

**COMMUNITY GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY**

**(Notice to Member States including proposals for appropriate measures)**

(1999/C 288/02)

(Text with EEA relevance)

**1. INTRODUCTION**

- (1) The Commission adopted its original Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup> in 1994. Their validity was extended until 31 December 1999 <sup>(2)</sup>. In 1997, the Commission added specific rules for agriculture <sup>(3)</sup>.
- (2) The Commission wishes through this version of the Guidelines, the text of which builds on previous versions, to make certain changes and clarifications prompted by a number of factors. First, completion of the internal market calls for a closer watch to be kept on State aid. The sixth and seventh surveys on State aid in the European Union in the manufacturing and certain other sectors <sup>(4)</sup> reveal an increase in the volume of ad hoc aid, chiefly for rescuing and restructuring firms in difficulty, without taking into account aid granted in the new German *Länder* by the *Treuhandanstalt* or the *Bundesanstalt für vereinigungsbedingte Sonderaufgaben*. The advent of the single currency will also speed up the trend towards increased intra-Community trade, which will make the impact of rescue and restructuring aid on competitive conditions within the Community felt all the more keenly. In addition, the Commission committed itself in its action plan for the single market <sup>(5)</sup> to further tightening the rules on rescue and restructuring aid, while taking account of the role of appropriate levels of aid in cushioning the social effects of restructuring. The Commission therefore set about clarifying the rules applicable to rescue and restructuring aid and framing more strictly the Guidelines according to which it will examine such aid.
- (3) State aid for rescuing firms in difficulty from bankruptcy and helping them to restructure may only be regarded as legitimate subject to certain conditions. It may be justified, for instance, by social or regional policy considerations, by the need to take into account the beneficial role played by small and medium-sized enterprises (SMEs) in the economy or, exceptionally, by the desirability of maintaining a competitive market structure when the disappearance of firms could lead to a monopoly or to a tight oligopolistic situation.

**2. DEFINITIONS AND SCOPE OF THE GUIDELINES AND LINKS WITH OTHER TEXTS ON STATE AID**

**2.1. CONCEPT OF 'A FIRM IN DIFFICULTY'**

- (4) There is no Community definition of what constitutes 'a firm in difficulty'. However, for the purposes of these Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.
- (5) In particular, a firm is, in any event and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines:
- (a) in the case of a limited company <sup>(6)</sup>, where more than half of its registered capital has disappeared <sup>(7)</sup> and more than one quarter of that capital has been lost over the preceding 12 months; or
- (b) in the case of an unlimited company <sup>(8)</sup>, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or
- (c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

<sup>(1)</sup> OJ C 368, 23.12.1994, p. 12.

<sup>(2)</sup> OJ C 67, 10.3.1999, p. 11.

<sup>(3)</sup> OJ C 283, 19.9.1997, p. 2. See also the footnote relating to the heading of Chapter 5.

<sup>(4)</sup> COM(1998) 417 final; COM(1999) 148 final.

<sup>(5)</sup> CSE(97) 1 final.

<sup>(6)</sup> This refers in particular to the types of company mentioned in the first subparagraph of Article 1(1) of Council Directive 78/660/EEC (OJ L 222, 14.8.1978, p. 11), as amended in particular by Directive 90/605/EEC (OJ L 317, 16.11.1990, p. 60).

<sup>(7)</sup> By analogy with the provisions of Council Directive 77/91/EEC (OJ L 26, 30.1.1977, p. 1).

<sup>(8)</sup> This refers in particular to the types of company mentioned in Article 1 of Directive 90/605/EEC.

(6) The usual signs of a firm being in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the company may already have become insolvent or may be the subject of collective insolvency proceedings brought under its domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or creditors.

(7) For the purposes of these Guidelines, a newly created firm<sup>(9)</sup> is not eligible for rescue or restructuring aid, even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets<sup>(10)</sup>.

(8) A company belonging to a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.

## 2.2. DEFINITION OF RESCUE AND RESTRUCTURING AID

(9) Rescue aid and restructuring aid are covered by the same set of guidelines, because in both cases the public authorities are faced with a firm in difficulties and the rescue and the restructuring are often two parts of a single operation, even if they involve different processes.

(10) Rescue aid is by nature temporary assistance. It should make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time the Commission needs to be able to reach a decision on that plan.

<sup>(9)</sup> The creation by a company of a subsidiary merely as a vehicle for receiving its assets and possibly its liabilities is not regarded as the creation of a new firm.

<sup>(10)</sup> The only exceptions of this rule are any cases dealt with by the *Bundesanstalt für vereinigungsbedingte Sonderaufgaben* in the context of its privatisation remit and other similar cases in the new *Länder*, involving companies emerging from a liquidation or a take-over of assets occurring up to 31 December 1999.

(11) Restructuring, on the other hand, will be based on a feasible, coherent and far-reaching plan to restore a firm's long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of these Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

## 2.3. SCOPE

(12) These Guidelines apply to firms in all sectors (except those covered by the ECSC Treaty), without prejudice to any specific rules relating to firms in difficulty in the sector concerned<sup>(11)</sup>. Chapter 5 incorporates the specific rules for agriculture adopted in 1997.

## 2.4. APPLICABILITY OF ARTICLE 87(1) OF THE EC TREATY

(13) State aid for rescuing or restructuring firms in difficulty will, by its very nature, tend to distort competition. In so far as it affects trade between Member States, it falls within the scope of Article 87(1) of the EC Treaty.

(14) Aid for restructuring can take different forms, such as capital injections, debt write-offs, loans, relief from taxes or social security contributions, or loan guarantees. For rescues, however, unless it is expressly stipulated otherwise in some other Community text on State aid, assistance should be limited to loans or loan guarantees (see points 23 to 27).

(15) The source of the aid can be any level of government<sup>(12)</sup>, central, regional and local, and any 'public undertaking', as defined in Article 2 of the 1980 Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations

<sup>(11)</sup> Specific rules of this nature exist for shipbuilding (Regulation (EC) No 1540/98, OJ L 202, 18.7.1998, p. 1), the motor vehicle industry (OJ C 279, 15.9.1997, p. 1) and the aviation sector (OJ C 350, 10.12.1994, p. 5).

