



european network of service providers in employment and rehabilitation

ENSPER

- **Response to the interpretation provided by the European Commission on EC Regulation No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment and**
- **Proposal for the New State Aid Regulation**

April 2006

Background

- In April 2005, the European Network of Service Providers in Employment and Rehabilitation (ENSPER) the European Association of Service providers for Persons with Disabilities (EASPD) and the European Disability Forum (EDF) submitted a letter to the European Commission (EC) in which they:
 - a) requested clarification *on the application of Articles 87 and 88 of the EC Treaty to State aid for employment* in Regulation No 2204/2002 and
 - b) put forward proposals on the future State Aid Regulation.
- In May 2005 the EC responded with a clarification on the current State Aid Regulation.
- In June 2005 the EC published a consultation document for the State Aid Action Plan. One of the priorities in this Action Plan is to streamline existing legal instruments. The EC intends to simplify and consolidate existing rules and to integrate a broader range of issues into one block exemption.
- In February 2006 representatives of ENSPER, EASPD and EDF met with the EC (DG Competition) to discuss the upcoming New State Aid Regulation.
- In this paper ENSPER gives its response to the Commission interpretation on the current State Aid Regulation no 2204/2002 and sets out its input with regard to the upcoming New State Aid Regulation.

1. Measurement of productivity

- ***Collective type of measurement***

Regulation 2204/2002 establishes the conditions a public funding scheme for sheltered workshops needs to comply with in order to be exempted from requiring approval by the Commission. The basic condition such a scheme would need to comply with is that it can be proved that sheltered workshops do not receive more money than they need to cover the additional costs (including lower productivity) related to employing people with disabilities.

At the outset it must be said that the focus should not be on the lower productivity of workers with disabilities. The individual productivity always has to be seen in relation to the available workplace, in what extent the workplace and the work conditions are adapted to individual needs, to the given support and technical aid in work etc. These are different services and support measures offered by providers of sheltered employment. These services and support also include measures aiming at transitions/progressions from sheltered employment to employment in the regular labour market. The cost for all these services should primarily be regarded as payment for delivered services and not as state aid. Workers with disabilities must be recognised as genuine and significant contributors to the European economy generating millions of euros in services and products every year.

Regulation 2204/2002 does not make clear exactly how lower productivity should be measured. Further to the request for clarification on this point, the Commission has specified that under the current Regulation, the calculation has to be made for each individual worker. This interpretation has been applied by some New Member States and has created considerable difficulties for the employers of disabled people in these countries. The organisations constituting ENSPER would like to point out to the Commission that measuring productivity for each and every individual employed in sheltered workshops is unsound economically and unfeasible in practice. There are a number of reasons for this:

- a) For a provider of sheltered employment with a majority of employees with disabilities it is possible to organise the work in a way making teams or groups of employees with disabilities together having a higher productivity than the sum of each individual's ability. This indicates the importance of a mechanism specific for sheltered employment, making payment by lump sums possible. In individual employment of people with disabilities in enterprises with a majority of non-disabled, this team-effect cannot be used, as the production has to make individual adaptations and considerations.
- b) In its letter of clarification from May 2005, the Commission states that *'productivity should be measured through a comparison of the overall output of a worker without disabilities and the output of the disabled person in question.'* ENSPER would like to point out that 'output' is relatively easily measured when

one is referring to manual or industrial activities (for instance filling in boxes or welding machine elements) but is much more difficult to measure when intellectual output is involved (for instance communication and administration duties).

- c) Disability is not a static condition. Disabled peoples' condition can improve or deteriorate during their working life. A variety of dynamics can influence one's condition such as the type and degree of his disability, the health and social care he receives, his immediate work environment as well as factors relating to learning, training and personal development. Therefore, it is not possible to evaluate disabled persons once and from then on to categorise them to be on a certain permanent level thereby establishing a reason for state support. This is especially true for persons with psychiatric diagnosis, behavioural and social disturbances who increasingly enter special work programmes today.
- d) Disabled people employed in sheltered workshops do not perform the same type of job every single day. Often they move between tasks or jobs being respectively more or less efficient in their performance. This means that output measurement has to be revised all the time.
- e) If employers are obliged to account and document cost of employing disabled employees with reference to every individual person, the companies will either have to establish a huge bureaucracy to handle changes in the particular situation of every individual or else there is a risk that they will produce veiled or inaccurate reports. Not to mention the ethical dilemma the company will have to face where a report of positive development for a certain person will result in less support from the government.

