State aid for disabled and disadvantaged workers: compatibility criteria for big cases

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1. Background

Unemployment, especially structural unemployment, is still a major problem in some parts of the European Union. Certain categories of workers still have difficulty getting onto the labour market. State aid in the form of wage subsidies (2) can provide additional incentives for companies to employ more disadvantaged and disabled workers. The objective of the aid is thus to boost demand by employers for the target categories of workers.

Member States may give wage subsidies for these target categories without prior notification to the Commission as long as they comply with the conditions and notification thresholds laid out in the General Block Exemption Regulation (3). But when individual aid measures involve large sums, they may entail a higher risk of distorting competition. So notifications and detailed assessments are still required for such measures.

For that reason the Commission adopted in July 2009 the Communication on ‘Criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification’ (referred to below as the ‘Communication’), which outlines the conditions under which the Commission will authorise such aid. It provides guidance on the kind of information the Commission requires and the assessment methodology it would follow.

2. Scope of the Communication and notification threshold

The Communication applies to wage subsidies for workers considered to be disadvantaged or disabled. Workers who do not comply with the definitions below cannot receive wage subsidies.

A worker is considered disadvantaged if she or he (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; or (c) is over the age of 50; 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 the under-represented 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. Severely disadvantaged worker means any person who has been unemployed for 24 months or more. (4)

A disabled worker has to be recognised as disabled under national law, or to have a recognised limitation resulting from physical, mental or psychological impairment. (5)

The General Block Exemption Regulation sets a notification threshold of € 5 million per undertaking per year for disadvantaged workers and € 10 million per undertaking per year for disabled workers. This means that there has to be an individual notification to the Commission (6) of any individual aid, whether granted ad hoc or as part of a scheme, where the grant equivalent exceeds € 5 million for disadvantaged workers or € 10 million for disabled workers per undertaking per year. It will then be assessed under the criteria laid out in the Communication.

Below the notification threshold of € 5 or € 10 million, an aid measure is normally exempted from notification. However, this exemption is only valid for aid schemes (for all sizes of firm) and ad-hoc aid to small and medium-sized companies. Ad-hoc wage subsidies for large firms are never covered by the

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

(2) Subsidies to wage costs where wage cost means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising: (a) the gross wage, before tax, and (b) the compulsory contributions, such as social security charges; and (c) child care and parent care costs.


General Block Exemption Regulation, even if aid is below the threshold of € 5 or € 10 million. For such aid the Commission will apply the same principles mutatis mutandis as in the Communication, though normally in a less detailed manner, as the sums are still modest.

3. Assessment criteria

The assessment criteria in the Communication reflect the 'refined economic approach', introduced by the Commission's State Aid Action Plan in 2005. The core element of the refined economic approach is the 'balancing test'. First the Commission looks at the purpose of State aid: Is the objective to improve fairness by changing an efficient but undesirable market outcome? Second, the test looks at the design of the aid measure: Is State aid an appropriate policy instrument? Does it induce a change of behaviour from the aid recipient? Is it proportionate? Finally, these positive effects have to be balanced against any negative effects caused by distortions of competition or trade that the aid might bring about.

The criteria set out in the Communication are not applied mechanically. The level of the Commission's assessment and the kind of information it will require from Member States will depend on the risks of distortion of competition and on the nature of each case notified.

3.1 Existence of an equity objective

Certain categories of worker experience particular difficulty in finding jobs, because employers consider them to be less productive or have prejudices against them. This perceived or real lower productivity may be due either to lack of recent work experience (for example, young workers or long-term unemployed) or to a permanent disability. The lower productivity of these workers reduces the financial advantage for the firm and they are likely to be excluded from the labour market unless employers are offered compensation for employing them.

It is socially desirable for all categories of workers to be integrated in the labour market. State aid in the form of wage subsidies for these target categories can help to improve social justice. Member States should demonstrate that the aid will indeed address this objective. In its analysis, the Commission will examine the following factors:

- Number and categories of workers concerned;
- Employment rates of the categories of workers concerned at national and/or regional level and in the undertaking(s) concerned;
- Unemployment rates for the categories of workers concerned at national and/or regional level.
- Particularly marginalised sub-groups of disabled and disadvantaged workers.

3.2 Appropriateness

State aid in the form of wage subsidies is not the only policy instrument available to Member States to promote employment of disadvantaged and disabled workers. They can also use general measures such as reducing taxation of labour and social costs, boosting investment in education and training, providing guidance, counselling, assistance and training for the unemployed and improving labour law.

Measures for which the Member State has considered other policy options, and the advantages of using wage subsidies for a specific company, are considered appropriate.

