

PART III: HORIZONTAL RULES

Criteria for the analysis of the compatibility of state aid for training subject to individual notification¹

1 Introduction

- (1) Training usually has positive external effects for society as a whole since it increases the pool of skilled workers from which undertakings can draw and it improves the competitiveness of the economy and promotes a knowledge society capable of embracing a more innovative development path.
- (2) Undertakings may, however, provide less than a socially optimal level of training if employees are free to change employers and other undertakings can benefit from recruiting employees trained by them. This is particularly true of training targeted at skills that are transferable between undertakings. State aid may help to create additional incentives for employers to provide training at a level that is socially desirable.
- (3) This Chapter sets out guidance as to the criteria the EFTA Surveillance Authority (hereinafter “the Authority”) will apply for the assessment of training aid measures. This guidance is intended to make the Authority’s reasoning transparent and to create predictability and legal certainty. Pursuant to Article 6(1)(g) of the Act referred to at point 1j of Annex XV to the EEA Agreement (*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)*),² as adapted to the EEA Agreement by Protocol 1 thereto³ (hereinafter referred to as “the General Block Exemption Regulation”), any individual training aid, whether granted ad hoc or on the basis of a scheme, will be subject to this guidance when its grant equivalent exceeds EUR 2 million per training project.
- (4) The criteria set out in this guidance will not be applied mechanically. The level of the Authority’s assessment and the kind of information it may require will be proportional to the risk of distortion of competition. The scope of the analysis will depend on the nature of the case.

2 Positive effects of the aid

2.1 Existence of market failures

¹ This Chapter corresponds to the Communication from the Commission of the European Communities — Criteria for the analysis of the compatibility of state aid for training subject to individual notification 2009/C 188/01 (OJ C 188/1 of 11.8.2009)

² OJ L 214, 9.08.2008, p. 3. For ad-hoc training aid to a large undertaking below the threshold of EUR 2 million, the Authority will *mutatis mutandis* apply the principles as outlined in this Chapter, though in a less detailed manner.

³ Joint Committee Decision No 120/2008 of 7.11.2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008), entered into force on 8.11.2008.

- (5) Skilled workers contribute to increasing the productivity and competitiveness of undertakings. Nevertheless, employers and employees may under-invest in training for a number of reasons. Employees may limit their investment in training if they are risk averse, suffer from financial constraints or have difficulties signaling the level of their acquired knowledge to future employers.
- (6) Undertakings may refrain from training their workforce at the level that would be optimal for society as a whole. This is due to the market failure linked with the positive externalities of training and to difficulties in appropriating the rents if employees are free to change employers. Undertakings may invest less into training, if they are concerned that once trained, an employee will leave before the undertaking has recouped its investment. Undertakings may be reluctant to provide sufficient training to their workers unless training pays off quickly or is rather specific to the needs of the undertaking concerned, or unless contractual clauses can prevent the trained employee from leaving the undertaking before the training cost have been amortised or (part of) the training expenses have been reimbursed.
- (7) Underinvestment in training may even occur if the undertaking can fully recoup its investment but its private benefits are smaller than the benefits for society as a whole. Such positive externalities of training may arise in particular if training improves transferable skills; that is to say, skills that can be used in more than one undertaking. In contrast, specific training only yields productivity gains in a specific undertaking and can be easily appropriated by undertakings⁴. Thus the scope for positive externalities of specific training is less pronounced than the scope for such externalities of general training.
- (8) Where undertakings are faced with higher costs and uncertain benefits for training disadvantaged or disabled workers⁵ there may be an incentive to provide less training to those groups. However, training disadvantaged or disabled workers can usually be expected to produce positive externalities for society as a whole.⁶
- (9) EFTA States should demonstrate that there is a market failure justifying the aid. In its analysis, the Authority will, among other things, consider the following elements:
 1. The nature of the training — whether it is specific or general within the meaning of Article 38 of the General Block Exemption Regulation; a single training project can comprise both general and specific elements; general training will produce more positive externalities.
 2. The transferability of the skills acquired during the training; the more transferable the skills the higher the likelihood of positive externalities training will be considered to provide transferable skills if, for example:
 - (a) training is jointly organised by several independent undertakings, or if employees of different undertakings may benefit from the training;

⁴ However, externalities of general training can also be appropriated by the undertakings through special clauses in contracts requiring the trained employee to remain in the undertaking for a defined period of time after he had received such training.

⁵ Disabled and disadvantaged workers are defined in Article 2 of the General Block Exemption Regulation.

