vocational training. In such cases, the grant or tax concession must reflect the externalities associated with the worker exploiting the newly acquired knowledge on the labour market.

Although the objective of such measures is to improve the situation of workers on the labour market, it must be recognized that firms also benefit in that they are able to reduce their labour costs because of the intermediary role they play in implementing tax and financial measures. That is why steps must be taken to ensure that the foreseeable proliferation of measures to promote employment, in response to the White Paper guidelines and the recommendations adopted at Essen, does not adversely affect the Commission's

parallel efforts to reduce artificial distortions of competition under Articles 92 and 93 of the EC Treaty.

These guidelines pursue a number of objectives:

- (i) to clarify the interpretation of Articles 92 and 93 of the EC Treaty with regard to State aid in the field of employment in order to ensure greater transparency of notification decisions under Article 93;
- (ii) to ensure consistency between the rules of competition and the implementation of the policies needed to combat unemployment in Europe, in accordance with the guidelines of the White Paper and the conclusions of the Essen Council;
- (iii) to make explicit, by defining the different types of aid and their objectives, the approach normally taken by the Commission, namely to give sympathetic consideration to State aid designed to improve the employment situation.

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

4. The guidelines presented here cover only those measures falling within the scope of Article 92 (1) of the EC Treaty, which stipulates 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'.

5. A number of employment-policy measures are not caught by Article 92 (1) of the EC Treaty because:

- they constitute aid to individuals that does not favour certain undertakings or the production of certain goods, or
- they do not affect trade between Member States, or
- they are 'general' measures.

This is clearly the case, in particular, with measures to provide guidance and counselling, general assistance and training for the unemployed (aid to individuals that does not favour certain undertakings or the production of certain goods) and aid designed to improve labour law or to adapt the education system (general measures).

A. Aid to individuals that does not favour certain undertakings or the production of certain goods

6. Measures to assist individuals the purpose or effect of which is not to favour certain undertakings or the

production of certain goods do not constitute State aid within the meaning of Article 92 (1) of the EC Treaty.

In so far as such measures apply automatically to individuals on the basis of objective criteria and without favouring certain undertakings or the production of certain goods, they do not constitute State aid if they are designed:

- to improve the personal situation of workers on the labour market or to make it possible for them to find work or become socially integrated, in particular by way of vocational training or apprenticeships,
- to supplement the income of certain workers,
- to encourage the employment of women in occupations traditionally carried on by men or the employment of individuals from ethnic minorities,
- to foster mobility of workers, the creation of self-employed activities or the recruitment of certain categories of worker having to contend with temporary socio-vocational disadvantages,
- to promote the employment of persons suffering from permanent physical or mental disabilities.

B. Effect on trade between Member States

7. Aid is caught by Article 92 (1) of the EC Treaty only if it affects trade between Member States. Thus, employment aid in respect of activities that do not involve trade between Member States (e.g. neighbourhood care services, certain local employment initiatives) does not fall within the scope of Article 92 (1). The Commission considers that this is also the case with *de minimis* aid⁽¹⁾, which encompasses most forms of aid for promoting self-employed activities.

C. General measures or State aid

8. The distinction between general measures and State aid lies outside the scope of these guidelines and is currently being discussed by the Commission.

⁽¹⁾ Point 3.2 of the Community guidelines on State aid for small and medium-sized enterprises (OJ No C 213, 19. 8. 1992), and Commission letter to the Member States dated 23 March 1993 (D/06878).

It should be noted that a number of general measures may affect competitive conditions and trade between Member States as much as State aid but, since these measures do not constitute State aid within the meaning of Article 92 (1) of the EC Treaty, the elimination of any distortions of competition that they might cause is covered not by the monitoring of State aid provided for in Articles 92 to 94 of the EC Treaty but by the implementation of Articles 101 and 102 concerning the removal of distortions caused by the differences between certain provisions in Member States which distort the conditions of competition in the common market.