<sup>(12)</sup> Including in the case of aid co-financed from Community funds.

between Member States and public undertakings<sup>(13)</sup>. Thus, for example, rescue or restructuring aid may come from State holding companies or public investment companies<sup>(14)</sup>.

- (16) To determine when injections of new capital by public authorities into companies which they own involve elements of aid, the criterion applied is the 'market-economy private investor' principle<sup>(15)</sup>. This provides that in circumstances where a rational private investor operating in a market economy would have made the finance available the provision or guarantee of funding to a company is not regarded as involving aid.
- (17) Where funding is provided or guaranteed by the State to an enterprise that is in financial difficulties, however, it must be deemed likely that the financial transfers involve State aid. Therefore, such financial transactions must be communicated to the Commission in advance, where appropriate through the notification of a general scheme, in accordance with Article 88(3) of the Treaty<sup>(16)</sup>. The presumption of aid is stronger in cases where there is a Community-wide or EEA-wide structural excess of production capacity on a market in which the recipient firm is active or where the industry as a whole is in difficulties.
- (18) The assessment of rescue or restructuring aid should not be affected by changes in the ownership of the business aided.

#### 2.5. COMPATIBILITY WITH THE COMMON MARKET

- (19) Article 87(2) and (3) of the Treaty provide for the possibility of aid falling within the scope of Article 87(1) being regarded as compatible with the common market. Apart from cases of aid to make good the damage caused by national disasters or exceptional occurrences (Article 87(2)(b)), which are not covered here, the only basis whereby aid for rescuing or restructuring firms in difficulty can be deemed compatible is Article 87(3)(c). Under this provision the Commission has the power to authorise 'aid to facilitate the development of certain economic activities (. . .) where such aid does not adversely affect trading conditions to an extent contrary to the common interest.'

<sup>(13)</sup> OJ L 195, 29.7.1980, p. 35, as amended by Directive 93/84/EEC (OJ L 254, 12.10.1993, p. 16).

<sup>(14)</sup> See judgment of the Court of Justice of 22 March 1977 in Case 78/76 *Steinike und Weinlig v Germany*, [1977] ECR 595; *Crédit Lyonnais/Usinor-Sacilor*, Commission press release IP(91) 1045.

<sup>(15)</sup> See the Communication on public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

<sup>(16)</sup> See in particular point 27 of the Communication on public undertakings in the manufacturing sector.

- (20) The Commission considers that aid for rescue and restructuring may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest if the conditions set out in these Guidelines are met. Where the firms to be rescued or restructured are located in assisted areas, the Commission will take the regional considerations referred to in Article 87(3)(a) and (c) into account as described in points 53 and 54.

#### 2.6. OTHER PROVISIONS OF COMMUNITY LAW

- (21) It should be stressed that the Commission cannot authorise aid for rescuing or restructuring firms in difficulty where the terms and conditions of the aid infringe Treaty provisions other than Articles 87 and 88 or secondary legislation.

### 3. GENERAL CONDITIONS FOR THE AUTHORISATION OF RESCUE AND/OR RESTRUCTURING AID NOTIFIED INDIVIDUALLY TO THE COMMISSION

- (22) This chapter deals exclusively with aid measures that are notified individually to the Commission. Under certain conditions, the Commission may authorise rescue or restructuring aid schemes: those conditions are set out in Chapter 4.

#### 3.1. RESCUE AID

- (23) In order to be approved by the Commission, rescue aid as defined in point 12 must:
- (a) consist of liquidity support in the form of loan guarantees or loans<sup>(17)</sup>. In both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Commission;

<sup>(17)</sup> An exception may be made in the case of rescue aid in the banking sector, in order to enable the credit institution in question to continue temporarily carrying on its banking business in accordance with the prudential legislation in force (Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions, OJ L 386, 30.12.1989, p. 14). Any aid granted in a form other than that described in subparagraph (b), for example a capital injection or a subordinated loan, will be taken into account when any compensatory measures under a restructuring plan are examined in accordance with points 35 to 39.

- (b) be linked to loans that are to be reimbursed over a period of not more than twelve months after disbursement of the last instalment to the firm <sup>(18)</sup>;
- (c) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;
- (d) be accompanied on notification by an undertaking on the part of the Member State concerned to communicate to the Commission, not later than six months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated;
- (e) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised (for example, covering wage and salary costs or routine supplies).
- (24) The rescue aid will initially be authorised for not more than six months or, where the Member State concerned has submitted a restructuring plan within that period, until the Commission reaches its decision on the plan. In duly substantiated exceptional circumstances and at the request of the Member State concerned, the Commission may extend the initial six-month period.
- (25) Rescue aid is a one-off operation designed to keep a company in business for a limited period, during which its future can be assessed. On the other hand, repeated rescues that would merely maintain the status quo, postpone the inevitable and in the meantime shift the attendant economic and social problems on to other, more efficient producers or other Member States cannot be allowed.
- (26) If the Member State fails to communicate the information stipulated in (d) of point 23 before the six-month deadline expires and does not make a duly substantiated request for the deadline to be extended, the Commission will initiate proceedings under Article 88(2).
- (27) The approval of rescue aid does not necessarily mean that aid under a restructuring plan will subsequently be

approved; such aid will have to be assessed on its own merits.

### 3.2. RESTRUCTURING AID

#### 3.2.1. Basic principle

- (28) Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and economic problems onto other producers who are managing without aid and to other Member States. The general principle should therefore be to allow the grant of restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the Community interest. This will only be possible if strict criteria are met, and if it is certain that any distortions of competition will be offset by the benefits flowing from the firm's survival (in particular, where it is clear that the net effect of redundancies resulting from the firm going out of business, combined with the effects on its suppliers, would exacerbate local, regional or national employment problems or, exceptionally, where the firm's disappearance would result in a monopoly or tight oligopolistic situation) and, where appropriate, there are adequate compensatory measures in favour of competitors.

