## **Preserving state aid access to companies employing workers with disabilities**

**Joint statement by the European Disability Forum, the European Association of Service Providers for Persons with Disabilities, the European Platform for Rehabilitation and the European Union of Supported Employment**

## **Executive summary**

The General Block Exemption Regulation (GBER) has, among its aims, that of regulating how and how much State Aid can be invested in supporting the employment of persons with disabilities in each Member State. The aid used under the limits established by this Regulation is considered not to distort the free competition within the EU’s internal market, not giving any particular employer or sector an unfair advantage over another. All aids above the threshold fixed by this GBER could potentially distort competition and therefore have to be notified to the European Commission and consequently authorised by it before their implementation.

The current Regulation is now under review to evaluate its relevance in relation to the current economic and labour market context. During this review, there are certain elements that we, the **European Disability Forum (EDF), the European Association of Service Providers for Persons with Disabilities (EASPD), the European Platform for Rehabilitation (EPR) and the European Union of Supported Employment (EUSE)** would like to see maintained.

Our first message is that it is key that provisions allowing the use of State Aid to support the employment of persons with all types of disabilities need to stay in the Regulation. Investment through the use of State Aid boosts employment opportunities for persons with disabilities, allowing for more people who would otherwise be cut off from the labour market to take up paid work, be part of their communities and live with greater autonomy. It also has a knock-on effect for families of persons with disabilities and particularly women, who are overrepresented in the role of informal care givers, allowing them to more easily enter the labour market themselves.

State Aid to ease the employment of persons with disabilities - be it short term adaptations or long-term support in the workplace - is a key element of the EU’s and all Member States’ obligations as States Parties to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This is to say, in accordance with Article 27, that the State Aid should be invested in freely chosen or accepted employment in a labour market that is inclusive and accessible to persons with disabilities, and where workers with disabilities have access to fair remuneration and workers’ rights on the same level as any worker without a disability. Therefore, it is important that the threshold for the amount of funds permitted for this purpose be adjusted in light of the current context in which wages and the cost of living have increased in many Member States since the rules in the current Regulation were agreed.

When sufficient investment is made in employment in a way that fully respects the rights of persons with disabilities to quality and freely-chosen work, the EU and its Member States will be able to show their ability to make tangible progress towards the implementation of the CRPD, the Pillar of Social Rights and the Commission’s new objective of an economy that works for people.

## **The joint statement**

As part of its efforts to update and modernise European State Aid policies and regulations, the European Commission is currently evaluating Commission Regulation [(EU) N°651/2014 of 17 June 2014](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710) declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty – the so-called General Block Exemption Regulation (GBER).

Our organisations, representing persons with disabilities and service providers for persons with disabilities, would like to seize the opportunity offered by the Commission’s assessment to stress how important the exemptions provided by the Regulation are in fostering the employment of persons with disabilities, including during the harshest years of the financial crisis and in light of the expected upcoming economic shock linked to the COVID 19 outbreak.

As the Commission reiterated in its recent Communication “A Strong Social Europe for Just Transitions” [[1]](#footnote-1), generating employment for persons with disabilities is a clear priority for the European Union. This proves to be a considerable task considering that, according to Eurostat, only around 50% of persons with disabilities are employed (a statistic that obscures other issues such as poor-quality and part-time employment for persons with disabilities, people being paid below minimum wage, workers’ rights not being respected and of the fact that the figures do not take into consideration persons with disabilities living in institutional care settings).

With this in mind, we call on the Commission to maintain the provisions of GBER’s **Section 6 Aid for disadvantaged workers and for workers with disabilities,** exemptingState Aid for wage subsidies and additional support for workers with disabilities from notification and approval procedures.

Under the Regulation’s Section 6, aid granted for the employment of workers with disabilities or for compensating the additional costs of employing workers with disabilities shall be considered compatible with the internal market within the meaning of Article 107(3) of the Treaty. As such, when it comes to this Aid Member States are exempted from the notification requirement of Article 108(3) of the Treaty, provided other conditions laid down in the Regulation are fulfilled.

The exemptions provided by the Regulation have encouraged Member States, regions and other public authorities to allocate State Aid to enterprises and organisations employing persons with disabilities, fostering employment and contributing to competitive and inclusive labour markets.

Furthermore, the Regulation has served as a reference framework providing legal certainty and common European criteria, for example by setting the definitions of “persons with disabilities” or “sheltered employment”.

While the effectiveness of the Regulation could in some cases be limited by the thresholds it sets – for example the threshold of 10 million Euros per undertaking per year should be updated to current prices, since it was set in 2008 – its value has been proven over the years, and as such its disability-related exemptions should be kept and strengthened in future reviews.