9. Employment is also promoted by other measures such as those to promote training and the acquisitions of new skills. In this respect, it may be useful to point out that in many cases the subsidies for vocational training/retraining do not constitute State aid caught by Articles 92 and 93 of the EC Treaty and that, where such measures fall within the scope of Article 92 (1) of the EC Treaty, the Commission usually gives them sympathetic consideration.

The same is true of measures to improve working conditions.

III. STATE AID TO EMPLOYMENT

10. One point needs to be made clear concerning the scope of these guidelines; aid to employment, as covered by these guidelines, is aid not linked to investment.

Even where investment aid is calculated per job created or includes premiums for job creation, it does not constitute employment aid as such since it is not directly intended to create or maintain jobs. Its effects in combating unemployment are indirect, through the realization of productive investment to bring about a structural change in the firm. The reference to jobs created is only one criterion for assessing aid to the investment for which the aid is intended. In view of its purpose and its permanent effects on the industrial structure, such aid should be treated just like any other investment aid and should be subject to the normal assessment criteria.

A. General comments

11. By granting employment aid to certain firms or to the production of certain goods, the authorities are taking over part of those firms' labour costs, which

are normal expenditure incurred in their own interest, and conferring a financial advantage that improves their competitive position. In so far as the products or services concerned are in competition with those of firms from other Member States, such aid is likely to distort competition and affect trade between Member States; consequently, it is, in principle, incompatible with the common market. Within the single market, aid granted to reduce labour costs can lead to distortions of intra-Community competition and deflections in the allocation of resources and mobile investment, to the shifting of unemployment from one country to another, and to relocation.

12. The Commission considers that, without rigorous controls and strict limits, employment aid can have harmful macroeconomic effects which cancel out its immediate effects on job creation. If the aid is used to protect firms exposed to intra-Community competition, it could have the effect of delaying adjustments needed to ensure the competitiveness of European industry. In the absence of rigorous controls, the fact that such aid will probably be concentrated in the most prosperous regions runs counter to the objective of economic and social cohesion. Care must also be taken to ensure that the granting of State aid does not lead to escalating subsidization, making the aid ineffective and wasting public money on all sides. Lastly, the danger is that, if granted in an uncontrolled fashion, this type of aid will simply shift unemployment elsewhere without helping to resolve the employment problem in the European Union and will therefore distort competition to an extent contrary to the common interest.

13. The Commission has traditionally been sympathetic to employment aid, particularly where it is intended to encourage firms to create jobs or to hire individuals who face particular difficulties in finding work. This attitude is justified by the fact that the lower productivity of these workers reduces the financial advantage accruing to the firm and by the fact that the workers also benefit from the measure and are likely to be excluded from the labour market unless employers are offered such incentives. This paper confirms that position.

B. Forms of aid

14. Employment aid introduced by the Member States usually takes the form of grants (single or monthly payments) and exemptions for certain firms from employers' social security contributions or from certain taxes. In some cases the different types of aid are combined.

C. Types of employment aid

15. The concepts of aid to maintain jobs and aid to create jobs need clarification because they are of major relevance to whether the aid is compatible with the common market.

16. Aid to maintain jobs means support given to a firm to persuade it not to lay off its workers, with the subsidy usually being calculated on the basis of the number of employees at the time the aid is granted.

17. Aid to create jobs, on the other hand, provides employment for workers who have never had a job or who have lost their previous job, and is calculated on the basis of the number of jobs created. It should be made clear that job creation refers to net job creation, i.e. the creation of an additional job in relation to the (average) workforce (over a period of time) of the firm concerned. Simply replacing a worker without actually increasing the workforce, and hence without creating new jobs, does not constitute genuine job creation.

18. One form of job creation, unusual because there is no increase in the number of hours worked in the firm, is job sharing, i.e. apportionment of the overall amount of available work between a larger number of jobs with a proportionally lower number of hours worked.