#### 3.2.2. Conditions for the authorisation of aid

- (29) Subject to the special provisions for assisted areas, SMEs and the agricultural sector (see points 53, 54 and 55 and Chapter 5), the Commission will approve aid only under the following conditions:
- (a) *Eligibility of the firm*
- (30) The firm must qualify as a firm in difficulty within the meaning of these Guidelines (see points 4 to 8).
- (b) *Restoration of viability*
- (31) The grant of the aid is conditional on implementation of the restructuring plan which must be endorsed by the Commission in the case of all individual aid measures.
- (32) The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the Member State concerned commits itself. The plan must be submitted in all relevant detail to the Commission and

<sup>(18)</sup> Reimbursement of the loan linked to the rescue aid may possibly be covered by the restructuring aid subsequently approved by the Commission.

include, in particular, a market survey<sup>(19)</sup>. The improvement in viability must derive mainly from internal measures contained in the restructuring plan and may be based on external factors such as variations in prices and demand over which the company has no great influence if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.

(33) The restructuring plan should describe the circumstances that led to the company's difficulties, thereby providing a basis for assessing whether the proposed measures are appropriate. It should take account, *inter alia*, of the present state of and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses. It should enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.

(34) The plan should provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital should be enough to enable the restructured firm to compete in the marketplace on its own merits.

(c) *Avoidance of undue distortions of competition*

(35) Measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. Otherwise, the aid should be regarded as 'contrary to the common interest' and therefore incompatible with the common market.

(36) This condition usually takes the form of a limitation on the presence which the company can enjoy on its market or markets after the end of the restructuring period.

<sup>(19)</sup> The items of information which the Commission needs in order to examine the aid satisfactorily are listed in Annex I.

Where the size of the relevant market(s)<sup>(20)</sup> is negligible at Community and at EEA level, or the firm's share of the relevant market(s) is negligible it should be considered that there is no undue distortion of competition. This condition should accordingly be regarded as not normally applying to small or medium-sized enterprises, except where otherwise provided by rules on State aid in a particular sector.

(37) The compulsory limitation or reduction of the company's presence on the relevant market(s) represents a compensatory factor in favour of its competitors. It should be in proportion to the distortive effects of the aid and, in particular, to the relative importance of the firm on its market or markets. The Commission will determine the extent of the limitation or reduction on the basis of the market survey attached to the restructuring plan and, where the procedure has been initiated, on the basis of information supplied by interested parties. The reduction in the firm's presence is to be put into effect through the restructuring plan and any conditions attached thereto.

(38) A relaxation of the need for compensatory measures may be contemplated if such a reduction or limitation is likely to cause a manifest deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation.

(39) Compensatory measures can take different forms according to whether or not the firm is operating in a market where there is excess capacity. In assessing whether or not there is excess capacity on a given market, the Commission can take into account all the relevant data in its possession:

(i) where there is a Community-wide or EEA-wide structural excess of production capacity in a market served by the recipient, the restructuring plan must make a contribution, in proportion to the amount of aid received and its impact on that

<sup>(20)</sup> As defined in point 7.6 of the multisectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998, p. 7): 'The relevant product market(s) for determining market share comprises the products envisaged by the investment project and, where appropriate, its substitutes considered by the consumer (by reason of the products' characteristics, their prices and their intended use) or by the producer (through flexibility of the production installations). The relevant geographic market comprises usually the EEA or, alternatively, any significant part of it if the conditions of competition in that area can be sufficiently distinguished from other areas of the EEA. Where appropriate the relevant market(s) may be considered to be global'. A footnote states that, where the investment concerns the production of intermediate goods, the relevant market may be the market for the final product if most of the production is not sold on the open market.

market, to the improvement of market conditions by irreversibly reducing production capacity. A capacity reduction is irreversible when the relevant assets are rendered permanently incapable of achieving the previous rate of output, or are permanently converted to another use. The sale of capacity to competitors is not sufficient in this case, except if the plant is sold for use in a geographic market in which its continued operation is unlikely to have significant effects on the competitive situation in the Community. The capacity reduction requirements must contribute to a reduction in the recipients firm's presence on its market or markets;

- (ii) where, on the other hand, there is no Community-wide or EEA-wide structural excess of production capacity in a market served by the recipient, the Commission will nevertheless examine whether compensatory measures should be required. Where any such compensatory measures involve a reduction in the capacity of the firm concerned, the necessary reduction could be achieved through the hiving-off of assets or subsidiaries. The Commission will have to examine the compensatory measures proposed by the Member State concerned, whatever form they take, and determine whether they are sufficient in scope to mitigate the potentially distortive effects of the aid on competition. In examining the necessary compensatory measures, the Commission will take account of the state of the market, and in particular its level of growth and the extent to which demand is met.

(d) *Aid limited to the minimum*

- (40) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including through the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. To limit the distortive effect, the amount of the aid or the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. The Commission will accordingly examine the level of the firm's liabilities after restructuring, including the situation after any postponement or reduction of its debts, particularly in the context of its continuation in business following collective insolvency proceedings brought against it under national law<sup>(21)</sup>. Neither should any of the aid go to finance new investment that is not essential for restoring the firm's viability.

- (41) In any event, it must be demonstrated to the Commission that the aid will be used only for the purpose of restoring the firm's viability and that it will not enable the recipient during the implementation of the restructuring plan to expand production capacity, except in so far as this is essential for restoring viability without unduly distorting competition.

(e) *Specific conditions attached to the authorisation of aid*

- (42) In addition to the compensatory measures described in points 35 to 39, and in the event that such provisions have not been adopted by the Member State concerned, the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest. For example, it may require the Member State:

(i) to take certain measures itself (e.g. to open up certain markets to other Community operators);

(ii) to impose certain obligations on the recipient firm (e.g. to refrain from acting as price leader on certain markets);

(iii) to refrain from granting other types of aid to the recipient firm during the restructuring period.

(f) *Full implementation of restructuring plan and observance of conditions*

- (43) The company must fully implement the restructuring plan that has been accepted by the Commission and must discharge any other obligations laid down in the Commission Decision. The Commission will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid.