⁶ For example, society will attach more value to training received by young and low skilled workers than an undertaking will do due to a perceived or real lower productivity.

(b) training is certified, leads to a recognised diploma or is validated by public authorities or institutions;

(c) training targets the categories of employees that are characterised by a high turnover in the undertaking and in the sector concerned;

(d) training could be valuable for the employee beyond his current job (future occupations in another undertaking, social life, well-being etc.).

3. The participants in the training: the inclusion of disabled or disadvantaged workers may increase the positive externalities of the training.

2.2 State aid as an appropriate policy instrument

(10) State aid is not the only policy instrument available to EFTA States to encourage training. Most training is provided through education systems (for example, universities, schools, vocational training carried out or sponsored by state authorities). Training can also be undertaken by the individuals themselves, with or without the support of their employers.

(11) Where the EFTA State has considered other policy options, and the advantages of using a selective instrument such as state aid for a specific undertaking are established, the measures concerned are considered to constitute an appropriate instrument. The Authority will in particular take account of any impact assessment of the proposed measure the EFTA State may have made.

2.3 Incentive effect and necessity of the aid

(12) State aid for training must result in the aid beneficiary changing its behaviour so that it provides more and/or better training than would have been the case without the aid. If such an increase in the quantity or quality of planned training activities does not take place, the aid is considered not to have an incentive effect.

(13) The incentive effect is identified by counterfactual analysis, comparing the levels of intended training with aid and without aid. Most employers find it necessary to train their workforce in order to ensure the proper functioning of their undertakings. It cannot be presumed that state aid for training, especially for specific training, is always needed.

(14) EFTA States should demonstrate to the Authority the existence of the incentive effect and the necessity of the aid. First, the beneficiary must have submitted an application for the aid to the EFTA State concerned before it started the training project. Second, the EFTA State must demonstrate that the state aid leads to an increase, by comparison to the situation without aid, in the size, quality, scope or targeted participants of the training project. The additional amount of training offered with aid can be shown, for example, by higher number of training hours or courses, higher numbers of participants, shifting from undertaking-specific to general training, or increasing the participation of certain categories of disadvantaged or disabled workers.

(15) In its analysis, the Authority will consider, among other things, the following elements:

(a) internal documents of the aid beneficiary on training costs, budgets, participants, content and scheduling for two scenarios: training with aid and training without aid;

(b) the existence of a legal obligation for employers to provide a certain type of training (for example, safety): if such an obligation exists, the Authority will normally conclude that there is no incentive effect;

(c) the credibility of the project submitted, for example, by referring to and comparing it with training budgets for previous years;

(d) the relationship between the training programme and the business activities of the aid beneficiary: the closer the relationship, the less likely the incentive effect. For example, training on the introduction of a new technology in a specific sector is unlikely to have an incentive effect since undertakings have no choice but to train their workforce on the newly introduced technology.

2.4 Proportionality of the aid

(16) The EFTA State must demonstrate that the aid is necessary and the amount is kept to the minimum in order to achieve the objective of the aid.

Eligible costs must be calculated in accordance with Article 39 of the General Block Exemption Regulation and be limited to the costs arising from training activities which would not be undertaken without aid.

EFTA States should provide evidence that the aid amount does not exceed the part of the eligible costs that cannot be appropriated by the undertaking.⁷ In any case, aid intensities must never exceed those laid down in Article 39 of the General Block Exemption Regulation and will be applied to the eligible costs.⁸

3 Negative effects of the aid

(17) If the aid is proportionate to achieve the objective of the aid the negative effects of the aid are likely to be limited and an analysis of the negative effects may not be necessary.⁹ However, in some cases, even where aid is necessary and proportionate for a specific undertaking to increase the amount of training provided, the aid may result in a change in the behaviour of the beneficiary which significantly distorts competition. In those cases the Authority will conduct a thorough analysis of the distortion of competition. The extent of the distortion of competition caused by the aid can vary depending on the characteristics of the aid and of the markets affected.¹⁰

⁷ This equals the part of the extra costs of the training that the undertaking cannot recover by benefiting directly from the skills acquired by its employees during the training.

⁸ See also current case practice, for example, C 35/2007, training aid to Volvo Cars in Gent, Commission Decision 2008/948/EC of 23 July 2008 on measures by Germany to assist DHL and Leipzig Halle airport (OJ L 346, 23.12.2008, p. 1) and Commission Decision 2007/612/EC of 4 April 2007 on state aid C 14/06 which Belgium is planning to implement for General Motors Belgium in Antwerp (OJ L 243, 18.9.2007, p. 71).

