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CRITERIA FOR THE COMPATIBILITY ANALYSIS OF TRAINING STATE AID CASES SUBJECT TO INDIVIDUAL NOTIFICATION

1. INTRODUCTION

1. The Lisbon European Council in March 2000 set a strategic goal for Europe to become the most competitive and dynamic knowledge-based economy in the world. The Lisbon conclusions stressed the central role of education and training as the main instruments to increase human capital and its impact on growth, productivity and employment. Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which firms can draw and it improves the competitiveness of the economy and promotes a knowledge society capable of embracing a more innovative development path.
2. Firms may, however, provide less than a socially optimal level of training if employees are free to change employers and other firms will benefit from hiring employees trained by them. This affects in particular training targeted at skills that are transferable between firms. State aid may help to create additional incentives for employers to provide training at a level that is socially desirable.
3. Below the Commission presents guidance as to the kind of information it may require and the methodology it would follow for the assessment of training aid measures. This guidance is intended to make the Commission's decisions and their reasoning transparent and to create predictability and legal certainty. Any individual training aid, whether granted ad hoc or on the basis of a scheme, will be subject to this guidance when its grant equivalent exceeds EUR 2 million per training project¹.
4. The criteria set out in this guidance will not be applied mechanically. The level of the Commission's assessment will be proportional to the risk of distortion of competition, and the scope of the analysis will depend on the nature of the case.

2. POSITIVE EFFECTS OF THE AID

2.1. Existence of market failures

5. Skilled workers contribute to increasing firms' productivity and competitiveness. Nevertheless, employers and employees may under-invest in training for a number of reasons. Employees may limit their investments in training if they are risk averse, suffer from financial constraints or have difficulties signalling the level of their acquired knowledge to future employers.
6. Firms may refrain from training their workforce at the level that would be optimal for society as a whole. This is due to the market failure linked with the positive

¹ Pursuant to Article 6.1(g) of the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3–47.
For ad-hoc training aid to a large firm below the threshold of €2mio, the Commission will mutatis mutandis apply the principles as outlined below, though in a less detailed manner.

externalities of training and to difficulties in appropriating the rents if employees are free to change employers. Firms may invest less into training than what may be efficient, if they are concerned that once trained, an employee will leave before the firm has recouped its investment. Firms may be reluctant to provide sufficient training to their workers unless training pays off quickly or is rather specific to the needs of the company concerned or unless special contract clauses can either constrain the trained employee from leaving the company before the training cost have been amortised or (part of) training expenses are reimbursed.

7. Underinvestment in training may even occur if the firm can fully recoup its investment but its private benefits are smaller than the benefits for society as a whole. Such positive externalities of training may arise in particular if training improves transferable skills; i.e. skills that can be used in more than one firm. In contrast, specific training only yields productivity gains in a specific firm and it can be easily appropriated by firms.² Thus the scope for positive externalities of specific training is limited.
8. Where firms are faced with higher costs and uncertain benefits for training of certain categories of disadvantaged or disabled workers³ they can have incentives to provide less training to these groups. However, one can expect that training of disadvantaged or disabled workers will usually produce positive externalities for society as a whole.⁴
9. Member States must demonstrate that there is a market failure justifying the aid. In its analysis, the Commission will in particular consider the following elements:
 - (1) Nature of the training: (i) specific or (ii) general as defined in Article 38 of the Regulation (EC) 800/2008. One training project can consist of both general and specific parts. General training will produce more positive externalities.
 - (2) Transferability of the skills acquired during the training. The more transferable the skills the higher the likelihood for positive externalities. Training will be considered to provide transferable skills if, for example:
 - Training is jointly organised by several independent companies, or if employees of different companies may benefit from the training.
 - Training is certified, leads to a recognised diploma or is validated by public authorities or institutions.
 - Training targets the categories of employees that are characterised by a high turnover in the company and in the sector concerned.

² However, externalities of general training can also be appropriated by the companies through special clauses in contracts requiring the trained employee to remain in the company for a defined period of time after he/she had received such training.