- (44) Where restructuring operations cover several years and involve substantial amounts of aid, the Commission may require payment of the restructuring aid to be split into instalments and may make payment of each instalment, subject to:

(i) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or

<sup>(21)</sup> See the third paragraph of point 6.

(ii) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

(g) *Monitoring and annual report*

(45) The Commission must be put in a position to make certain that the restructuring plan is being implemented properly, through detailed regular reports communicated by the Member State concerned.

(46) In the case of aid to large firms, the first of these reports will normally have to be submitted to the Commission not later than six months after approval of the aid. Reports will subsequently have to be sent to the Commission at least once a year, at a fixed date, until the objectives of the restructuring plan can be deemed to have been achieved. They must contain all the information the Commission needs in order to be able to monitor the implementation of the restructuring programme, the timetable for payments to the company and its financial position and the observance of any conditions or obligations laid down in the decision approving the aid. They must in particular include all relevant information on any aid for any purpose which the company has received, either on an individual basis or under a general scheme, during the restructuring period (see points 90 to 93). Where the Commission needs timely confirmation of certain key items of information, e.g. on closures or capacity reductions, it may require more frequent reports.

(47) In the case of aid to small or medium-sized enterprises, transmission each year of a copy of the recipient firm's balance sheet and profit and loss account will normally be sufficient, except where stricter conditions have been laid down in the decision approving the aid.

### 3.2.3. 'One time, last time' condition

(48) In order to prevent firms from being unfairly assisted, restructuring aid should be granted once only. When planned restructuring aid is notified to the Commission, the Member State must specify whether the firm concerned has in the past already received restructuring aid, including aid granted before entry into force of these Guidelines and any unnotified aid<sup>(22)</sup>. If so, and where less than 10 years has elapsed since the restructuring

period came to an end<sup>(23)</sup> or implementation of the plan has been halted, the Commission will normally<sup>(24)</sup> allow further restructuring aid only in exceptional and unforeseeable circumstances for which the company is not responsible<sup>(25)</sup>. An unforeseeable circumstance is one which could in no way be anticipated when the restructuring plan was drawn up.

(49) The application of this rule will in no way be affected by any changes in ownership of the recipient firm following the grant of aid or by any judicial or administrative procedure which has the effect of putting its balance sheet on a sounder footing, reducing its liabilities or wiping out its previous debts where it is the same firm that is continuing in business.

(50) Where a firm over assets of another firm, and in particular one that has been the subject of one of the procedures listed in point 49 or of collective insolvency proceedings brought under national law, and has itself already received rescue or restructuring aid, the purchaser is not subject to the 'one time, last time' requirement, provided that the following three conditions are met:

(a) the purchaser is clearly separate from the old firm;

(b) the purchaser has acquired the old firm's assets at market prices (thereby avoiding any shifting to the new company of aid paid to the old one);

<sup>(23)</sup> Unless otherwise specified, the restructuring period will normally come to an end when the deadline for implementation of the various measures provided for in the restructuring plan expires (see the sixth indent in point IV of Annex I).

<sup>(24)</sup> Given the degree of liberalisation and specific features of each sector, two situations should be noted:

— in the air transport sector, entirely liberalised since 1997, the Commission will apply the 'one time, last time' principle within the limits and conditions of the guidelines on State aid in the aviation sector.

— in other sectors, if the effects of the liberalisation of Community markets that were previously closed to competition have created new economic conditions, derogations may be considered.

<sup>(25)</sup> For the purposes of this paragraph, aid granted before 1 January 1996 to enterprises in the former GDR and declared compatible with the common market by the Commission is not taken into account. In addition, the paragraph does not apply to cases of aid to such enterprises notified before 31 December 2000. However, the Commission considers that restructuring aid should normally only need to be granted once and will examine such cases in the light of this principle.

<sup>(22)</sup> With regard to unnotified aid, the Commission will take account in its analysis of the possibility that the aid could have been declared compatible with the common market other than as restructuring aid.

(c) the winding-up or court-supervised administration and purchase of the old company are not merely devices aimed at evading application of the 'one time, last time' principle (the Commission could determine that this is the case if, for example, the difficulties encountered by the purchaser were clearly foreseeable when it took over the assets of the old company).

(51) It should, however, be stressed here that, since it constitutes aid for initial investment, aid for the purchase of the assets cannot be authorised under these Guidelines (see also point 7).

### 3.2.4. Amendment of the restructuring plan

(52) Where restructuring aid has been approved, the Member State concerned may, during the restructuring period, ask the Commission to agree to changes being made to the restructuring plan and the amount of the aid. The Commission may allow such changes where they meet the following conditions:

(a) the revised plan must still show a return to viability within a reasonable timescale;

(b) if the amount of the aid is increased, any requisite compensatory measures must be more extensive than those initially imposed;

(c) if the proposed compensatory measures are smaller than those initially planned, the amount of the aid must be correspondingly reduced;

(d) the new timetable for implementation of the compensatory measures may be delayed with respect to the timetable initially adopted only for reasons outside the company's or the Member State's control. If that is not the case, the amount of the aid must be correspondingly reduced.

### 3.2.5. Restructuring aid in assisted areas

(53) Economic and social cohesion being a priority objective of the Community under Article 158 of the EC Treaty and other policies being required to contribute to this objective under Article 159<sup>(26)</sup>, the Commission must take the needs of regional development into account

<sup>(26)</sup> Article 159 of the EC Treaty provides *inter alia* that 'the formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement'.

when assessing restructuring aid in assisted areas. The fact that an ailing firm is located in an assisted area does not, however, justify a permissive approach to aid for restructuring: in the medium to long term it does not help a region to prop up companies artificially. Furthermore, given the limited resources available to promote regional development it is in the regions' own best interest to apply these scarce resources to develop as soon as possible alternative activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to firms in assisted areas.

(54) Thus, the criteria listed in points 29 to 52 are equally applicable to assisted areas, even when the needs of regional development are considered. In assisted areas however, and unless otherwise stipulated in rules on State aid in a particular sector, the conditions for authorising aid may be less stringent as regards the implementation of compensatory measures. If regional development needs justify it, the required capacity reduction will be smaller in assisted areas than in non-assisted areas and a distinction will be drawn between areas eligible for regional aid under Article 87(3)(a) of the Treaty and those eligible under Article 87(3)(c) so as to take account of the greater severity of the regional problems in the former areas.