3.3 Incentive effect:

necessity and proportionality of aid

State aid for employing disadvantaged and disabled workers must lead to a net increase in the number of such employees in the undertaking concerned. Newly recruited disadvantaged or disabled employees should only fill newly created posts or posts freed up by voluntary departure, invalidity, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct. Posts resulting from redundancy must not be filled by subsidised disadvantaged or disabled workers. State aid cannot be used to replace subsidised workers whose subsidies have ended and have consequently been dismissed.

Member States should provide the Commission with proof of the net increase in the target categories of workers and the necessity of the aid. First, the aid beneficiary must meet the formal requirement of having applied for aid from their Member State before the target groups were employed. Second, the Member State must demonstrate that the wage subsidy is paid for a disadvantaged or disabled worker in a firm where the recruitment would have not occurred without the aid.

The Commission's analysis will focus on:

- Internal documents from the aid beneficiary on employment costs and target workers in two scenarios: with aid and without aid;
- Existing or past wage subsidies in the undertaking concerned: categories and number of workers subject to subsidies;

• Annual turnover of categories of workers concerned by the measure.

The aid amount must not exceed the net additional costs of employing the target categories of disadvantaged or disabled workers compared to the costs of employing non-disadvantaged or non-disabled workers. These extra costs include costs arising from employing disadvantaged or disabled workers (for example, due to lower productivity) and benefits which the aid recipient derives from such employment (for example, improving the image of the company). Aid must never exceed 50% of wage costs for disadvantaged workers and 75% of wage costs for disabled workers.

3.4 How can wage subsidies lead to distortions of competition?

In spite of the improved social justice and higher numbers of certain categories of workers in the labour market, high levels of aid create a higher risk of distorting competition.

The extent to which competition is distorted can vary, depending on the design of aid and the characteristics of the markets affected. For example, a scheme for subsidised wages designed to encourage most firms to employ more disadvantaged or disabled workers is likely to have a different effect on the market than a large amount of aid given to a single firm to boost its employment of a certain category of workers. The latter is likely to distort competition more significantly, as the aid recipient’s competitors become less able to compete. The distortion will be even greater if the beneficiary’s labour costs account for a high share of total costs. In addition, the fewer the firms, and the larger their share of the market, the less competition one would expect to observe. If the affected market is concentrated, with high entry barriers, and the aid recipient is a major player on it, then it is more likely that competitors will have to alter their behaviour in response to the aid. For example, they may have to postpone or abandon the introduction of a new product or technology, or leave the market altogether. Sectoral specificities can also affect the outcome of the analysis. For example, the presence of over-capacity or of mature markets in an industry may increase the risk of aid leading to inefficiency and output being displaced in firms which have no subsidised workers. Finally, each case will be assessed in the light of the labour market situation in the aid recipient’s area (i.e. unemployment and employment rates, wage levels, and labour law).

Wage subsidies may also lead to distortions of competition in particular cases. For example, wage subsidies may lead to a substitution effect, where jobs given to a certain category of workers simply replace jobs for other categories. Wage subsidies can cause a reduction of jobs elsewhere in the economy when a firm with subsidised workers increases output, but displaces output by firms which have no subsidised workers, with the result that the aid crowds out unsubsidised employment.

Furthermore, wage subsidies may enable firms with otherwise poor commercial prospects to enter the market or introduce new products, to the detriment of their more efficient rivals. The availability of aid will also affect a firm’s decision to leave a market where it is already operating. Subsidised wages could reduce the size of losses and enable a firm to stay in the market for longer — with possible negative effects on more efficient rivals.

In the markets where wage subsidies are granted, firms are discouraged from competing and may reduce their investments and attempts to increase efficiency and innovation. There may be delays in the aid recipients’ introduction of new, less labour-intensive technologies due to changes in the relative costs of labour-intensive and technology-intensive production methods. Rivals with competing or complementary products may decrease or delay investment as well. As a consequence, overall investment levels in the industry concerned will decline.

The last step in the analysis is to evaluate to what extent the positive effects of the aid outweigh its negative effects. This exercise will be carried out on a case-by-case basis. In order to balance the positive and negative effects, the Commission will measure them and make an overall assessment of their impact on producers and consumers in each of the markets affected.

4. Conclusion

The Communication is a useful and practical tool to help public authorities and companies to understand how best to achieve a rapid approval of aid for disabled or disadvantaged workers. It also strengthens the Commission’s commitment to employment policy in the European Union and complements the Commission’s Communication to the European Council on a shared commitment to employment. (8)