



EUROPEAN COMMISSION

Brussels, 16.11.2011
C(2011) 8317 final

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

Subject: SA. 32012 - Portugal

Modification of the aid scheme for the modernisation of enterprises (SIRME)

Procedure

- (1) The Portuguese authorities notified to the Commission the above mentioned aid scheme on 30 November 2010. The Commission found the notification incomplete and requested additional information on the measure at hand by letters of 6 January, 31 March and 18 July 2011. The Portuguese authorities provided the requested information by letters of 3 February, 18 May and 12 August 2011. The Portuguese authorities provided further information by message dated 19 September 2011 and registered at the Commission on 21 September 2011. The Commission requested final clarifications by a letter of 6 October 2011 to which Portugal replied on 13 October 2011.

Description of the aid

- (2) The notified aid scheme is intended to prolong and to introduce several alterations to a scheme for the modernisation of enterprises (SIRME) which was initially approved by the

S. Ex.^a o Ministro dos Negócios Estrangeiros
Paulo PORTAS
Largo do Rilvas
P – 1399-030 - Lisboa

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Telephone: 00-32-(0)2-299.11.11.

Commission in 1998 and has since been subject to several modifications authorized by the Commission.¹

- (3) The legal basis of the revised SIRME consists of a draft decree-law and an implementing Regulation not yet approved under national procedures.
- (4) The overall budget of the notified measure is EUR 137.3 million. The scheme will apply from the date of the Commission decision approving this scheme, until 31 October 2012².

¹ The Commission first authorized the SIRME scheme by a decision of 22/12/1998 (aid scheme NN 100/1998 (ex – N 393/1998). The validity of this scheme was later extended until 31/12/2003 by the Commission on 07/03/2000 (Aid scheme N 8/2000). By decision of 20/12/2001 the Commission authorized a further modification of the SIRME scheme (N537/2001).

² The previous scheme approved by a Commission decision of 20/12/2001 (N 537/2001) has in the meantime expired on 31 December 2010, after Portugal had notified the present measure.

General principles

- (5) The scheme is aimed at facilitating the funding of financial consolidation and industrial restructuring operations of small and medium sized enterprises³ which are in financial difficulty.
- (6) The aid will be granted by a contract concluded between the beneficiary and an investment fund called "Fund for the Revitalization and Modernisation of Business" (FRME), which is under the control of the Portuguese Institute to Support Small and Medium-sized Enterprises and Innovation (IAPME), the body responsible for managing SIRME.
- (7) The granting of aid under the scheme is subject to a business restructuring and financial consolidation plan ("the restructuring plan") that should lead to the medium to long term viability of the beneficiary enterprise as measured by a minimum level of financial autonomy (ratio of own funds to net assets) of 25%.
- (8) The entities responsible for the management of the beneficiary firm must demonstrate their credentials for business management and their ability to manage the implementation of the restructuring plan.
- (9) No aid shall be awarded to companies operating in the agricultural sector, sports clubs, public limited liability companies in the sports industry, enterprises that are part of a business group, enterprises that are active in a market suffering from long-term overcapacity, enterprises whose initial financial situation was insecure, and newly created enterprises defined as enterprises which have been operating for less than three years at the time they submit their application for aid under the scheme. The granting of any form of aid to large enterprises under this scheme shall be subject to prior notification to and approval by the European Commission. Large enterprises are firms that do not meet the conditions for classification as an SME under EU law⁴.
- (10) Portugal, in its submission to the Commission dated 12 August 2011, confirmed that the mere purchase of assets by another company is not eligible for restructuring aid under the notified scheme.

Eligibility

- (11) Only SMEs in financial difficulty are eligible for aid under this scheme. For the purposes of this scheme, a firm shall be deemed to be in financial difficulty when:
 - (a) In the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding twelve months;

³ Commission Recommendation concerning the definition of micro, small and medium-sized enterprises, OJ C(2003) 1422, 06.05.2003, p. 36.