IV. APPLICATION OF THE DEROGATIONS IN ARTICLE 92 (2) AND (3) OF THE EC TREATY

19. Where aid to promote employment is caught by the ban laid down in Article 92 (1) of the EC Treaty, an examination must be made of whether it qualifies for one of the derogations in Article 92 (2) and (3). Here a distinction must be made between aid that creates new jobs and aid that maintains existing jobs.

20. The Commission is generally sympathetic to aid intended to create jobs. Despite the risks involved for intra-Community competition, such aid improves the employment content of growth. Consequently, taking due account of the application of the specific sets of rules governing certain branches of industry or agriculture, and in so far as the amount of aid per

worker is justified and does not represent too high a proportion of the firm's production costs, it may be concluded that, when a firm makes this type of effort, the aid it receives for the purpose generally qualifies for the derogation in Article 92 (3) c) in that it is intended to facilitate the development of certain activities, provided that it does not adversely affect trading conditions to an extent contrary to the common interest.

21. In assessing employment aid, the Commission will apply the following criteria:

— It will be favourably disposed towards aid to create new jobs in SMEs⁽¹⁾ and in regions eligible for regional aid⁽²⁾. Outside these two categories, it will also look favourably upon aid to encourage firms to take on certain groups of workers experiencing particular difficulties entering or re-entering the labour market. In the latter case, there is no need for net job creation, provided that the post falls vacant following voluntary departure and not redundancy.

— It will also be sympathetic towards aid to promote job sharing, which allows the overall amount of work available to be distributed among a larger number of posts with shorter working hours, thereby offering the possibility of (part-time) work to a greater number of people.

— For aid in the preceding categories to be viewed favourably, the Commission will also scrutinize the terms of the employment contract, in particular compliance with the obligation to hire workers for an indefinite period and to maintain newly created jobs for a minimum period, conditions which ensure that the job created is a stable one. Any other guarantee of the permanence of new jobs, particularly the arrangements for payment of the aid, will also be taken into account.

— The Commission will make sure that the level of aid does not exceed that which is necessary to provide an incentive to create jobs, taking account, where appropriate, of any difficulties

⁽¹⁾ Community guidelines on State aid for small and medium-sized enterprises (OJ No C 213, 19. 8. 1992).

⁽²⁾ Commission communication on regional aid systems (OJ No C 31, 3. 2. 1979).

facing SMEs and/or disadvantages affecting the region concerned. The aid must be temporary.

- If the creation of jobs for which aid is granted is combined with the training or retraining of the workers concerned, this will make a particularly positive contribution to a favourable assessment by the Commission.

22. Aid to maintain jobs, which is similar to operating aid, will be authorized only under the following conditions:

Such aid may be authorized where, in accordance with Article 92 (2) (b) of the EC Treaty, it is intended to make good the damage caused by natural disasters or exceptional occurrences. Under certain conditions, aid to maintain jobs may also be authorized in regions eligible for the derogation under Article 92 (3) (a) of the EC Treaty concerning the economic development of areas where the standard of living is abnormally low or where there is serious underemployment⁽¹⁾.

Where aid to maintain jobs is granted as part of a rescue, restructuring or conversion plan for an ailing firm, it will have to be notified and will be assessed applying the relevant Commission guidelines⁽²⁾.

Naturally, these considerations concern solely aid to maintain jobs and the Member States are free to take any appropriate measures to ensure that employment is maintained by general measures, such as a general reduction in taxes and social security contributions paid by firms.

23. Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.

Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve

their market share to the detriment of their Community competitors both within the Member State concerned and for exports inside and outside the Community, with all the attendant implications in terms of a worsening of the employment situation in those sectors in the other Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other Member States generally outweigh the common interest involved in active measures to reduce unemployment; the Commission will usually consider such aid to be incompatible with the common market. However, where such aid is granted in a region affected by serious underemployment, the Commission will take this fact into account.

The Commission will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold out the prospect of considerable job creation.