³ Disabled and disadvantaged workers are defined in Article 2 of Regulation (EC) 800/2008. All definitions contained in the GBER to which this text refers are to be found in the annex to this document.

⁴ For example, a society will attach more value to training received by young and low skilled workers than a firm will do due to a perceived or real lower productivity.

- Training could be valuable for the employee beyond his/her current job (future occupations in another company, social life, well-being etc.)
- (3) Participants to the training: the inclusion of certain categories of disabled or disadvantaged workers may increase positive externalities of the training.

2.2. State aid as an appropriate policy instrument

10. State aid is not the only policy instrument available to Member States to foster training. In fact, most training is provided through education systems (e.g. universities, schools, vocational training carried out or sponsored by state authorities). Training can also be undertaken by the individuals themselves, with or without the support of their employers.
11. Measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument. The Commission will in particular take account of any impact assessment of the proposed measure the Member State may have made.

2.3. Incentive effect and necessity of the aid

12. State aid for training must result in the aid beneficiary changing its behaviour so that it provides more and/or better training than would have been the case without the aid. If such an increase of quantity or quality in planned training activities does not take place, the aid is considered not to have an incentive effect.
13. Incentive effect is identified by counterfactual analysis, comparing the levels of intended training with aid and without aid. Most employers find it necessary to train their workforce in order to ensure a proper functioning of their companies. It cannot be presumed that State aid for training, especially for specific training, is always needed.
14. Member States should demonstrate to the Commission the existence of the incentive effect and necessity of aid. First, the beneficiary must have submitted an application for the aid to the Member State concerned before it starts the training project. Second, the Member State must demonstrate that State aid leads to an increase, by comparison to a situation without aid, of a size, quality, scope or targeted participants of the training project. The additional amount of training offered with aid can be shown, for example, by bigger number of training hours or courses, higher number of participants, of shifting from company-specific to general training, or increasing the participation certain categories of disadvantaged or disabled workers.
15. In its analysis, the Commission will consider the following elements:
- (1) Internal documents on training costs, budgets, participants, content and scheduling for two scenarios: training with aid and training without aid.
 - (2) Existence of a legal obligation for employers to provide a certain type of training (e.g. security): if such obligation exists, the Commission will normally conclude that there is no incentive effect.

- (3) Credibility of the submitted project, e.g. by referring to and comparing it with training budgets for previous years.
- (4) Relationship between the training programme and the business activities of the aid beneficiary: the closer the relationship, the less likely the incentive effect. For example, training on the introduction of a new technology in a specific sector is unlikely to have an incentive effect since firms have no choice but to train their workforce on the newly introduced technology.

2.4. Proportionality of the aid

16. The Member State should provide evidence that the aid is necessary and the amount is kept to the minimum. In its analysis the Commission will consider the following elements:

- (1) Accurate calculation of eligible costs: eligible costs must be calculated following Article 39 of the Regulation (EC) 800/2008 and be limited to the costs arising from training activities which would not be undertaken without aid.
- (2) Aid limited to the minimum: Member States should provide evidence that the aid amount does not exceed the part of the eligible costs as defined under subparagraph (1) above that cannot be appropriated by the company⁵. In addition, aid intensities must never exceed those defined in Article 39 of the Regulation (EC) 800/2008 and will be applied to the eligible costs as defined under subparagraph (1) above.⁶

3. NEGATIVE EFFECTS OF THE AID

17. If the aid is proportionate as to achieve the aid objective the negative effects of the aid are likely to be limited and the analysis of the negative effects may not be necessary.⁷ However, in some cases, even where aid is necessary and proportionate for a specific undertaking to increase the amount of training provided, the aid may result in a change in behaviour of the beneficiary which significantly distorts competition. In these cases the Commission will conduct a thorough analysis of distortions of competition. The extent of the distortion of the aid can vary depending on the aid design and of the characteristic of the markets affected.⁸

18. The aid design that may affect the likelihood and the size of the distortion are:

- selectivity and asymmetry;

⁵ This equals to the part of the extra costs of the training that the company cannot recover by benefiting directly from the skills acquired by its employees during the training.

