

**COMMISSION REGULATION (EC) No 1125/2009****of 23 November 2009****amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.2, Part III.3 and Part III.7 of its Annex I**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(1)</sup>, and in particular Article 27 thereof,

Whereas:

(1) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(2)</sup> established compulsory comprehensive State aid notification forms.

(2) Following the adoption by the Commission of the Communication on criteria for the compatibility analysis of training State aid cases subject to individual notification <sup>(3)</sup> and the Communication from the Commission on criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification <sup>(4)</sup> it is necessary to modify part of the notification forms annexed to Regulation (EC) No 794/2004.

(3) Following the existence of an error it is necessary to modify a part of the notification form annexed to Regulation (EC) No 794/2004.

(4) Regulation (EC) No 794/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Part III.2 of Annex I to Regulation (EC) No 794/2004 is replaced by Annex I to this Regulation.

*Article 2*

Part III.3 of Annex I to Regulation (EC) No 794/2004 is replaced by Annex II to this Regulation.

*Article 3*

Part III.7a question 2.3 and Part III.7b question 2.3 of Annex I to Regulation (EC) No 794/2004 are amended in accordance with Annex III to this Regulation.

*Article 4*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2009.

*For the Commission*

Neelie KROES

*Member of the Commission*

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(2)</sup> OJ L 140, 30.4.2004, p. 1.

<sup>(3)</sup> OJ C 188, 11.8.2009, p. 1.

<sup>(4)</sup> OJ C 188, 11.8.2009, p. 6.

## ANNEX I

## 'PART III.2

## SUPPLEMENTARY INFORMATION SHEET ON STATE AID FOR TRAINING

This supplementary information sheet must be used for the notification of individual aid pursuant to Article 6(1)(g) of Commission Regulation (EC) No 800/2008 <sup>(1)</sup> and covered by the Criteria for the compatibility analysis of training State aid cases subject to individual notification (hereinafter "Criteria for the compatibility analysis") <sup>(2)</sup>. It must also be used in the case of any individual aid or scheme, which is notified to the Commission for reasons of legal certainty.

If there are several beneficiaries participating in the notified project, please provide the information below for each of them.

## COMPATIBILITY OF AID UNDER ARTICLE 87(3)(c) OF THE EC TREATY — DETAILED ASSESSMENT

Aid for training may be considered to be compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

The purpose of this detailed assessment is to ensure that high amounts of aid for training do not distort competition to an extent contrary to the common interest, but rather contribute to the common interest. This happens when the benefits of State aid in terms of positive knowledge spill-over outweigh the harm for competition and trade.

The provisions below provide guidance as to the type of information the Commission may require in order to carry out a detailed assessment. The guidance is intended to make the Commission's decisions and their reasoning transparent and foreseeable in order to create predictability and legal certainty. Member States are invited to provide all the elements that they consider useful for the assessment of the case.

If there are several beneficiaries involved in the project notified as individual aid, please provide the information below for each of them.

**Characteristics of the notified measure**

1. Please provide a brief description of the measure specifying objective(s) of the measure, aid instrument, structure/organisation of the training, beneficiaries, budget, aid amount, payment schedule, aid intensity, and eligible costs.

2. Does the measure apply to the production and/or processing and/or marketing of the agricultural products listed in Annex I to the EC Treaty?

yes  no

3. Does the measure apply to the production, processing and/or marketing of the fisheries and/or aquaculture products listed in Annex I to the EC Treaty?

yes  no

4. Is the aid foreseen for the maritime transport sector?

yes  no

If yes, please answer the following questions:

(a) Is the trainee not an active member of the crew but a supernumerary on board?

yes  no

(b) Shall the training be carried out on board of ships entered into Community registers?

yes  no

5. Does the notified measure relate to:

Specific training <sup>(3)</sup>:

yes  no

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ C 188, 11.8.2009, p. 1.

<sup>(3)</sup> As defined in Article 38 of Regulation (EC) No 800/2008.

General training <sup>(3)</sup>:

yes  no

A combination of general and specific training:

yes  no

Training aid given to disabled or disadvantaged workers <sup>(4)</sup>:

yes  no

6. Please provide a detailed description of the training project including programme, skills to be acquired, timing, number of hours, participants, organisers, budget, etc.
7. Please provide details on the beneficiary including identity, group of which the beneficiary is a member, annual turnover, number of employees and business activities.
8. If applicable, please indicate the exchange rate which has been used for the purposes of the notification.
9. Please number all documents provided by the Member States as annexes to the notification form and indicate the document numbers in the relevant parts of this supplementary information sheet.