V. NOTIFICATION

24. The measures identified in this document as not constituting State aid caught by Article 92 (1) of the EC Treaty do not need to be notified in advance⁽³⁾. However, all employment aid schemes and all cases of *ad hoc* employment aid outside authorized schemes must be notified in advance to the Commission pursuant to Article 93 (3), in good time for it to give its opinion on their compatibility with the common market.

25. Employment aid schemes which have been authorized by the Commission in the past may have to be reviewed in accordance with Article 93 (1).

26. The Commission supports the development and implementation of structural policies including active labour market policies which establish fair competition between, on the one hand, the unemployed and those in work who are vulnerable to or affected by structural economic change and, on the other hand, those in more stable employment. Most of the measures taken by Member States in this regard apply throughout their economies and do not constitute State aid at all. However, when they favour certain undertakings or the production of certain goods, they may give rise to State aid within the meaning of Article 92 (1) of the EC Treaty. Such State aid measures must be notified to the Commission pursuant to Article 93 (3), unless they are within the limits of the *de minimis* rule. In order

⁽¹⁾ Commission communication on the method for the application of Article 92 (3) (a) and (c) to regional aid (OJ No C 212, 12. 8. 1988).

⁽²⁾ Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ No C 368, 23. 12. 1994, p. 12).

⁽³⁾ Point 5 of these guidelines.

to reflect the urgency of measures to deal with the current unemployment crisis in the EU and to support the promotion of structural employment policies, in particular by means of active labour market measures, the Commission will adopt an accelerated procedure for the notification of employment and training aid schemes as follows:

- notifications on the form ⁽¹⁾ prescribed for use in the 'accelerated procedure' will be processed within twenty working days of receipt,
- the Commission will make the necessary arrangements to allow Member States to transmit notifications and other relevant information in electronic form,
- finally, where Member State measures are communicated to the Commission as part of a programme under the European Social Fund (ESF) and State aid measures are identified as such, the Commission will, as a general rule, adopt a single decision on the ESF and State aid aspects of the measures. Where the Member State wishes to avail itself of the accelerated procedure in respect of certain measures, it will present the information required on the prescribed form. The Commission will act as provided for in the first indent above.

⁽¹⁾ As amended to deal with the specific characteristics of employment aid measures.

27. Aid granted without advance notification to the Commission pursuant to Article 93 (3) and not authorized by it will be illegal and, if it is declared incompatible with the EC Treaty, the Member States concerned will have to recover the aid wrongfully paid.

VI. CONCLUSION

28. If the Commission concludes, after examining employment aid schemes planned by the Member States and subject to notification, that the arrangements and conditions conform to these guidelines, it may regard them as compatible with the common market by virtue of the derogation in Article 92 (3) (c), which applies to aid to facilitate the development of certain activities without adversely affecting trading conditions to an extent contrary to the common interest.
29. However, where aid to employment concerns certain sectors, firms or categories of aid which are governed by specific Community codes, it may be regarded as compatible with the common market only if it complies with the conditions laid down in those codes.
30. A report on the application of these guidelines will be submitted and, if necessary, the guidelines will be reviewed five years after they enter into force.

Authorization for State aid pursuant to Articles 92 and 93 of the EC Treaty

Cases where the Commission raises no objections

(95/C 334/05)

Date of adoption: 14. 3. 1995

Member State: France

Aid No: NN 103/94

Title: Aid for the sheepmeat industry --- technical assistance and investment aid

Objective: Strengthening structures in the sheepmeat industry

Aid intensity:

- Technical assistance: FF 130 000 a year per technical assistant as part of the agreements for guidance of sheepmeat production
- 35 % maximum of the investment

Conditions: In the case of the investment aid, the Commission took account of the undertaking by the French authorities to comply with the ceiling of 35 % rate of aid on each investment project. In the case of the campaign of advertising and promotion, see Commission Decision to open proceedings under Article 93 (2) of the EC Treaty, published in the OJ (OJ No C 289, 31. 10. 1995).