⁶ See also current case practice, e.g. C 35/2007, Training aid to Volvo Cars in Gent (OJ C 265, 7.11.2007), N 227/2006 - DHL Leipzig Halle, (OJ C 48, 02.03.2007), C 14/2006, Training aid to General Motors Antwerp, (OJ C 210, 1.09.2006).

⁷ In addition, if the labour market functioned perfectly, employees could always extract a larger salary for their better skills due to the training received and internalise positive externalities of the training.

⁸ A number of markets can be affected by the aid, because the impact of the aid may not be restricted to the markets where the aid beneficiary is active but it can extend to other markets, for example input markets.

- size of aid;
 - repetition and duration of aid;
 - effect of the aid on firm's costs.
19. For example, a subsidised training scheme used to encourage most firms in a Member State to undertake more training to raise the total amount of the appropriate level is likely to have different effect on the market than a large amount of aid given to a single firm to enable it to increase its training. The latter is likely to distort competition more significantly as the aid recipient's competitors become less able to compete⁹. The distortion will be even greater if the training costs in the beneficiary's business represent a high share of the total costs.
20. In assessing the market characteristics, which can give a much more accurate picture of the likely impact of an aid, the Commission will among others consider:
- the structure of the market; and
 - sector or industry characteristics.
21. The structure of the market will be assessed through the concentration of the market, the size of firms¹⁰, product differentiation¹¹, and barriers to entry and exit. Market shares and concentration ratios will be calculated once the relevant market has been defined. In general, the fewer the firms, the larger their share of the market, and the less competition one would expect to observe.¹² If the affected market is concentrated with high barriers to entry¹³ 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.
22. While examining the sector features the Commission will look among others at importance of the trained workforce for the business, existence of overcapacity, growing, mature or declining industries, financing strategies of training for competitors (state aid, employees, employers). For example, training aid in a declining industry may increase the risk of a competition distortion by keeping an inefficient firm afloat.
23. Below we present the most typical distortions of competition the training aid may have.

Product entry and exit

⁹ It should be noted however, that training aid given to a whole sector in one Member State may lead to a distortion on trade between Member States.

¹⁰ Size of the firm can be expressed in the terms of market shares as well as turnover and/or employment.

¹¹ The lower the degree of product differentiation, the greater the effect of the aid on competitors' profits will be.

¹² It is important to note however, that some markets are competitive despite there being few firms present.

¹³ It should be noted however, that sometimes granting of an aid helps to overcome entry barriers and allows new firms to enter a market.

24. In a competitive market firms sell products that bring profits. By altering costs, State aid alters profitability, and can therefore affect the firm's decision to offer a product or not. For example, a state aid that would reduce the ongoing costs of production such as training for staff would enable products with otherwise poor commercial prospects to enter a market to the detriment of the product portfolio of the non-aided rivals.
25. The availability of State aid may also affect a firm's decision to withdraw a product from the market. State aid to training could reduce the size of losses and enable the product to stay in the market for longer – which may mean that products of other, more efficient firms that do not get aid would be forced to exit instead.

Change of location

26. State aid for training may result in some territories benefiting from more favourable production conditions, namely due to a better trained workforce as a result of the aid. State aid for training could be used to attract investment in non assisted areas or to increase the amount of overall aid (e.g. if training aid is cumulated with regional aid) received by companies in assisted areas. This may contribute to companies re-locating to the territories where such aid is given, or to displacement of trade flows towards these areas.

Crowding out of training investment

27. To survive in the marketplace and maximize profits, firms have incentives to invest in training of staff. The optimal amount of investment in training which each firm is willing to make depends also on how much its competitors invest. Firms which are subsidised by the state may reduce their own investment. Alternatively, if the aid induces the aid recipient to invest more, competitors may react by reducing their own expenditure in training. If, to achieve the same objective, aid beneficiaries or their competitors spend less in presence of aid than in its absence, their private investment in training of staff is crowded out by aid.