⁴ See footnote 3.

- (b) In the case of a company where at least some members have unlimited liability for the debt of the company, 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 twelve months;
- (c) It is in a financial position that entitles it to request the initiation of national insolvency proceedings.

Conditions for granting the aid

- (12) Any application for aid under SIRME, will be subject to a prior analysis of the firm's economic and financial viability, identification of the measures required for successful restructuring, calculation of funding requirements and contribution of each participant to the process. In this regard, the restructuring plan must include in particular reorganisation and rationalisation of activities on a more efficient basis, withdrawal from loss-making activities, diversification towards more profitable activities and a market survey.
- (13) The business restructuring must be complemented by financial consolidation via an increase of the firm's resources by the current shareholders, the entrance of new shareholders, and the renegotiation of debts, which might include their consolidation or even reduction, as well as the contracting of new loans.
- (14) The aid will normally be granted in the form of an increase in the capital of the beneficiary firm however, it may also take other forms such as loans, guarantees and tax concessions. The aid amount must be limited to the minimum necessary for the restructuring of the company.
- (15) As regards eligible costs, it will not be acceptable for restructuring plans to be limited to financial aid designed to make good past losses without tackling the reasons for those losses. The improvement in viability must derive mainly from internal measures and it may be based on external factors over which the company has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring must involve the permanent abandonment of activities which would remain loss-making after restructuring
- (16) In the case of medium-sized enterprises, the restructuring plan must include compensatory measures. These measures may comprise, among others, divestment of assets, reductions in capacity or market presence, and reduction of barriers to entry on the markets concerned. The compensatory measures must be in proportion to the distortive effects of the aid to be granted for business revitalisation and modernisation, and, in particular, to the size and the relative importance of the firm on its markets. Closure of loss-making activities which would at any rate be necessary to restore the firm's viability will not be considered as compensatory measures. Compensatory measures will not normally apply to small enterprises except where the beneficiary is active in a market suffering from long-term overcapacity or where otherwise provided for by rules on State aid in a particular sector.
- (17) The production capacity of the enterprise undergoing the restructuring must not rise as a result of the receipt of aid.

- (18) Aid shall be limited to the minimum required to allow implementation of the restructuring plan. Without prejudice to the securing of other sources of funding, the beneficiary must contribute from its own resources to the implementation of the business restructuring plan. The own contribution of the beneficiary towards the restructuring costs shall amount to at least 25% for small enterprises and at least 45% for medium sized enterprises.
- (19) The Portuguese authorities committed to apply the provisions of the points 52 to 54 of the Guidelines in case of changes to any approved restructuring plans.

Common conditions for the authorisation of rescue and/or restructuring aid schemes

- (20) The maximum value of financial aid to be granted under this scheme shall not exceed EUR 2 500 000 for each business restructuring plan. Aids granted under this scheme may not be cumulated with any other similar aids for the same eligible expenses.
- (21) The "one time, last time" principle, whereby aid for business restructuring can generally be granted only once to each individual enterprise, must be respected.
- (22) The SIRME scheme will not allow for measures where one company takes over assets of another firm which has itself already received rescue or restructuring aid.

Monitoring and Annual reports

- (23) The Portuguese authorities committed to provide the Commission with annual reports according to point 86 of the Guidelines. These reports will include a list of all beneficiaries, specifying for each of them the following elements: the company name, the company's sectoral code; the number of employees; the annual turnover and balance sheet value; the amount of aid granted; the amount and form of the beneficiary's contribution; where appropriate, the form and the degree of the compensatory measures; where appropriate, any restructuring aid, or other support treated as such, which it has received in the past; whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

Assessment

Existence of aid

- (24) The granting of funding to enterprises in difficulties at conditions which they would not have been able to obtain on the market represents a financial advantage. The advantage is of a selective nature, since it is only granted to small and medium-sized enterprises and since only firms in difficulties may benefit from the scheme. The advantage is financed by the public resources of the Fund. Since the scheme is open to all sectors of the economy, with the only exception of those mentioned in point (11), and most, if not all sectors are open to competition and intra-EU trade, competition and trade are likely to be affected.