#### Objective of the aid

10. Please give a detailed description of the objectives of common interest pursued by the notified measure.

#### Existence of positive externalities <sup>(5)</sup>

11. Please demonstrate that the training will generate positive externalities and provide the supporting documents.

The following elements may be used for the purposes of demonstrating positive externalities. Please specify those relevant for the notified measure, and provide supporting documents:

- Nature of the training
- Transferability of the skills acquired during the training
- Participants to the training

#### Appropriate instrument <sup>(6)</sup>

12. Please explain to what extent the notified measure represents an appropriate instrument to increase training activities and provide the supporting documents.

#### Incentive effect and necessity of the aid <sup>(7)</sup>

In order to demonstrate the incentive effect, the Commission requires an evaluation by the Member State in order to prove that without the aid, i.e. in the counterfactual situation, the quantity or quality of the training activities would be smaller.

13. Has/have the supported project(s) started prior to the submission of the application for the aid by the beneficiary/beneficiaries to the national authorities?

yes  no

If yes, the Commission considers that the aid does not present an incentive for the beneficiary.

14. If no, specify the relevant dates:

The training project will start on:

The aid application by the beneficiary was submitted to the national authorities on:

Please provide the relevant supporting documents.

<sup>(3)</sup> As defined in Article 38 of Regulation (EC) No 800/2008.

<sup>(4)</sup> As defined in Article 2 of Regulation (EC) No 800/2008.

<sup>(5)</sup> Cf. Criteria for the compatibility analysis, Section 2.1.

<sup>(6)</sup> Cf. Criteria for the compatibility analysis, Section 2.2.

<sup>(7)</sup> Cf. Criteria for the compatibility analysis, Section 2.3.

15. Please provide the beneficiary's internal documents on training costs, participants, content and scheduling for two scenarios: training project with aid and training project without aid. Please explain, on the basis of this information, how State aid increases the quantity and/or quality of the planned training activities.
16. Please confirm that there is no legal obligation for the employers to provide the training type covered by the notified measure.
17. Please provide with the beneficiary's training budgets for previous years.
18. Please explain the relationship between the training programme and business activities of the aid beneficiary.

#### Proportionality of the aid <sup>(8)</sup>

##### Eligible costs

Eligible costs must be calculated following Article 39 of Regulation (EC) No 800/2008 and limited to the extra costs necessary to achieve an increase of training activities.

19. Please specify the eligible costs foreseen for the measure
- trainers' personnel costs
  - trainers' and trainees' travel expenses, including accommodation costs
  - other current expenses such as materials and supplies directly related to the project
  - depreciation of tools and equipment, to the extent that they are used exclusively for the training project
  - cost of guidance and counselling services with regard to the training project
  - indirect costs (administrative, rent, overheads), transport and tuition costs for participants) up to the amount of the total of the other eligible costs referred to above
  - trainees' personnel costs <sup>(9)</sup>.
20. Please provide a detailed calculation of the eligible costs of the notified measure ensuring that the eligible costs are limited to the part of **extra costs** necessary to achieve an increase of quality or quantity of training activities.
21. Please provide evidence that the aid is limited to the minimum, i.e. 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.

##### Aid intensities for general training

22. Please specify the aid intensity applicable to the notified measure.
23. Is the general training under the notified measure given to disabled or disadvantaged workers?
- yes     no

##### 24. Nature of the beneficiary:

- |                         |                          |     |                          |    |
|-------------------------|--------------------------|-----|--------------------------|----|
| Large enterprise        | <input type="checkbox"/> | yes | <input type="checkbox"/> | no |
| Medium-sized enterprise | <input type="checkbox"/> | yes | <input type="checkbox"/> | no |
| Small enterprise        | <input type="checkbox"/> | yes | <input type="checkbox"/> | no |

##### Aid intensities for specific training

25. Please specify the aid intensity applicable to the notified measure.
26. Is the specific training under the notified measure given to disabled or disadvantaged workers?
- yes     no

<sup>(8)</sup> Cf. Criteria for the compatibility analysis, Section 2.4.

<sup>(9)</sup> 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.

## 27. Nature of the beneficiary

Large enterprise  yes  no

Medium-sized enterprise  yes  no

Small enterprise  yes  no

**Analysis of the distortion of competition and trade** <sup>(10)</sup>

28. Please specify whether the beneficiary received training aid in the past and provide details on the previous aid (dates, amount of aid, and duration of training projects).

29. Please specify the annual training costs of the beneficiary (total training budget for the last three years, proportion of training costs in relation to total costs) and explain how the aid affects the beneficiary's costs (e.g. percentage of annual training costs and total costs covered by the aid, etc.).

30. Please specify the relevant product and geographic markets on which the beneficiary is active and on which the aid is likely to have an impact.

31. For each of these markets please provide:

— market concentration ratio,

— market share of the beneficiary,

— market shares of the other companies present in these markets.

32. Please describe the structure and competitive situation on the relevant markets and provide supporting documents (e.g. barriers to entry and exit, product differentiation, character of the competition between market participants, etc.).