4. BALANCING AND DECISION

28. 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 done on a case-by-case basis. In order to balance positive and negative effects, the Commission will assess them and make an overall assessment of their impact on producers and consumers in each of the markets affected. Unless quantitative information is readily available the Commission will use qualitative information for assessment purposes.
29. The Commission is likely to take a more positive stance and therefore accept a higher degree of competition distortion, if the aid is necessary, well targeted and proportionate for a specific undertaking to increase its training activities and the society benefits from the extra training provided more than the aid beneficiary.
30. The balancing exercise can lead to three possible outcomes:
 - (1) The Commission may raise no objections to the notified aid measure without initiating the formal investigation procedure or, following the formal

investigation procedure laid down in Article 6 of the Regulation (EC) No 659/1999¹⁴, decide to close the procedure with a decision in accordance with Article 7 of the Regulation, if

- (a) the aid is found to have positive effects and limited distortions to competition; or
 - (b) the aid is likely to give rise to serious distortions to competition but the total positive effects outweigh the negatives ones.
- (2) The Commission may take, following a formal investigation procedure, a conditional decision within the meaning of Article 7(4) of the Regulation, if the aid is likely to seriously distort competition but can be redesigned to reduce these. For example, when the negative effects of the aid outweighs the positive ones the Commission can consider lowering aid intensities than those proposed by the Member State, in order to offset the resulting distortions of competition and trade.
- (3) Finally, the Commission may, following a formal investigation procedure, consider the notified aid measure incompatible with the common market if the aid is likely to give rise to serious distortions to competition such that the total negative effects outweigh the positive effects of the aid.

¹⁴ Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty (OJ L 83, 27.3.1999, p.1).

Annex

Article 2

Definitions

(18) "disadvantaged worker" means any person who belongs to any of the following categories:

- (a) any person who has not been in paid employment for the previous 6 months;
- (b) any person who has not attained an upper secondary educational or vocational qualification (ISCED 3);
- (c) any person over the age of 50 years;
- (d) any person living as a single adult with one or more dependents;
- (e) any person working in a sector or profession characterised by a gender imbalance which is 25 % more significant than the average national gender imbalance;
- (f) any person who 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;

(19) "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;

Article 38

Definitions

For the purposes of this Section, the following definitions shall apply:

1. 'specific training' means training involving tuition directly and principally applicable to the employee's present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work;

2. 'general training' means training involving tuition which is not applicable only or principally to the employee's present or future position in the undertaking, but which provides qualifications that are largely transferable to other undertakings or fields of work. Training shall be considered 'general' if, for example:

- (a) it is jointly organised by different independent undertakings or where employees of different undertakings may avail themselves of the training;

(b) it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

Article 39

Training aid

1. Training aid shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty, provided that the conditions laid down in paragraphs 2, 3 and 4 of this Article are fulfilled.

2. The aid intensity shall not exceed:

(a) 25 % of the eligible costs for specific training; and

(b) 60 % of the eligible costs for general training.

However, the aid intensity may be increased, up to a maximum aid intensity of 80 % of the eligible costs, as follows:

(a) by 10 percentage points if the training is given to disabled or disadvantaged workers;

(b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises.

Where the aid is granted in the maritime transport sector, it may reach an intensity of 100 % of the eligible costs, whether the training project concerns specific or general training, provided that the following conditions are met:

(a) the trainee shall not be an active member of the crew but shall be supernumerary on board; and

(b) the training shall be carried out on board ships entered on Community registers.

3. In cases where the aid project involves both specific and general training components which cannot be separated for the calculation of the aid intensity, and in cases where the specific or general character of the training aid project cannot be established, the aid intensities applicable to specific training shall apply.

4. The eligible costs of a training aid project shall be:

(a) trainers' personnel costs;

(b) trainers' and trainees' travel expenses, including accommodation;

(c) other current expenses such as materials and supplies directly related to the project;

(d) depreciation of tools and equipment, to the extent that they are used exclusively for the training project;

(e) cost of guidance and counselling services with regard to the training project;

(f) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the other eligible costs referred to in points (a) to

(e). As regards the trainees' personnel costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account.