



## State Aid Reform Draft General Block Exemption Regulation (2<sup>nd</sup> version)

### Position paper by Workability Europe

October 2007

#### Introduction

Workability Europe welcomes the Commission's simplification efforts, which will lead to one single set of rules and definitions replacing five different regulations, in line with the reform principles of the EC "State Aid Action Plan". Workability Europe believes that simpler procedures will cut down bureaucracy and increase legal certainty for aid providers and recipients. This is of particular importance for implementing financial measures in support of the employment of people with disabilities.

Workability Europe also appreciates the fact that the Commission has engaged in a second round of consultation with stakeholders and herewith submits its contribution. Following a short presentation of the organisation, in this position paper Workability Europe sets out its position in relation to specific Articles of concern in the Draft General Block Exemption Regulation.

#### Who are we?

Workability Europe is the largest employer body representing providers of work and employment services to people with disabilities in Europe. The growing membership provides work programmes for about 1,250,000 disabled people. Today, Workability Europe has over 35 members located in over 20 countries. Our members include both umbrella as well as single organisations.

Workability Europe's **Vision** is for a European society in which equal employment opportunities are a reality for people with disabilities.

Its **Mission** is to be recognised as the European leader in promoting and providing employment and work participation for people with disabilities.

## Definitions (Article 2.17-20)

**Article 2.17** in the Regulation makes a distinction between a "**disadvantaged worker**" and a "**disabled worker**" which is a sensible split having in mind the specificities of disability and the generally higher needs and support required by disabled people. "Disadvantaged worker" is defined very broadly which is wise as it is difficult to exhaust who may be disadvantaged in today's complex society.

However, we are of the opinion that the Commission should introduce a gradation between severely disadvantaged workers and less disadvantaged workers. Therefore, we ask for a more profound definition system of "disadvantaged worker". If a "disadvantaged worker" cumulates more than one criteria in the definition (e.g. an elderly worker from an ethnic minority or a long-term unemployed worker who does not speak the local language, etc.), more state aid should be appropriated.

With regards to **Article 2.19**, in June 2007 Workability Europe argued that it is impractical to define the precise level of disability as compared to a particular job position, due to several reasons. The Commission has now abandoned the requirement that Member States should determine the precise level of disability as compared with the particular job position. Thus, we welcome the changed definition of "**sheltered employment**." Whereas the first Draft stated: "sheltered employment means *employment in an establishment where at least 75 % of workers are disabled to a degree of at least 50 %*", the Commission has now changed this definition to "*employment in an establishment where at least 50 % of workers are disabled*".

In **Article 2.20**, the definition of "**supported employment**" has changed in the right way too by becoming clearer: the first Draft proposed: "*Supported employment means employment of disabled workers in need of personal assistance or support at work in an establishment which does not offer sheltered employment.*" The new version proposes: "*Supported employment means employment of disabled workers in an establishment which offers personal assistance or support, but is not a 'sheltered employment' environment*".

## Individual notification thresholds (Article 6.1, h, i)

The threshold has been split into two sub-articles, which in our opinion offers more opportunities to employers to hire and finance disabled workers.

**Article 6.1** in the first Draft stated "*This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the grant equivalent of which exceeds the following thresholds: (h) aid for the employment of disabled workers in the form of wage costs and aid for the employment of disabled workers compensating for additional expenses: EUR 10 million per undertaking per year.*

In the new version, the definition has been split in two parts:

*"(h) aid for the employment of disabled workers in the form of wage costs: EUR 10 million per undertaking per year;*

*(i) aid for the employment of disabled workers compensating for additional expenses: EUR 10 million per undertaking per year".*

**Aid for the employment of disabled workers in the form of wage subsidies  
(Article 32)**

Workability Europe believes that **Article 32.2** can be further improved with the aim of favouring the inclusion of people with disabilities in the mainstream labour market. Therefore, we propose the following amendment to the Commission’s text:

<b>Commission proposal</b>	<b>Workability Europe proposal</b>
<p><i>Article 32</i> <i>Aid for the employment of disabled workers in the form of wage subsidies</i></p> <p>1. Aid schemes for the employment of disabled workers in the form of wage subsidies 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 the conditions laid down in paragraphs 2 to 5 are fulfilled.</p> <p>2. The aid intensity shall not exceed 60 % of the eligible costs.</p>	<p><i>Article 32</i> <i>Aid for the employment of disabled workers in the form of wage subsidies</i></p> <p>1. Aid schemes for the employment of disabled workers in the form of wage subsidies 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 the conditions laid down in paragraphs 2 to 5 are fulfilled.</p> <p>2. The aid intensity shall not exceed 60 % of the eligible costs, <b>with the exception of the first year of employment, where the aid intensity shall not exceed 80% of the eligible costs.</b></p>

**Justification**

Incentives favouring the recruitment of disabled people are commonly used by Member States. Incentives are meant to boost employers’ confidence as well as providing support in the most difficult period for disabled workers to overcome prejudices concerning their inclusion in the labour market. Particularly, the first year of employment is extremely important.

In several Member States, such as Germany, France, Slovenia and Spain, financial subsidies are available in the form of a lump sum incentive (one-off payment) for employers recruiting disabled workers. Lump sum incentives have proved to be effective, especially for SMEs. Their purpose is to make the recruitment of persons with disabilities attractive to employers, who otherwise might not make the effort.

During the first year of employment, the combination of both wage subsidies (the lump sum incentive and the permanent wage subsidy) might exceed the proposed threshold of 60% for aid intensity. For this reason, it is proposed to increase the threshold for aid intensity to 80% of the eligible costs during the first 12 months of employment.

**Article 32.5** in the first Draft stated *“Except in the case of lawful dismissal for misconduct the disabled workers shall be entitled to continuous employment for a minimum period of 12 months.”* We argued about the counter-productiveness of the minimum period of 12 months and it is welcome to see that this definition has been amended, allowing Member States to reduce the minimum period of employment in consistency with national legislation. The new definition is: *“Except in the case of lawful dismissal for misconduct the disabled workers shall be entitled to continuous employment for a minimum period of 12 months. By way of derogation, Member States may limit the minimum period of employment consistent with their national legislation governing employment contracts, in which case the aid shall be reduced pro rata accordingly”.*

## **Aid for the employment of disabled workers compensating for additional expenses (Article 33)**

**Article 33.3(e)** does not include aid for the costs of “constructing, installing or expanding the establishment” for “**supported employment**” as is provided for “**sheltered employment**” in 33.3(d). Workability Europe believes that supported employment in many instances can provide a more favourable employment environment for people with disabilities and that mainstream and integrated employment for people with disabilities should be promoted, and therefore, the capital costs available to supported employment should be the same as those for sheltered employment. Access to such aid can, and does, assist private sector organisations providing supported employment to make the necessary changes to their premises to accommodate the needs of people with disabilities. Workability Europe believes that access to capital aid would encourage employers to engage in supported employment. For example, as pointed out by the Rehab Group, in Ireland, the Workplace Equipment/Adaptation Grant (please see information below) is invaluable in off-setting the costs for employers of making workplaces accessible. The inability of those engaged in providing supported employment to access capital aid under the Block Exemption should therefore be addressed.

### ***The Workplace Equipment/Adaptation Grant***

This grant is administered by FAS, Ireland’s National Training and Employment Agency. The grant is available for employers, employees and self-employed people with disabilities who require changes to their workplace or who require specialised equipment during their employment. The current maximum grant is 6348.70 EUR. Examples of some reasons for which grants may be used include voice synthesisers, minor building modifications including the construction of ramps, and modifications to toilet facilities and stair lifts, etc. As the number of people with disabilities entering employment increases, this fund will become more essential and will be accessed on a more regular basis by a greater number of people.

### **Aid during periods of employee transition**

Workability Europe believes that aid provided for individuals during periods of transition from “sheltered employment” to “supported employment” or to employment in the open labour market should be permitted under the Block Exemption. Employees moving from one form of employment to another should be encouraged and investment should be allowed during these periods of transition in order to ensure that employees do not incur any additional costs.

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