33. Please describe the features of the sector where the beneficiary is active (e.g. importance of the trained workforce for the business, existence of overcapacity, financing strategies of training for competitors, etc.).

34. If relevant, please provide information on the effects on trade (shift of trade flows).

## CUMULATION

35. Is the aid granted under the notified measure combined with other aid?

yes  no

If yes, please describe the rules on cumulating aid applicable to the notified aid measure:

## OTHER INFORMATION

36. Please indicate here any other information you consider relevant to the assessment of the measure(s) in concerned.

---

<sup>(10)</sup> This section does not apply to measures of less than EUR 2 provided the question 10.3 in Part I of this Annex is duly completed.

## ANNEX II

## PART III.3

## SUPPLEMENTARY INFORMATION SHEET ON STATE AID TO DISADVANTAGED AND DISABLED WORKERS

This supplementary information sheet must be used for the notification of individual aid pursuant to Article 6(1)(h) to (i) of Regulation (EC) No 800/2008 and covered by the Criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification (hereinafter "Criteria for the compatibility analysis")<sup>(1)</sup>. It must also be used in the case of any individual aid or scheme, which is notified to the Commission for reasons of legal certainty.

If there are several beneficiaries participating in the notified project, please provide the information below for each of them.

## COMPATIBILITY OF AID UNDER ARTICLE 87(3)(c) OF THE EC TREATY — DETAILED ASSESSMENT

Aid to disadvantaged and disabled workers may be considered to be compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

The purpose of this detailed assessment is to ensure that high amounts of aid to disadvantaged and disabled workers do not distort competition to an extent contrary to the common interest, but actually contribute to the common interest. This happens when the benefits of State aid in terms of the increased net employment of targeted disabled and disadvantaged workers outweigh the harm for competition and trade.

The provisions below provide guidance as to the type of information the Commission may require in order to carry out a detailed assessment. The guidance is intended to make the Commission's decisions and their reasoning transparent and foreseeable in order to create predictability and legal certainty. Member States are invited to provide all the elements that they consider useful for the assessment of the case.

If there are several beneficiaries involved in the project notified as individual aid, please provide the information below for each of them.

**Characteristics of the notified measure**

1. Please provide a brief description of the notified measure specifying objective of the aid, aid instrument, beneficiaries, categories of workers concerned, aid amount, payment schedule, duration, aid intensity, and eligible costs.
2. Does the measure apply to the production and/or processing and/or marketing of the agricultural products listed in Annex I to the EC Treaty?  
 yes     no
3. Does the measure apply to the production, processing and/or marketing of the fisheries and/or aquaculture products listed in Annex I to the EC Treaty?  
 yes     no
4. Please provide details on the beneficiary including identity, group of which the beneficiary is a member, turnover, number of employees and business activities.
5. Does the notified measure relate to:  
  
Recruitment of disadvantaged workers<sup>(2)</sup>:  
 yes     no  
  
Recruitment of severely disadvantaged workers<sup>(3)</sup>:  
 yes     no  
  
Recruitment of disabled workers<sup>(4)</sup>:  
 yes     no

<sup>(1)</sup> OJ C 188, 11.8.2009, p. 6.

<sup>(2)</sup> As defined in Article 2(18) of Regulation (EC) No 800/2008.

<sup>(3)</sup> As defined in Article 2(19) of Regulation (EC) No 800/2008.

<sup>(4)</sup> As defined in Article 2(20) of Regulation (EC) No 800/2008.

6. If applicable, please indicate the exchange rate which has been used for the purposes of the notification.
7. Please number all documents provided by the Member States as annexes to the notification form and indicate the document numbers in the relevant parts of this supplementary information sheet.

**Objective of the aid**

8. Please give a detailed description of the objectives of common interest pursued by the notified measure.
- Equity objective of common interest <sup>(5)</sup>
9. Please demonstrate that the notified measure will lead to a net increase of employment of the targeted disabled and disadvantaged workers and quantify the increase.
10. The following elements may be used for the purposes to demonstrate that the notified measure contributes to an equity objective of common interest. Please specify those relevant for the notified measure, and provide supporting documents:
- Number and categories of workers concerned by the measure
  - Employment rates of the categories of workers concerned by the measure on the national and/or regional level and in the undertaking(s) concerned
  - Unemployment rates for the categories of workers concerned by the measure on the national and/or regional level.

**Appropriate instrument <sup>(6)</sup>**

11. Please explain to what extent the notified measure represents an appropriate instrument to increase the employment of disadvantaged and/or disabled workers and provide the supporting documents.

**Incentive effect and necessity of the aid <sup>(7)</sup>**

In order to demonstrate the incentive effect, the Commission requires an evaluation by the Member State proving that the wage subsidy is only paid for a disadvantaged or disabled worker in a firm, where the recruitment would have not occurred without the aid.

