

Brussels, 18 July 2002

OPINION
of the
Economic and Social Committee
on the
**Draft Commission Regulation on the application of Articles 87 and 88
of the Treaty to State aid for employment**
(OJ C 88/2, 12.4.2002)

On 30 April 2002, the Commission decided to consult the Economic and Social Committee, under Articles 149 and 150 of the Treaty establishing the European Economic Community, on the:

Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to State aid for employment
(OJ C 88/2, 12.4.2002).

The Economic and Social Committee decided to appoint **Mr Zöhrer** as rapporteur-general to prepare its opinion.

At its 392nd plenary session (meeting of 18 July 2002) the Economic and Social Committee adopted the following opinion by 120 votes in favour, with two abstentions.

1. **Gist of the Commission proposal**

1.1 The draft regulation on employment aid would replace the current EU guidelines on State aid for employment. It proposes to exempt certain types of aid which are allowed under those guidelines, namely aid for the creation of new jobs and aid to encourage employers to recruit disadvantaged categories of worker, such as the long-term unemployed and the disabled. The conditions under which the aid is exempted have been clarified by comparison with the current guidelines, and are in line with conditions already existing where aid is given for the creation of jobs in new investment projects. The draft regulation also exempts aid to meet the continuing costs of employing disabled staff.

1.2 Many labour market measures taken by Member States to promote the creation of employment or the recruitment of disadvantaged workers do not fall under the definition of State aid at all. In particular, general measures such as reductions in the taxation of labour or in social costs which apply automatically to all enterprises in a Member State who recruit, for example, long-term unemployed workers do not constitute state aid. The draft regulation would apply only to those measures which do fall within the definition of State aid under Article 87(1) of the EC Treaty because they favour certain enterprises over others.

2. **General comments**

2.1 The Committee broadly welcomes the Commission proposal, which helps implement the EU's employment objectives by clarifying the legal conditions under which aid for employment can be granted without prior notification to the Commission. This also makes for administrative simplification.

2.2 The promotion of employment is – rightly – becoming an ever more important part of EU economic and social policy. As the Commission points out in the recitals, Member States are justified in applying measures that provide incentives to enterprises to increase their levels of employment, in particular of workers from disadvantaged categories.

2.3 Recital 6 of the Commission document states that general measures which do not distort competition by favouring certain undertakings or the production of certain goods do not constitute State aid. The concern is that, in practice, it will be difficult to distinguish aid in the sense of the present regulation from general measures of this kind. In the interests of legal certainty, a clear definition would be desirable.

The Committee would therefore encourage the Commission to publish an explanation, describing general measures in greater detail. In cases of doubt, the Committee recommends that Member States seek prior clarification from the Commission.

2.4 The fundamental importance of legal certainty is also illustrated by the controversies surrounding the application of the regulation on aid for training and, more particularly, with regard to sectoral training funds set up by the social partners in certain countries.

2.5 The Committee would refer to two areas that it feels are not adequately addressed in the Commission proposal.

2.5.1 The Committee thinks that the proposed regulation should also apply to aid granted to "sheltered employment" schemes. As a rule, such schemes have predominantly social objectives that are laid down in national legislation. Hence, their operations cannot be equated with those of a commercial enterprise. The regulation should address these needs by covering aid of this kind and providing a definition of sheltered employment.

2.5.2 Relevant studies demonstrate that enterprises operating in the social field (such as co-operatives, associations, societies, etc.) can make an active contribution to creating new jobs. The EU authorities have repeatedly recognised the particular importance of enterprises in the social field. Recent examples alone include the Green Paper on corporate social responsibility and the European Commission's consultation paper on co-operatives in Enterprise Europe.

2.5.3 In order to take due account of these enterprises' special role, the Committee proposes that this factor be reflected in the possible level of aid intensity.

3. **Specific comments**

3.1 **Article 2 - Definitions**

3.1.1 **Small and medium-sized enterprises**

3.1.1.1 Annex I defines SMEs with reference to the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises. It must be ensured that any amendment to this recommendation during the present regulation's period of validity is also taken into account and that the annex can be brought into line without embarking on a fresh legislative process.

3.1.1.2 The Committee endorses the more favourable provisions for SMEs. However, it cannot accept the fact that large firms in "non-assisted" areas are to be excluded from the "job-creating" provisions on the grounds that they do not 'suffer from particular difficulties' (recital 21). Large firms, just like small ones, may encounter particular difficulties which justify their eligibility for job-creating aid.