### 3.2.6. Aid for restructuring small and medium-sized enterprises

(55) Aid to firms in the small to medium-sized category<sup>(27)</sup> tends to affect trading conditions less than that granted to large firms. This also applies to aid to help restructuring, so that the conditions laid down in points 29 to 47 are applied less strictly: the grant of restructuring aid to SMEs will not usually be linked to compensatory measures (see points 35 to 39), unless this is otherwise stipulated in rules on State aid in a particular sector; and the requirements regarding the content of reports will be less stringent (see points 45, 46 and 47). On the other hand, the 'one time, last time' principle (points 48 to 51) applies in full to SMEs.

### 3.2.7. Aid to cover the social costs of restructuring

(56) Restructuring plans normally entail reductions in or abandonment of the affected activities. Such retrenchments are often necessary in the interests of rationalisation and efficiency, quite apart from any

<sup>(27)</sup> As defined in the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).



capacity reductions that may be required as a condition for granting aid (particularly in cases where there is a Community-wide or EEA-wide structural excess of production capacity — see points 35 to 39). Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.

(57) Member States' labour legislation may comprise general social security schemes under which redundancy benefits and early retirement pensions are paid direct to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 87(1) in so far as the State deals direct with employees, and the company is not involved.

(58) Besides direct redundancy benefit and early retirement provision for employees, general social support schemes frequently provide for the government to cover the cost of benefits which the company grants to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 87(1) for firms undertaking restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used <sup>(28)</sup>.

(59) The obligations a company itself bears under employment legislation or collective agreements with trade unions, to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. That being so, any contribution by the State to these costs must be counted as aid. This is true regardless of whether the payments are made direct to the firm or are administered through a government agency to the employees.

(60) The Commission has a positive approach to such aid, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship, and often only serves

to even out differences in the obligations placed on companies by national legislation.

(61) Besides meeting the cost of redundancy payments and early retirement, aid is commonly provided in connection with a particular restructuring case for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. The Commission consistently takes a favourable view of such aid.

(62) The type of aid described in points 56 to 61 should be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees is disregarded for the purposes of determining the extent of the compensatory measures referred to in points 35 to 39.

(63) In the common interest, the Commission will ensure in the context of the restructuring plan that social effects of the restructuring in Member States other than the one granting aid are kept to the minimum.

#### 4. AID SCHEMES FOR SMES

##### 4.1. GENERAL PRINCIPLES

(64) The Commission will authorise aid schemes for rescuing and/or restructuring small or medium-sized enterprises in difficulty only where the firms concerned correspond to the Community definition of SMEs. Subject to the following specific provisions, the compatibility of such schemes will be assessed in the light of the conditions set out in Chapters 2 and 3. Any aid which is granted under a scheme and does not meet one of those conditions must be notified individually and approved in advance by the Commission.

##### 4.2. ELIGIBILITY

(65) Unless otherwise stipulated in rules on State aid in a particular sector, awards of aid, under schemes authorised from now on, to small or medium-sized enterprises will be exempted from individual notification only where the enterprise concerned meets at least one of the three criteria set out in point 5. Aid to enterprises that do not meet any of those three criteria must be notified individually to the Commission so that it can assess whether they qualify as firms in difficulty.

<sup>(28)</sup> In its judgment of 26 September 1996 in Case C-241/94, (*France v Commission* [1996] ECR I-4551), (*Kimberly Clark Sopalin*), the Court of Justice confirmed that the system of financing on a discretionary basis by the French authorities, through the National Employment Fund, was liable to place certain undertakings in a more favourable situation than others and thus to qualify as aid within the meaning of Article 87(1) of the Treaty. (The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the common market.)

#### 4.3. CONDITIONS FOR THE AUTHORISATION OF RESCUE AID SCHEMES

(66) In order to be approved by the Commission, rescue aid schemes must satisfy the conditions set out in (a), (b), (c) and (e) of point 23. Condition (d) set out in point 23 is replaced by the following, for the purposes of this Chapter:

(d) Rescue aid may be granted for not more than six months, during which time and analysis must be made of the firm's position. Before the end of that period the Member State should either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary.

Any rescue aid granted for longer than six months must be individually notified to the Commission.

#### 4.4. CONDITIONS FOR THE AUTHORISATION OF RESTRUCTURING AID SCHEMES

(67) The Commission will authorise restructuring aid schemes only if the grant of aid is conditional on full implementation by the recipient of a restructuring plan that has been approved by the Member State concerned and meets the following conditions:

(a) *Restoration of viability*: the criteria set out in points 31 to 34 apply;

(b) *Avoidance of undue distortions of competition*: since aid to SMEs tends to distort competition less, the principle set out in points 35 to 39, namely that the recipient firm's presence on the relevant market(s) should be reduced, does not apply unless it is otherwise stipulated in rules on State aid in a particular sector. Schemes should nevertheless provide that recipient firms must not increase their capacity during the restructuring plan;

(c) *Aid limited to the minimum necessary*: the principles set out in points 40 and 41 apply;

(d) *'One time, last time'-principle*: the rule laid down in points 48 to 51 applies. However, Member States must notify measures individually to the Commission where an exception is made to this principle:

(i) in exceptional and unforeseeable circumstances for which the company is not responsible;

(ii) where a firm takes over assets of another firm which has itself already received rescue or restructuring aid;

(e) *Amendment of the restructuring plan*: any changes to the plan must comply with the rules set out in point 52.

#### 4.5. COMMON CONDITION FOR THE AUTHORISATION OF RESCUE AND/OR RESTRUCTURING AID SCHEMES

(68) Schemes must specify the maximum amount of aid that can be awarded to any one firm as part of a rescue and/or restructuring operation, including where the plan is modified. Any aid exceeding that amount must be notified individually to the Commission. The maximum amount of aid may not be more than EUR 10 million, including any aid from other sources or under other schemes.