⁹ In addition, if the labour market functioned perfectly, employees could always extract a larger salary for their better skills due to the training received and internalize positive externalities of the training.

¹⁰ A number of markets can be affected by the aid, because the impact of the aid may not be restricted to the markets where the aid beneficiary is active but it can extend to other markets, for example input markets.

(18) The aid characteristics that may affect the likelihood and the extent of the distortion are:

- (a) selectivity;
- (b) the size of the aid;
- (c) the repetition and duration of the aid;
- (d) the effect of the aid on the undertaking's costs.

(19) For example, a training scheme used to encourage undertakings in general in an EFTA State to undertake more training is likely to have a different effect on the market than a large amount of aid given to a single undertaking to enable it to increase its training. The latter is likely to distort competition more significantly as the aid beneficiary's competitors become less able to compete.¹¹ The distortion will be even greater if the training costs in the beneficiary's business represent a high share of the total costs.

(20) In assessing the market characteristics, which can give a much more accurate picture of the likely impact of an aid, the Authority will among other things consider:

- (a) the structure of the market; and
- (b) the characteristics of the sector or industry.

(21) The structure of the market will be assessed through the concentration of the market, the size of undertakings,¹² importance of product differentiation¹³ and barriers to entry and exit. Market shares and concentration ratios will be calculated once the relevant market has been defined. In general, the fewer undertakings there are, the larger their share of the market, and the less competition one would expect to observe.¹⁴ If the affected market is concentrated with high barriers to entry¹⁵ and the aid beneficiary is a major player on it then it is more likely that competitors will have to alter their behaviour in response to the aid.

(22) While examining the characteristics of the sector the Authority will look among other things at the importance of the trained workforce for the business, the existence of overcapacity, whether the markets in the industry are growing, mature or declining, financing strategies of competitors for training (state aid, employees, employers). For example, training aid in a declining industry may increase the risk of a distortion of competition by keeping an inefficient undertaking afloat.

¹¹ It should be noted however, that training aid given to a whole sector in one EFTA State may lead to a distortion on trade between Contracting Parties.

¹² Size of the undertaking can be expressed in the terms of market shares as well as turnover and/or employment.

¹³ The lower the degree of product differentiation, the greater the effect of the aid on competitors' profits will be.

¹⁴ It is important to note however, that some markets are competitive despite there being few undertakings present.

¹⁵ It should be noted however, that sometimes granting of an aid helps to overcome entry barriers and allows new undertakings to enter a market.

- (23) Training aid may, in particular cases, lead to distortions of competition in respect of market entry and exit, effect on trade flows and crowding out of training investment.

Market entry and exit

- (24) In a competitive market undertakings sell products that generate profits. By altering costs, state aid alters profitability, and can therefore affect the undertaking's decision to offer a product or not. For example, state aid that would reduce the ongoing costs of production such as training for staff would make entry more appealing and enable undertakings with otherwise poor commercial prospects to enter a market or introduce new products to the detriment of more efficient competitors.
- (25) The availability of state aid may also affect an undertaking's decision to leave a market where it is already operating. State aid for training could reduce the size of losses and enable an undertaking to stay in the market for longer — which may mean that other, more efficient undertakings that do not get aid are forced to exit instead.

Effect on trade flows

- (26) State aid for training may result in some territories benefiting from more favourable production conditions than others. This may result in the displacement of trade flows in favour of the regions where such aid is given.

Crowding out of training investment

- (27) To survive in the marketplace and maximize profits, undertakings have incentives to invest in training of staff. The amount of investment in training which each undertaking is willing to make also depends on how much its competitors invest. Undertakings which are subsidised by the state may reduce their own investment. Alternatively, if the aid induces the aid beneficiary to invest more, competitors may react by reducing their own expenditure in training. If, to achieve the same objective, aid beneficiaries or their competitors spend less in the presence of the aid than in its absence, their private investment in training of staff is crowded out by the aid.

4 Balancing and decision

- (28) The last step in the analysis is to evaluate the extent to which the positive effects of the aid outweigh its negative effects. This will be done on a case-by-case basis. In order to balance the positive and the negative effects, the Authority will assess them and make an overall assessment of their impact on producers and consumers in each of the markets affected. Unless quantitative information is readily available the Authority will use qualitative information for the purposes of the assessment.
- (29) The Authority is likely to take a more positive stance and therefore accept a higher degree of distortion of competition, if the aid is necessary, well targeted and proportionate for a specific undertaking to increase its training activities and society benefits from the extra training provided more than the aid beneficiary.