3.1.2 **Young people**

3.1.2.1 Under the Commission proposal, this category includes any young person under 25 who has not previously obtained his or her first regular paid employment. The Committee would point out that in a number of Member States some young people have already had an employment contract – albeit a special one – as part of work-linked training, but were not kept on after training and are unemployed. This group of young people should also be included.

3.1.3 **Older workers**

3.1.3.1 In the Committee's view the proposed age limits are too rigid because (i) age limits in the Member States vary (often between women and men) and (ii) the situation may vary depending on the particular sector or region concerned. The Committee therefore proposes framing a definition that can be deployed more flexibly in the Member States in cases where generally applicable national arrangements are in place.

3.1.4 **Women**

3.1.4.1 The two-year average period for calculating the unemployment rate is too long. If countermeasures are to be taken in good time, a one-year reference period should be sufficient. It must also be remembered that disproportionately high female unemployment is not necessarily accompanied by an overall unemployment rate above the EU average. The Committee therefore proposes the following definition:

3.1.4.2 Any woman in a NUTS II geographical area where female unemployment has exceeded 150 % of the average unemployment rate in the area concerned for at least one calendar year.

3.1.5 **Disabled workers**

3.1.5.1 The Commission's chosen definition is too restrictive. Also, by adding the words: "... and yet capable of entering the labour market", the Commission rules out support for establishments that employ disabled people under sheltered employment schemes, since this phrase refers exclusively to the regular labour market. The Committee thus proposes the following wording:

– any person considered disabled under national law.

3.2 **Article 4 - Aid for the creation of new employment**

3.2.1 Basically it is understandable that the Commission proposal should allow aid intensity to vary depending on whether or not an area qualifies for regional aid pursuant to Article 87(3)(a) and (c).

3.2.2 To calculate aid intensity, the Commission opts for the same procedures as those used for regional aid. For non-experts, these calculations are very hard to understand. They also cause no end of practical difficulties, given the mix of gross and net calculations involved. The Committee would therefore encourage a general debate on the issue and proposes that a simpler method be sought for the next planning period.

3.2.3 Furthermore, the Committee fails to understand why the steel sector is treated differently from other industries. When it comes to creating new jobs and granting aid for that purpose, the question of which sector is involved should be irrelevant. The sectors already exempted under Article 1 (Scope) are the only possible exceptions.

3.3 **Enterprises operating in the social field**

3.3.1 Enterprises operating in the social field (cooperatives, federations, associations etc.) often play a special role in creating new jobs. In many cases, they operate regardless of regional economic conditions in areas where traditional industries are either non-existent or in crisis.

3.3.2 This field also fosters social coherence and integration. Through their work, co-operatives and associations secure the professional and social integration of people and groups who, because of difficult personal circumstances, are in danger of exclusion.

3.3.3 What is more, enterprises operating in the social field sometimes play a key role in local communities that are in difficulty as a result of industrial or social restructuring, or are hit by urban migration. In such cases, these enterprises are dynamic centres for sustainable local and regional development.

3.3.4 In Article 4, therefore, the Committee proposes setting an overall aid intensity ceiling of 20% for enterprises and organisations operating in the social field.

3.4 **Article 6 – Additional costs of employment of disabled workers**

3.4.1 The aid described in Article 6 of the draft regulation for the employment of disabled workers relates solely to the employment of such people on the normal labour market – i.e. in for-profit enterprises.

3.4.2 Such aid does not include the employment of disabled people as part of sheltered employment schemes. These schemes may also involve bodies carrying out economic activities, but they have a largely social remit and are not profit-based.

3.4.3 In order to take appropriate account of these schemes and their function for society, the Committee proposes that, in general terms, aid to assist the setting-up or maintenance of such establishments (including administrative and transport costs) should be exempt from notification.

3.5 **Article 11– Transparency and monitoring**

3.5.1 The Committee considers that the obligation on Member States to keep records of any aid granted must not result in administrative tasks being shifted onto enterprises, thereby posing an additional bureaucratic and financial burden.

3.6 **Article 12 – Entry into force and period of validity**

3.6.1 The Commission's proposed period of validity – until 31 December 2006 – matches the Structural Funds planning period. To ensure continuity, the Commission should review the regulation in good time so that a new regulation can enter into force immediately the old one expires.

Brussels, 18 July 2002

The President
of the
Economic and Social Committee

The Secretary-General
of the
Economic and Social Committee

Göke Frerichs

Patrick Venturini