#### 4.6. MONITORING AND ANNUAL REPORTS

(69) Points 45, 46 and 47 do not apply to aid schemes. However, a condition of approval will be that reports are presented on the scheme's operation, normally on an annual basis, containing the information specified in the Commission's instructions on standardised reports<sup>(29)</sup>. The reports must also include a list of all beneficiary firms indicating, for each of them:

(a) the company name;

(b) its sectoral code, using the NACE<sup>(30)</sup> two-digit sectoral classification codes;

(c) the number of employees;

(d) annual turnover and balance sheet value;

(e) the amount of aid granted;

(f) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;

<sup>(29)</sup> See letter to the Member States of 22 February 1994: Competition law in the European Communities, Vol. IIA.

<sup>(30)</sup> Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

- (g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

## 5. PROVISIONS APPLICABLE TO AID FOR RESTRUCTURING IN THE AGRICULTURAL SECTOR <sup>(31)</sup>

### 5.1. CAPACITY REDUCTIONS

- (70) Points 35 to 39, and 55 and 67(b) provide that the requirement for compensatory measures is not normally applied in the case of small and medium-sized enterprises, unless otherwise stipulated in sector-specific State aid rules. In the agricultural sector, the Commission will normally require compensatory measures, in accordance with the principles set out in points 35 to 39, to be carried out by all recipients of restructuring aid, whatever their size. However, Member States may alternatively apply the special rules for agriculture set out in points 73 to 82.

### 5.2. DEFINITION OF EXCESS CAPACITY

- (71) In the agricultural sector and for the purposes of these Guidelines, structural excess capacity is defined by the Commission on a case-by-case basis taking account in particular of:
- (a) the extent and trend for the relevant product category over the past three years of market stabilisation measures, especially export refunds and withdrawals from the market, development of world market prices, and the presence of sector limits in Community legislation. Primary products subject to production quotas shall be deemed not to have excess capacity;
  - (b) as regards fisheries and aquaculture, the specific features of the sector and the Community rules governing it, and in particular the Guidelines for the examination of State aid to fisheries and aquaculture <sup>(32)</sup> and Council Regulation (EC) No 2468/98 <sup>(33)</sup>.

### 5.3. ELIGIBILITY FOR RESCUE AND RESTRUCTURING AID SCHEMES

- (72) Point 65, concerning eligibility for rescue and restructuring aid schemes for SMEs and more specifically the exemption from the requirement to notify individually

<sup>(31)</sup> Covering, for the purposes of the Guidelines, all operators involved in the production of, and/or trade in, products of Annex I to the Treaty, including fisheries and aquaculture, but having due regard to the specific features of the sector and the Community rules governing it.

<sup>(32)</sup> OJ C 100, 27.3.1997, p. 12.

<sup>(33)</sup> OJ L 312, 20.11.1998, p. 19.

any awards of such aid, does not apply to the agricultural sector (production, processing and marketing). In that sector and under aid schemes authorised from now on, awards of aid to SMEs that do not fulfil the conditions set out in the point may nevertheless be exempted from individual notification.

### 5.4. CAPACITY REDUCTIONS

- (73) The Commission will, at the request of the Member State concerned, and as an alternative to the general provisions of these Guidelines concerning capacity reduction, apply the following provisions for operators in the agricultural sector.

#### (a) General case

- (74) Where there is a structural excess of production capacity, the requirement of irreversibly reducing or closing capacity set out in points 35 to 39 applies. However, in the case of primary agricultural production, this requirement is replaced by the requirement that the capacity reduction or closure continues for at least five years, as follows:

- (i) for measures targeted on particular products or operators the production capacity reduction must normally attain 16 % <sup>(34)</sup> of that for which the restructuring aid is effectively granted;
- (ii) for other measures not so targeted the abovementioned capacity reduction must normally attain 8 % <sup>(34)</sup> of the value of output of products with structural excess for which the restructuring aid is effectively granted.

- (75) In determining eligibility for, and amounts of, restructuring aid, no account shall be taken of the burdens of compliance with Community quota and related provisions applicable at the level of individual operators.

#### (b) Special case for small agricultural enterprises (SAEs)

- (76) For the purposes of these Guidelines SAEs are defined as those operators in the agricultural sector with no more than 10 annual work units.

<sup>(34)</sup> For restructuring aid granted in assisted areas, including less favoured regions, the capacity reduction requirement will be reduced by two percentage points.

(77) For SAEs, the requirement of irreversibly reducing or closing capacity may be deemed to be achieved at the relevant market level (not necessarily involving exclusively or even any of the beneficiaries of the restructuring aid). Subject to compliance with common agricultural policy provisions, Member States may choose whatever capacity reduction system they wish to apply to SAEs. In such cases, Member States must, as a general rule, demonstrate that:

- (i) for measures targeted on particular products or operators the system would in the relevant Member State, reduce production capacity of product(s) with structural excess by 10 %<sup>(34)</sup> of that which the restructuring aid is effectively granted;
- (ii) for other measures not so targeted, this capacity reduction must attain 5 %<sup>(34)</sup> of the value of output of products with structural excess for which the restructuring aid is actually granted. This reduction may be either products which actually benefit from the restructuring aid or any other Annex I products with structural excess.

The Member State must also demonstrate that the capacity reduction would be supplementary to any applicable in the absence of the restructuring aid.

(78) Where the capacity reduction is not sought at the level of the beneficiary of the aid, measures to achieve the reduction must be implemented no later than two years after the threshold set out in points 79, 80 and 81 has been attained.

(c) *Particular circumstances for all operators in the agricultural sector*

(79) In this sector even very small amounts of aid are capable of fulfilling the conditions of Article 87(1) of the Treaty. However, in recognition of the practical problems associated with capacity reduction at the level of primary agricultural production (and indirectly in the processing and marketing of products under Annex I of the Treaty), yet recognising the common interest to be eligible for exemption under Article 87(3)(c), the Commission, subject to adherence to all other conditions, will waive the capacity reduction requirements in the following situations:

- (i) for measures aimed at any particular category of products or operators, where the totality of

decisions taken in favour of all beneficiaries over any consecutive twelve-month period does not involve a quantity of products which exceeds 3 % of the total annual production of such products in that country;

- (ii) for other measures not so aimed, where the totality of decisions taken in favour of all beneficiaries over any consecutive twelve-month period does not involve a value of product which exceeds 1,5 % of the total annual value of agricultural production in that country.