The provisions that enable the granting of and access to State Aid for both wages and any additional costs linked to the provision of certain reasonable accommodation, such as for example the provision of assistive technology, need to be maintained, as many of the companies and organisations generating employment opportunities for persons with disabilities depend on State Aid to be able to compete in the open market. State Aid granted under the GBER benefits all workers with disabilities, responding to the varying needs that different disabilities entail: as it is formulated in the Regulation, State Aid for wage subsidies and compensation for additional costs represents a fundamental tool for the employment of workers with higher support needs (where long-term support is often needed) as well as for the employment of workers with less intensive needs requiring “simple” infrastructure or equipment adaptations.

State aid is therefore fundamental to cover part of these costs and to enable the enterprises to both employ more persons with disabilities and remain competitive on the market. Therefore, the absence of State Aid in these cases would generally distort fair competition.

Additionally, lack of accessibility of companies and organisations is an additional barrier that prevents many employers from considering persons with disabilities as potential workforce (e.g. lack of accessibility of the built environment in which the company is set up, lack of accessibility of software or other legacy ICT systems needed to perform the work, etc.). Retrofitting those environments in order to make them accessible for persons with disabilities may entail a disproportionate burden for the organisation. Hence, it is important that the adaptation of premises and the adaptation or acquisition of equipment remains an eligible cost up to 100%.

Furthermore, State aid facilitating the employment of persons with disabilities in companies not only brings benefits to both the employee and employer, but can also benefit society in other ways. It can allow the family members of persons with disabilities to more easily take up paid work themselves, particularly women who are more likely to take on the role of carers, and in turn reduce the risk of household poverty, to which households with a member with a disability are far more prone.

***State Aid catalyses social inclusion through employment***

The inclusion of disadvantaged workers and workers with disabilities into the labour market is an effective tool to fight discrimination and reduce exposure to poverty of the most discriminated and excluded.

However, persons with disabilities face various challenges and barriers when attempting to enter the labour market. According to the most recent available figures from Eurostat, which as explained above overlook the issue of poor-quality and underpaid work and miss from the statistics many of the most marginalised persons with disabilities, only 50.8% of persons with disabilities are employed compared with 74.8% of persons without disabilities.[[2]](#footnote-2) On an everyday-basis, enterprises across the EU, and in particular social economy enterprises, are tackling these issues and offer stable long-term employment to persons with disabilities. In addition to offering a regular income, this also increases efforts of inclusion of persons with disabilities into society and provides a boost for equality and human rights in Europe, as employment is a crucial part of people’s lives and contributes to a person’s participation in society, autonomous living, identity, and self-worth.

As such, the “right of persons with disabilities to work, on an equal basis with others” is a legal commitment assumed by the European Union and all its Member States through the signature and ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD)[[3]](#footnote-3). This Convention also stresses that, among other things, signatories must “promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment”.

The use of State Aid to support the employment of persons with disabilities is also justified by the EU Charter of Fundamental Rights, which highlights the importance of access to employment for the inclusion of persons with disabilities in society. In its Article 26, it is stated that the EU “recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and **occupational integration and participation in the life of the community**.” Furthermore, the Charter stipulates in its Article 15 that every citizen has the freedom and, the right to employment.[[4]](#footnote-4)

In addition to this international and European policy framework, the promotion of employment for persons with disabilities is clearly enshrined in other, more specific EU policy instruments. The most targeted one when it comes to persons with disabilities and their environment is the **European disability strategy 2010-2020**[[5]](#footnote-5)**,** whichclearly recognises employment of persons with disabilities as one of the priority areas in which EU action is needed. Moreover, the Strategy itself recognises State Aid – and the exemptions provided by the GBER – as a tool to address the current employment exclusion persons with disabilities face today. As the Commission is currently preparing a new Strategy for 2021 onwards, it will be key to ensure that State Aid remains a central element in the new Disability Agenda 2030. This will directly support and help fund the implementation of the new Strategy and will contribute to the fulfilment of the CRPD obligations.

Non-discriminatory access to employment is equally a fundamental part of Europe’s economic and social governance, as it is stated in the European Pillar of Social Rights[[6]](#footnote-6). In its chapter on equal opportunities, the Pillar states that as part of ensuring the equal treatment and opportunities regarding employment and social protection regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, “equal opportunities of under-represented groups shall be fostered”.

The Pillar makes an even clearer reference in this regard when setting the policy foundations for the inclusion of persons with disabilities, stipulating that “**people with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs**”. Once more, at a time when the Commission is developing its Action Plan for the implementation of the Pillar[[7]](#footnote-7) – which includes amongst others the new Disability Agenda or the Action Plan on the social economy – it is important to stress how State Aid must be preserve to support social advancements in these fields.