On account of the above reasons, ENSPER urges the Commission to resort to a collective type of measurement for lower productivity in sheltered workshops. In this way employers of disabled people are entitled to receive a lump sum which averages out the ups and downs of the employees both on permanent and daily basis. This type of measurement is already applied in the UK, Sweden and the Netherlands and has proved to work well.

Finally, ENSPER would like to stress that the application of a collective type of measurement of productivity can further improve a framework for the delivery of person-centred services and attention to individual workers with disability as the group oriented view allows a wider range of disabilities in the production, not depending on a separate solution for each person.

- ***Vocational disability certificate***

ENSPER understands that the New Draft Regulation will introduce the concept of “vocational disability certificate”. The certificate is to be created and will not measure the degree of disability but the degree of loss in productivity.

ENSPER fully agrees with the Commission’s objective to introduce a condition that clearly shows the link between disability and the loss of productivity before granting state aid. The intention is that “companies” have to prove that they need aid for the employment of a person by proving the loss in productivity. Reasoning behind this is to have an instrument against misuse of state aid.

However, ENSPER underlines that “vocational disability certificate” currently do not exist in all Member States and the setting up of such system in countries where it does not exist will create enormous bureaucracy and practical difficulties. It is also important to mention that in different Member States (such as for example in UK), a similar instrument already was in use for some time and was later on abolished. One of the reasons why it was abolished was the impossibility of measuring the loss of productivity particularly with individuals who either have degenerative or changing disabilities or mental health problems. I.e the cost of evaluation exceeded the benefit of such a system.

Therefore, ENSPER would like to urge the Commission to uphold its stated intention that this vocational disability certificate will not be imposed on all Member States but would be competence of the Member States. I. e. if Member States choose not to make use of the certificate they would have to prove in another way state aid is needed.

2. Amount of state aid to be awarded

ENSPER would like to ask for the elimination of the distinction between aid for the recruitment of disabled workers (Article 5 in the current Regulation) and aid for the additional costs of employment of disabled workers (Article 6). First, it is not fully clear what is meant with ‘recruitment’. This terminology seems to imply that it means the one-time costs for hiring a disabled person.

If the distinction between Article 5 and Article 6 is upheld, ENSPER would like to request for the removal of the condition that state aid can only be granted if an employee has the right to continuous employment for 12 months (Article 5, paragraph 3, sub b). This condition might limit employers in their willingness to employ disabled persons.

3. Block exemptions

The Lisbon Strategy aims at fostering a competitive market. The organisations that constitute ENSPER recognise that a competitive environment is essential in a common market place. The type of employment which the organisations constituting ENSPER represent will not as such deteriorate competitiveness. This kind of employment can widen the option for competitive work to new groups, provided the market prizes for the produced services and goods are competitive compared with similar services and goods produces by other producers without this kind of employment. The State Aid Action Plan proposes to issue a general block exemption integrating state aid exemption for SME, employment, training, R&D, regional, environment.

ENSPER urges the Commission to pay particular attention that by putting together different types of exemptions in one general block exemption the special characteristics of employment, which have very different aims than training aid or aid for R&D for example, are safeguarded. ENSPER would like to advocate a different regime for aid concerning facilitating employment for disabled people.

4. Simplification of administrative procedures

ENSPER welcomes the Commission's stated objective for less bureaucracy and simplification of procedures in the State Aid Action Plan. Employers often make an extra effort in employing disabled persons. This should get extra stimulus. Simplification of procedures would lessen the administrative burden and reduce costs. In this respect, ENSPER asks the Commission to urge Member States to likewise reduce the amount of bureaucracy involved with the submission of extremely detailed reports on every expense made from public measures.

Finally, we would like to thank the Commission for engaging in a structured and transparent dialogue on this issue with the organisations constituting ENSPER.

- THE END -

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