(80) At the request of the Member State concerned, the geographic references under (i) and (ii) of point 79 may, for any measure, be determined at a regional level. In all cases, measurement of the production of a country (or a region) shall be based on normal production levels (in general, the average of the previous three years), and, as regards the quantity or the value of production of beneficiaries, be representative of that of their enterprises prior to the decision to grant aid.

(81) Exemption from the capacity reduction requirement shall in no case imply tolerance of investment aid related to activities subject to sectoral limits.

(82) In cases where the limits for exemption from capacity reduction pursuant to points 79, 80 and 81 are exceeded:

- (i) the capacity reduction to be achieved shall be determined on the basis of total aided capacity, not only that part exceeding the thresholds;

- (ii) as regards beneficiaries other than SAEs which already have been accepted for aid prior to the thresholds being attained, the capacity reduction may be achieved through measures analogous to those for SAEs under points 76, 77 and 78.

##### 5.5. 'ONE TIME, LAST TIME' CONDITION

(83) The principle that restructuring aid should be granted once only also applies to the agricultural sector. However, by way of derogation from points 48 to 51 and 67, as regards individual awards of aid and rescue and restructuring schemes concerning primary agricultural production, the period during which further aid may not be granted except in exceptional and unforeseeable circumstances for which the company is not

responsible is reduced to five years. Derogations from this principle do not need to be notified individually to the Commission, provided that they are made in accordance with conditions set out in the scheme and approved by the Commission. Amendments to rescue and restructuring schemes which are intended to take account of market developments that were not foreseeable at the time the schemes were approved by the Commission will be examined on a case-by-case basis.

#### 5.6. MONITORING AND ANNUAL REPORT

- (84) The rules set out in Chapters 3 and 4 apply to monitoring and annual reports in the agricultural sector, except for the obligation to supply a list of all aid beneficiaries and certain items of information on each of them (points 69(a) to (g)). The latter obligation does not apply to schemes for SAEs.
- (85) Where recourse has been had to the provisions of points 73 to 82, the report must also include data showing either:
- (a) the quantity (or value) of production which has effectively benefited from the restructuring aid, and data on capacity reduction achieved pursuant to those points; or
  - (b) that the conditions for exemption from capacity reduction according to points 79, 80 and 81 have been fulfilled.

#### 5.7. DEFINITION OF 'ASSISTED AREAS'

- (86) For the purposes of these Guidelines, 'assisted areas' (see points 53 and 54) shall also include, for operators in the agricultural sector, the less favoured areas defined in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations<sup>(35)</sup>.

### 6. APPROPRIATE MEASURES UNDER ARTICLE 88(1)

- (87) The Commission is proposing, under Article 88(1) of the Treaty, that the Member States adopt appropriate measures as set out below, with regard to their existing aid schemes. The Commission will make authorisation of any future scheme conditional on compliance with the provisions below.

#### 6.1. INDIVIDUAL NOTIFICATION OF ANY AID FOR TANGIBLE INVESTMENT DURING THE RESTRUCTURING PERIOD

- (88) Where a large enterprise receives restructuring aid examined under these Guidelines, the grant of any other investment aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Commission's assessment of the extent of the compensatory measures required.

- (89) During the period for restructuring such an enterprise, any aid intended to encourage tangible investment (whether it be to promote regional development, environmental protection or any other objective) awarded after 30 June 2000 must be notified individually, unless it is covered by the *de minimis* rule<sup>(36)</sup>.

#### 6.2. NEED TO INFORM THE COMMISSION OF ANY AID GRANTED TO THE RECIPIENT FIRM

- (90) Where a large enterprise receives restructuring aid examined under these Guidelines, monitoring of the satisfactory implementation of the Commission's decisions on such aid requires a large measure of transparency with regard to any further aid which the firm might receive, even in accordance with a scheme that has already been authorised and even where such aid is not subject to individual notification under points 88 and 89.

- (91) With effect from 30 June 2000, notifications of aid for restructuring a large enterprise must indicate, for information, all other aid of any kind which is planned to be granted to the recipient firm during the restructuring period, unless it is covered by the *de minimis* rule.

- (92) Likewise, the reports to be submitted in accordance with points 45, 46 and 47 of these Guidelines must indicate any other aid granted to the recipient firm during the period covered, and any other aid which is planned to be granted to the recipient firm during the restructuring period, unless it is covered by the *de minimis* rule.

- (93) The Commission reserves the right to initiate proceedings under Article 88(2) of the Treaty against all aid to a particular firm if the grant of aid under approved schemes is liable to circumvent the requirements of these Guidelines.

<sup>(35)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(36)</sup> OJ C 68, 6.3.1996, p. 9.

### 6.3. ADAPTATION OF EXISTING RESCUE OR RESTRUCTURING AID SCHEMES IN THE LIGHT OF THESE GUIDELINES

- (94) Member States must adapt their existing rescue and restructuring aid schemes which are to remain in operation after 30 June 2000 in order to bring them into line with these Guidelines, and in particular with the requirements of Chapter 4, after that date.
- (95) To enable the Commission to monitor the adaptation process, Member States must let it have a list of all such schemes before 31 December 1999. They must subsequently, and in any event before 30 June 2000, provide it with sufficient information to enable it to check that the schemes have indeed been modified in accordance with these Guidelines.

## 7. ENTRY INTO FORCE; DURATION AND REVIEW OF THE GUIDELINES

### 7.1. AMENDMENT OF THE REGIONAL AID GUIDELINES

- (96) Point 4.4 of the Guidelines on national regional aid<sup>(37)</sup> is hereby amended by deleting the text from the word 'unless' up to the end of that point. That text excluded from the scope of 'initial investment' the purchase of an establishment from a firm in difficulty, and thus disqualified it for regional aid. That exclusion therefore no longer operates. However, where an establishment is purchased from a firm in difficulty, it must be demonstrated in particular that the condition laid down in point 4.5, namely that the transaction takes place at market conditions, has been fulfilled.

