

SUMMARIES OF STATE AID JUDGMENTS AT NATIONAL LEVEL

JUDGMENTS SELECTED FROM THE 2009 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL

I- Information on the decision

Commissioner for State Aid Control ("Εφορος Ελέγχου Κρατικών Ενισχύσεων"), 14.01.2005, Decision No. 234, "Scheme for the provision of incentives regarding the recruitment of persons with a serious disability in the private sector"

II- Brief description of the facts and legal issues

On 4 January 2005, the Department of Labour in the Ministry of Labour and Social Insurance notified a draft aid scheme to the Cyprus Commissioner for State aid control, entitled "*scheme for the provision of incentives for the recruitment of persons with a serious disability in the private sector*".

The Cyprus Commissioner for State aid control is an independent official, competent for controlling and monitoring State aid issues in all economic sectors. In particular, the Commissioner is the only with the competence to determine the compatibility of State aid measures with Community Block Exemption Regulations, the granting authorities being obliged to notify a draft of their aid measure to the Commissioner and wait for the latter's approval before putting it into effect.

The notified scheme at issue aimed to facilitate the recruitment of unemployed persons with a serious disability in the private sector, tackling the reluctance of employers to recruit people with a serious physical disability, mental impairment or sensory impairment (visual or hearing), either due to their perceived lower productivity or due to the wage cost. The scheme was adopted pursuant to 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 (OJ L 337, 13.12.2002, pp. 3-14).

III- Summary of the Commissioner's findings

The Commissioner initially examined the notified aid scheme in the light of the cumulative criteria in Article 87(1) EC. Having found the measure to constitute aid and all the criteria having been fulfilled, he subsequently examined the measure in the light of the provisions of Regulation 2204/2002.

In particular, the Commissioner found that the term "*disabled worker*" used in the notified scheme fell within the definition given in the Regulation. Moreover, the requirement set by the Regulation that the gross intensity of all aid relating to the employment of disabled workers, calculated as a percentage of the wage costs over a period of one year following recruitment, should not exceed 60%, had been met. Explicit mention was also made of the condition that where the recruitment does not represent a net increase in the number of employees in the establishment concerned, the post or posts must have fallen vacant following voluntary departure, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.

Furthermore, the scheme was also deemed to be in line with the provisions of the Regulation on the additional costs associated with employing disabled workers. Thus, the aid, together with any other aid provided for the recruitment of disabled workers, should not exceed the level necessary to compensate for any reduced productivity resulting from the disabilities of the worker or workers and for any of the costs incurred in constructing facilities or adapting premises or/and acquiring office equipment to render the employment of disabled people in the private sector possible. Equally integrated into the notified scheme was the requirement that the beneficiary maintain records to evidence the fact that the aid to cover the additional costs of employment of disabled workers did not exceed the specified limits. Lastly, the Commissioner considered the prohibition under the notified scheme on the cumulation of aid for the same eligible costs in accordance with the provisions of the Regulation on cumulation and in particular, with the condition that, in the event of a cumulation of aid, the gross aid intensity shall not exceed 100% of the wage costs over any period for which the worker(s) are employed.

Having concluded that the notified aid scheme constituted aid within the meaning of Article 87(1) EC, and was in accordance with Commission Regulation 2204/2002, the Commissioner issued a positive decision, authorizing the measure in question.

This summary has not been prepared by DG Competition or any other service of the Commission. The content of this judgment and this summary have not in any way been approved by the Commission and should not be relied upon as a statement of the Commission's or DG Competition's views.

I- Information on the decision

Commissioner for State Aid Control ("Εφορος Ελέγχου Κρατικών Ενισχύσεων"), 01.02.2005, Decision No. 236, "Aid scheme for construction companies concerning the upgrade of their equipment"

II- Brief description of the facts and legal issues

On 23 December 2004, the Cyprus Productivity Center notified to the Cyprus Commissioner for State Aid Control a draft aid scheme, entitled "aid scheme for construction companies concerning the upgrade of their equipment".

The Cyprus Commissioner for State aid control is an independent official, competent for controlling and monitoring State aid issues in all economic sectors. The Commissioner is the only competent authority able to rule upon the compatibility of State aid measures with Community Block Exemption Regulations, the granting authorities being obliged to notify a draft of their aid measure to the Commissioner and wait for the latter's approval before putting it into effect.

The scheme at issue was aimed the improving the of working conditions of around 30.000 workers active in the construction sector and reducing the number of work accidents, occupational diseases and dangerous occurrences at construction sites. It was made up of two parts, the first being concerned with subsidies for carrying-out of projects and the second with subsidies for the acquisition of equipment.

Recipients of the aid for the acquisition of equipment were only small and medium-sized enterprises (SMEs), as defined in the Commission Recommendation of 6 May 2003 (OJ (2003) L 124/36), registered in the Council for the Registration of Contractors, which had implemented and operated a system of security and health management and would appoint a person responsible for the management of these issues, trained in matters of security and health at work.

Undertakings which had not implemented security and danger management systems were only entitled to benefit from aid for the carrying-out of projects from authorized external consultants. Following the completion of the relevant project, those undertakings would qualify for aid for equipment too.

The scheme was based on Commission Regulation (EC) No. 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ (2001) L 10/33).

III- Summary of the Commissioner's findings

The Commissioner first assessed the notified scheme in relation to the cumulative criteria in Article 87(1) EC. With the acceptance of the part of the measure pertaining to aid for the acquisition and installation of equipment in existing construction machinery, which would be granted as *de minimis* aid pursuant to the provisions of Regulation 69/2001, and which was therefore permissible, the remainder of the aid fulfilled all the criteria of Article 87(1) EC and was deemed to constitute aid.

The Commissioner subsequently examined the notified aid scheme in the light of the provisions of Regulation 70/2001. Firstly, he found that the aid intensities under the scheme were in line with the provisions of the Regulation. Equally harmonised were the provisions on eligible costs. Yet the

Commissioner stressed that the competent authority ought to assess on a case-by-case basis whether the various investments fell into the remit of eligible costs, as delineated by the Regulation. The gross aid intensity for services provided by outside consultants, as well as the nature of the latter services, as defined in the scheme, were also in accordance with the Regulation.

Lastly, the prohibition on cumulation of aid in relation to the same eligible costs provided for under the scheme rendered an examination of whether the provisions of the Regulation on cumulation had been complied with otiose. The Commissioner, taking into account the Law, Regulation 994/98, Regulation 70/2001, Recommendation 2003/361/EC and Regulation 69/2001, decided that the notified scheme, in so far as it did not concern *de minimis* aid, constituted State aid, which, nevertheless, was authorized, being in compliance with the provisions of the aforementioned legislative instruments.

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