***State Aid serves the implementation of EU legislation***

Besides being a key tool for guaranteeing the respect of fundamental rights and principles – such as the social inclusion of persons with disabilities – the categories of State Aid considered under Section 6 of the GBER are a fundamental tool to implement existing EU legislation and to fulfil Europe’s international obligations.

Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019[[8]](#footnote-8) on the accessibility requirements for products and services – the Accessibility Act – sets accessibility requirements for products and services in the EU, including voluntary requirements concerning the built environment. Enterprises respecting and procuring products, services, and the built environment in line with the requirements laid down in the Accessibility Act could greatly benefit from State Aid in the GBER, especially when the fulfilment of accessibility imposes an undue burden for the organisation.

Thus, in addition to the provision of reasonable accommodation and adaptations, including assistive technologies and services specifically designed for or provided to persons with disabilities, State aid considered under the GBER can also foster investments in accessible products, services and physical environments as set out in the Accessibility Act. Given that the GBER allows for State Aid to be granted to costs of adapting or acquiring special equipment or software for use by workers with disabilities, or for costs directly linked to transport of workers with disabilities to the working place and for work related activities, the existing concept of “additional costs” should also support the enterprises to become more inclusive by default so as to avoid the special adaptation when this is not needed thanks to an adequate level of accessibility (e.g. instead of purchasing a standalone screen-reader for a blind employee, the company can update its software to one that complies with the Accessibility Act requirements and thus includes a built-in screen reader in the ICT device so other employees with disabilities can be hired more easily).

State Aid also supports the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation[[9]](#footnote-9), providing additional means to implement Article 5 of the Directive, which refers to ensuring reasonable accommodation in the workplace.

Other European policies supported by the GBER’s exemptions include the Council Recommendation on the integration of the long-term unemployed into the labour market[[10]](#footnote-10) as well as the Youth Guarantee[[11]](#footnote-11). State aid covered by Section 6 has a proven record of boosting the employment of persons with disabilities and can therefore also reinforce the ambitions of both of these policies.

***State Aid is required to ensure fair competition regarding the employment of persons with disabilities***

As shown by the case studies complementing this paper, State Aid for the employment of persons with disabilities can enrich competition and consolidate the European single market.

Access to State Aid for the employment of persons with disabilities can also be beneficial for public finances; allowing companies to assume investments and costs that otherwise will be the responsibility of public authorities. By supporting the inclusion of persons with disabilities into the labour market, State Aid can help leverage additional investments from private or non-governmental employers.

Furthermore, losing the potential for the creation of employment of persons with disabilities through State Aid would result in increased public spending, as many persons with disabilities could lose their jobs and their dependence on the State would increase. Reduced assistance for the employment of persons with disabilities would also affect the wellbeing of many families, particularly women who are statistically more likely to take on a role as a carer and thus themselves be cut off from the labour market. This is likely to become more evident as Europe’s population ages and therefore is more exposed to disabilities.

State Aid for the employment of persons with disabilities under the auspices of the GBER is a fundamental element to ensure that enterprises who employ many persons with disabilities – in particular social economy enterprises or not-for profit organisations - can compete on equal terms with those who do not employ persons with disabilities. State Aid covers and compensates for the costs that employers incur when employing persons with disabilities (such as workplace adaptation and wage support) without representing a competitive advantage in commercial terms. Rather than distorting competition, State Aid ensures fair competition in the first place.

***Future legislative reviews***

As shown by concrete examples, State Aid for the employment of persons with disabilities is fundamental not only to ensure the inclusion of persons with disabilities into the labour market, but also to ensure fair competition in an open market.

While acknowledging the need to assess and modernise European State Aid legislation, the European organisations representing persons with disabilities and service providers for persons with disabilities call on the European institutions to maintain the current exemptions granted under the General Block Exemptions Regulation to the aid for the employment of workers with disabilities in the form of wage subsidies as well as to the aid for compensating the additional costs of employing workers with disabilities**.**

## **About the signatories**

**The European Disability Forum (EDF)** is an independent NGO representing the interests of 100 million Europeans with disabilities. Run by persons with disabilities and their families, EDF is a strong, united voice of the disability movement in Europe, coordinating advocacy on the rights of all persons with disabilities at the EU level and supporting our members at national level.

EDF’s vision is that all persons with disabilities are fully included in society on an equal basis with others and that our human rights, as outlined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), are fully respected, protected and fulfilled.

EDF’s mission is to ensure persons with disabilities’ full inclusion in society and enjoyment of our human rights through our active involvement in policy development, implementation and monitoring of the CRPD in Europe.