12. Has/have the supported project(s) started prior to the submission of the application for the aid by the beneficiary/beneficiaries to the national authorities?
- yes     no

If yes, the Commission considers that the aid does not present an incentive for the beneficiary to increase a net employment of disabled or disadvantaged workers.

13. If no, specify the relevant dates:

The employment commenced on:

The aid application by the beneficiary was submitted to the national authorities on:

Please provide the relevant supporting documents.

14. Does the recruitment lead to an increase, by comparison to a situation without aid, of number of disadvantaged or disabled workers in the undertaking(s) concerned?
- yes     no
15. If not, have the post or posts fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy?
- yes     no

<sup>(5)</sup> Cf. Criteria for the compatibility analysis, Section 2.1.

<sup>(6)</sup> Cf. Criteria for the compatibility analysis, Section 2.2.

<sup>(7)</sup> Cf. Criteria for the compatibility analysis, Section 2.3.

16. Please describe any existing or past wage subsidies in the undertaking concerned: categories and number of workers subject to subsidies.

**Proportionality of the aid <sup>(8)</sup>**

*Eligible costs*

Eligible costs must be calculated following Articles 40 and 41 of Regulation (EC) No 800/2008 and limited to the extra costs necessary to achieve a net increase of disadvantaged or disabled workers employed.

17. Which are the eligible costs foreseen under the notified measure?

- gross wage, before tax
- compulsory contributions, such as social security charges
- child care and parent care costs.

18. Please provide a detailed calculation of the eligible costs and the period covered <sup>(9)</sup> by the notified measure ensuring that the eligible costs are limited to the costs necessary to achieve a net increase of employment of the targeted categories of disadvantaged or disabled workers.

19. Please provide evidence that the aid is limited to the minimum, i.e. the aid amount does not exceed the net additional costs of employing the targeted categories of disadvantaged or disabled workers compared to the costs of employing workers who are not disadvantaged/disabled.

*Aid intensities for disadvantaged workers*

20. Please specify the aid intensity applicable to the notified measure.

*Aid intensities for disabled workers*

21. Please specify the aid intensity applicable to the notified measure.

**Analysis of the distortion of competition and trade <sup>(10)</sup>**

22. Please provide information on the aid amount, payment schedule and aid instrument.

23. Please specify whether the beneficiary received aid for disadvantaged or disabled workers in the past and provide details on the previous aid measures (dates, amount of aid, categories and number of workers concerned, and duration of wage subsidies).

24. Please specify the employment costs of the beneficiary (total employment costs, employment costs of targeted disabled and disadvantaged workers, proportion of employment costs in relation to total costs) and explain how the aid affects the beneficiary's costs (e.g. percentage of employment costs and total costs covered by the aid).

25. Please specify the relevant product and geographic markets on which the beneficiary is active and the aid is likely to have an impact.

26. For each of these markets please provide:

- market concentration ratio,
- market share of the beneficiary,
- market shares of the other companies present in these markets.

27. Please describe the structure and competitive situation on the relevant markets and provide supporting documents (e.g. barriers to entry and exit, product differentiation, character of the competition between market participants, etc.).

<sup>(8)</sup> Cf. Criteria for the compatibility analysis, Section 2.4.

<sup>(9)</sup> For employment of disadvantaged workers eligible costs shall be the wage costs over a maximum period of 12 months (or 24 months for severely disadvantaged worker) following recruitment. For employment of disabled workers eligible costs shall be the wage costs over any given duration during which the disabled worker is being employed.

<sup>(10)</sup> This section does not apply to measures of less than EUR 5 million for the employment of disadvantaged workers and of less than EUR 10 million for the employment of disabled workers provided the question 10.3 in Part I of this Annex is duly completed.

28. Please describe the features of the sector where the beneficiary is present (e.g. importance of the labour costs for the sector, existence of overcapacity, etc.).
29. Please describe the situation on the national/regional labour market (e.g. unemployment and employment rates, wage levels, labour law, etc.).
30. If relevant, please provide information on the effects on trade (shift of trade flows).

#### CUMULATION

31. Is the aid granted under the notified measure combined with other aid?

yes  no

32. If yes, please describe the rules on cumulating aid applicable to the notified aid measure:

#### OTHER INFORMATION

33. Please indicate here any other information you consider relevant to the assessment of the measure(s) in concerned.'

---

#### ANNEX III

1. Question 2.3 of Part III.7a of Annex I to Regulation (EC) No 794/2004 is replaced by the following:
- '2.3. Will the aid under the scheme be linked to loans that are to be reimbursed within six months after disbursement of the first instalment to the firm?'
2. Question 2.3 of Part III.7b of Annex I to Regulation (EC) No 794/2004 is replaced by the following:
- '2.3. Is the aid linked to loans that are to be reimbursed within six months after disbursement of the first instalment to the firm?'

---