### 7.2. ENTRY INTO FORCE AND DURATION

- (97) Subject to the provisions set out below, these Guidelines shall enter into force on the date of their publication in the *Official Journal of the European Communities*. They shall remain in force, unless otherwise stipulated in any new decision, for five years.

### 7.3. AID TO SMES

- (98) Aid for rescuing and restructuring SMEs individually notified before 30 April 2000 will be assessed in the light of the guidelines in force before adoption of this text. The extension of those guidelines, which was notified to Member States and published in the *Official Journal of the European Communities* on 10 March 1999 (see footnote 2) is therefore renewed for such aid.
- (99) Any scheme is nevertheless subject to the appropriate measure referred to in points 94 and 95 where the scheme is intended to remain in operation after 30 June 2000.

### 7.4. AID TO LARGE ENTERPRISES

- (100) Subject to the provisions set out below, the Commission will assess the compatibility with the common market of any aid for rescuing or restructuring large enterprises, on the basis of these Guidelines once they are published in the *Official Journal of the European Communities*.

However, notifications registered by the Commission before that date will be examined in the light of the criteria in force at the time of notification.

### 7.5. NON-NOTIFIED AID

- (101) The Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty:
- (a) on the basis of these Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Communities*;
- (b) on the basis of the Guidelines in force at the time the aid is granted in all other cases.

<sup>(37)</sup> OJ C 74, 10.3.1998, p. 9.

## ANNEX I

**NOTIFICATION FORM FOR INDIVIDUAL GRANTS OF RESTRUCTURING AID****I. Information on the company**

- Company name;
- Legal status;
- Sector in which it operates, with corresponding NACE code;
- Names of the main shareholders and extent of their holdings;
- List of shareholders' agreements (creation of a hard core, purchase option, etc.);
- If the company belongs to a group, copy of the full, up-to-date organisation chart of the whole of the group, showing the links between its members (capital and voting rights);
- If the company originates from a purchase of assets following liquidation or court-supervised administration proceedings, also give the above details for the firm(s) concerned;
- Location of all main production sites throughout the world, with workforce;
- If the company is treated as an SME, the Member State must supply evidence that it fulfils all the criteria of the Community definition. If that is the case, it must explain why the company does not qualify for a restructuring aid scheme for SMEs (either there is no such scheme or the company does not meet the eligibility criteria);
- A copy of the last three profit and loss accounts (if possible) or at least of the most recent one;
- A copy of any court decision appointing an administrator or opening an investigation into the company.

**II. Market surveys**

The Member State must supply a copy of the survey of the market(s) served by the firm in difficulty, with the name of the organisation which carried it out. The market survey must give in particular:

- a precise definition of the market covered by the survey;
- the names of the company's main competitors with their shares of the world, Community or domestic market, as appropriate;
- the evolution of the company's market shares in recent years;
- an assessment of total production capacity and demand at Community level, concluding whether or not there is excess capacity on the market;
- Community-wide forecasts for trends in demand, aggregate capacity and prices on the market over the five years ahead.

**III. Description of the aid**

- Demonstrate that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within a group;
- State whether the company has already received rescue aid and, if so, give the approval date and attach the Member State's commitment to submit a restructuring or liquidation plan;
- State whether the company or any of its subsidiaries in which it holds not less than 25 % of the capital or the voting rights have in the past already received restructuring aid or aid regarded as such. If so, give the references of the previous Commission decisions;

- Indicate the form to be taken by the aid and the total amount of the financial benefit involved;
- Describe the compensatory measures proposed with a view to mitigating the distortive effects on competition at Community level;
- Specify all the aid of any kind which the firm is likely to receive before the end of its restructuring period, unless it is covered by the 'de-minimis' rule.

#### IV. Restructuring plan

The Member State must supply a restructuring plan drawn up in accordance with points 29 to 47 and containing at least the following information:

- presentation of the different market assumptions arising from the market survey;
- analysis of the reason why the firm has run into difficulty;
- presentation of the proposed future strategy for the firm;
- description of the different restructuring measures planned and their cost;
- comparative assessment of the economic and social consequences, at regional and/or national level, of disappearance of the firm in difficulty and of implementation of the restructuring plan;
- timetable for implementing the different measures and final deadline for implementing the restructuring plan in its entirety;
- very precise description of the financial arrangements for the restructuring:
  - use of capital still available,
  - sale of assets or subsidiaries to help finance the restructuring,
  - financial commitment by the different private shareholders and the main lending banks,
  - amount of public assistance and demonstration of the need for that amount,
  - where appropriate, grant of repayable loans or insertion of a 'better fortunes' clause to secure reimbursement of the aid;
- projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;
- record of the discussion on the planned restructuring held with the trade unions representing the firm's employees;
- name(s) of the author(s) of the restructuring plan and date on which it was drawn up.

#### V. Undertaking by the Member State

The Member State must undertake to give, in the reports on restructuring aid that has been allowed, all relevant information on aid of any kind granted to the firm receiving restructuring aid, whether under a scheme or not, until the restructuring period comes to an end.

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## ANNEX II

**NOTIFICATION FORM FOR RESCUE AID****Essential information on the company**

Company name:

Legal status:

Sector in which it operates:

Workforce (consolidated where appropriate):

Operating costs and financial charges over the last 12 months:

Maximum amount to be loaned:

Name of lender:

**Essential supporting documents to be supplied**

- latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law;
  - an undertaking by the Member State to submit to the Commission, within not more than six months of the date of approval of the rescue aid, either a restructuring plan, or a liquidation plan, or proof that both the loan and the aid have been reimbursed in full;
  - a liquidity plan for the six months ahead, indicating the amounts to be borrowed in the short term;
  - a copy of the offer of a loan (linked to the rescue aid) to the firm in difficulty, specifying the conditions for the payment of the amounts loaned and the terms of reimbursement;
  - a copy of the draft guarantee covering the loan in question where it is to be guaranteed.
-