**The European Association of Service Providers for Persons with Disabilities (EASPD)** is a European NGO network representing over 17,000 social and health support provider organisations across Europe and across disabilities, working towards the promotion of equal opportunities for persons with disabilities through effective and high-quality service systems.

**The European Platform for Rehabilitation (EPR)** is a network of service providers to people with disabilities committed to high quality service delivery. EPR’s vision is a society where every person can co-create quality services that bring about equal opportunities for all, social inclusion and quality of life.

EPR’s mission is to build the capacity of its members to provide sustainable, high quality services through mutual learning and training; its motto being “Learning and Innovating Together”.

**The European Union of Supported Employment (EUSE)** is a non-Government organisation and was established in 1993 to facilitate the development of Supported Employment throughout Europe. Supported Employment assists people with significant disabilities (physical, intellectual, psychiatric, sensory and hidden) to access real employment opportunities, of their own choice, in an integrated setting with appropriate ongoing support to become economically and socially active in their own communities.

EUSE works to achieve this through the promotion of the Supported Employment model, the exchange of information and knowledge on good practice in Supported Employment and the development of model services. EUSE provides a platform for networking with other organisations and associations at European and worldwide level.

This Position Paper has been produced with the financial support of the European Union Programme for Employment and Social Innovation “EaSI” (2014-2020). The information contained in this Position Paper does not necessarily reflect the official position of the European Commission.

## **Annex I: Benefits of state aid policies to different stakeholder groups**

|  |  |  |
| --- | --- | --- |
| **Stakeholder** | **Impact of State Aid Policies** | **Impact without State Aid Policies** |
| **Persons with disabilities** | More equal opportunities on the labour market  More economic (and other) freedom  More independent living | Disadvantaged on the labour market  More reliance on social security  More poverty & social exclusion |
| **Families** | Better work-life balance  More economic (and other) freedom | More excluded from the labour market  More reliance on social security  More poverty & social exclusion |
| **Employers of persons with disabilities** | Employ more **persons with disabilities**  Fair competition with other companies  More diverse workforce | Much harder to employ **persons with disabilities**  Unfair competition with other companies  Less diverse workforce |
| **Non-employers of persons with disabilities** | Easier to employ more **persons with disabilities**  Fair competition with other companies | Much harder to start employing **persons with disabilities**  Competitive advantage on those who do employ **persons with disabilities** |
| **Public Authorities** | More **persons with disabilities** (& others) in jobs  More economic empowerment  Fair competition between companies  Less public espenditure as more persons in employment, than relying on social security | Higher unemployment  More poverty & social exclusion  Unfair competition between companies  More expensive as more reliance on social security. |
| **Society** | More social cohesion  More inclusive growth  Better value for taxpayers money | More inequality & poverty  Less social cohesion  More expensive for taxpayers |
| **European Union** | Coherent & effective implementation of EU policy objectives  Fulfilment of legal and regulatory obligations | Incoherent & ineffective implementation of EU policy objectives |

1. European Commission Communication “A Strong Social Europe for Just Transitions”, 14 January 2020: <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_20> [↑](#footnote-ref-1)
2. EU-SILC 2017. On average, only 50.8% of persons with disabilities are in employment, compared to 74.8% for persons without disabilities. It should be noted that persons with disabilities that are considered as inactive or unable to work, and people that are living in institutions are not included in these statistics, meaning that in reality there is an even higher proportion of persons with disabilities not in employment. Furthermore, the figures do not shed light on the number of people in part-time employment, the quality of the employment, or indeed whether this employment takes place in the open labour market or not. These current statistics on employment of persons with disabilities have not improved in the last decade and would be even worse without state aid. [↑](#footnote-ref-2)
3. UN Convention on the Rights of Persons with Disabilities, Article 27 – Work and employment: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-27-work-and-employment.html> [↑](#footnote-ref-3)
4. Charter of Fundamental Rights of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> [↑](#footnote-ref-4)
5. Communication on the European Disability Strategy 2010-2020: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF> [↑](#footnote-ref-5)
6. European Pillar of Social Rights: <https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf> [↑](#footnote-ref-6)
7. European Commission Communication “A Strong Social Europe for Just Transitions”, 14 January 2020: <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_20> [↑](#footnote-ref-7)
8. “European Accessibility Act” / Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services: <https://eur-lex.europa.eu/eli/dir/2019/882/oj> [↑](#footnote-ref-8)
9. “Anti-Discrimination-Directive” / Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078> [↑](#footnote-ref-9)
10. Council recommendation on the integration of the long-term unemployed into the labour market: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016H0220%2801%29&qid=1456753373365> [↑](#footnote-ref-10)
11. Council recommendation on establishing a Youth Guarantee: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0426(01)> [↑](#footnote-ref-11)