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MaltaAuthor(s): Yana Haber

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Malta

Assistance for the Employment of Disabled and Disadvantaged Persons.

The Maltese Authorities have financed an “Employment Aid Programme” through the European Social Fund under the European Union’s Cohesion Policy 2007-2013. In line with the objective of the European Social Fund, the Employment Aid Programme facilitated the integration of disadvantaged and disabled persons in the labour market.

The Employment Aid Programme sought to:

- enhance the employability and productivity of vulnerable groups with low employment rates;
- facilitate access to employment and upgrade the skills of those furthest away from the labour market; and
- contribute to increasing the country’s labour supply and achieving greater social cohesion.

Implemented in line with the General Block Exemption Regulation (GBER),¹ the Employment Aid Programme had as its primary aim the promotion of an inclusive labour market by encouraging employers to recruit disadvantaged persons and persons with disability. This was achieved through the increase of job opportunities for disadvantaged groups and disabled persons in the labour market; upgrading their skills through work experience and therefore enhance their employment prospects; enhancing the financial independence of disadvantaged persons and pre-

venting social exclusion and marginalisation.

The scheme was notified in end of 2008 with an overall budget of €10 million covering the period from 1 January 2009 till 1 January 2013. In line with the permissible parameters of the GBER, employers received a subsidy equivalent to 50% of a year’s wage cost i.e. half the basic salary for 52 weeks excluding bonuses, allowances, commission or overtime together with half the employer’s national insurance in the case of recruitment of disadvantaged workers. In the case of employment of disabled persons, the assistance offered was of a maximum of 156 weeks and covered 75% subsidy in the form of wage subsidies for the first year, and 60% for the subsequent two years. Employers were required to retain the disabled person in employment for a further one year after the subsidy period.

The success of the scheme over this four year period saw around 2,600 jobseekers being employed through the assistance of the Aid Scheme. This greatly contributed to the economic growth of the country in a time when the economic crisis had a negative impact on several EU Member States, while it also reduced the number of registered unemployed and resulted in savings from the amount

of social assistance benefits paid. The scheme was administered on a demand-driven approach which facilitated a more timely response to the applications submitted following the necessary evaluations of submissions and monitoring of the employment contracts. Given the success of the scheme the Maltese Authorities sought to extend the applicability of the Employment Aid Programme till December 2013 with an increased allocated budget, this time targeting a smaller geographical area. The scheme was in fact made available only for new employment that took place on the second largest island of Malta.

The client group was slightly amended to reflect those on the unemployment register in this specific geographical area. Eligible participants included:

- any person who has not been in regular paid employment for the previous 6 months and does not have a job.
- any person who wishes to enter or to re-enter working life and who has been absent both from work and from education for at least two years
- any person who lives as a single adult with one or more dependants.
- any person who has not attained an upper secondary educational or vocational qualification (ISCED 3).
- any person older than 50 years.
- any long-term, registered unemployed person, i.e. any person who has been unemployed for twelve of the previous sixteen months, or six of the previous

¹ Commission Regulation (EC) No. 800/2008 of the 6th August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty.

- eight months in the case of persons under 25.
- any person who is a registered disabled person and who has a recognized, serious, physical, mental or psychological impairment.

With the extension till end of June 2014 of the current GBER, the Maltese authorities are retaining the option to issue a re-launch of the same employment aid scheme, while also following closely the Commission's proposals in the

area of employment aid in the draft General Block Exemption Regulation that is envisaged to enter into force on 1 July 2014.

Yana Haber
Ministry of Finance
Floriana

The Netherlands

A Selection of Recent Judgments of the Supreme Civil Court, the Administrative Jurisdiction Division of the Council of State and the Trade and Industry Appeals Tribunal

I. Introduction

Last year again, State aid law was frequently invoked in cases before Dutch courts. The types of cases and the legal relationships these cases dealt with were very diverse, ranging from administrative, to civil and tax. Many cases happened to relate to planning law, in which State aid claims can only play a marginal role according to Dutch case law. State aid law grounds for appeal were often combined with procurement law claims. On the whole, the chance of success of the alleged State aid claims appeared small, however. Quite often, this is likely related to inadequate substantiation of the State aid claim. Three striking judgments are highlighted below.

2. *Relevant Time Period and Consequences of Illegal Aid*

In a judgment of 18 January 2013, the Supreme Civil Court ruled that several contracts concerning the lease of parking spaces do not constitute State aid.¹ The Court found that the question whether these contracts confer an advantage and distort competition must be answered in the light of the moment at which the contracts were concluded – in this case: 1979 and 1988. The fact that the contracts would not meet market conditions if they had been concluded at the moment of bringing proceedings does not, according to the Court, justify the conclusion that they distort competition. The Supreme Civil Court also ruled that there is no rule of law preventing the partial nullity of a legal act by which State aid has

been granted. According to the Court, the ECJ's case law does not dictate that the verdict that illegal State aid has been granted invalidates the entire legal act where partial nullity would suffice to restore the previous competitive situation. Furthermore, the Court ruled that the mere declaration that a contract is tortuous for breaching Article 108(3) TFEU is not a suitable measure for restoring the previous competitive situation in accordance with the ECJ's case law.

III. Informal Advice from the Commission when Deciding on a Subsidy Application

In a judgment of 13 February 2013, the Administrative Jurisdiction Division of the Council of State found that the failure of an administrative authority to contact the Commission for informal advice before partially rejecting an application for a subsidy violated the principle of due care.² This principle is codified in Article 3:2 of the Dutch General Administrative Law Act. The application for the subsidy was made by a company called Ridderstee on the basis of a subsidy regulation to encourage recreation and tourism in the province of South-Holland. The requested subsidy would help to finance the construction of a hotel and the realization of a so-called all-weather facil-

¹ Supreme Civil Court 18 January 2013, ECLI:NL:HR:2013:BY0543.

² Administrative Jurisdiction Division of the Council of State 13 February 2013, ECLI:NL:RVS:2013:BZ1245.