- (25) The aid falls under the provisions of Art. 107(1) of the TFEU. The Portuguese authorities have fulfilled their obligation under article 108(3) of the TFEU, by means of the notification procedure, in accordance with Article 2(1) of Commission Regulation (EC) N° 659/1999⁵.
- (26) Having concluded that the notified scheme constitutes state aid, the Commission has to assess whether this aid can be considered compatible with the internal market. Since the scheme at issue concerns a Fund allowing Portugal to grant restructuring aid to enterprises in difficulties, it has to be assessed under the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁶, in particular the rules laid out in Section 4, concerning the assessment of aid schemes for SMEs.

General principles

- (27) The proposed scheme respects the general principles laid down in point 78 of the Guidelines. The qualification of the companies concerned as small and medium-sized enterprise will be determined in the light of the Community definition of SMEs. Any aid which is granted under the scheme but does not meet all the necessary conditions will have to be notified in advance to the Commission and will be subject to the Commission's prior approval. Thus, the Commission considers that the notified scheme is in line with the Guidelines as far as general principles are concerned.

Eligibility

- (28) In the notified scheme it is foreseen that: only enterprises in difficulties in the meaning of the Guidelines will be eligible for aid, but not for the first three years following the start of their operations. Also, a firm belonging to a business group will not be eligible for restructuring aid under the scheme. Additionally, in accordance with point 79 of the Guidelines, the scheme is limited to enterprises which fulfil at least one of the three criteria listed in point 10 of the Guidelines for the assessment of beneficiaries' eligibility. The scheme, therefore, complies with the Guidelines with respect to the general preconditions for eligibility.

Conditions for the authorisation of restructuring aid schemes

- (29) As far as conditions for the authorisation of restructuring aid are concerned, the Commission considers that the scheme fulfils the requirements of point 82 of the Guidelines. The granting of the aid will be conditional on full implementation of the restructuring plan by the recipient. The specific provisions laying out which requirements the restructuring plan will have to fulfil are referred to in the draft law governing the scheme in respect of:

- (a) Demonstration of a credible restructuring plan leading to a restoration of long-term viability, in line with points 34 to 37 of the Guidelines;

⁵ Council Regulation (EC) N° 659/199 of 22 March 1999 laying down detailed rules for the application of Article 107(1) of the TFEU.

⁶ Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty, OJ C 244, 1.10.2004, p.2., and Commission Communication concerning the prolongation of the Community Guidelines on State aid for Rescuing and Restructuring Firms in Difficulty, OJ C 156, 9.7.2009, p. 3.

- (b) Adoption of compensatory measures, capable to ensure that the adverse effects of the aid on trading conditions are minimized as much as possible, in line with points 38 to 42 of the Guidelines;
- (c) Limitation of the aid to the minimum, together with the compulsory significant contribution from the beneficiary, considered appropriate for small-sizes enterprises at the level of at least 25%; medium-sized enterprises at the level of at least 40%, in line with points 43 to 44 of the Guidelines.
- (d) The Portuguese authorities undertook that in case of amendments to the restructuring plans, the provisions set in points 52 to 54 of the Guidelines will apply.

(30) Therefore, the Commission considers that the scheme fulfils all the conditions for the authorisation of restructuring aid schemes as set in Section 4.4 of the Guidelines.

Common conditions for the authorisation of rescue and/or restructuring aid schemes

(31) In compliance with point 83 of the Guidelines, the proposed scheme provides that the maximum aid amount to any single beneficiary will not exceed EUR 2.5 million (according to point 83 the maximum amount of combined rescue and restructuring aid for one company may not exceed EUR 10 million). Aids granted under this scheme may not be cumulated with any other similar aids for the same eligible expenses.

(32) The "one time, last time" principle is explicitly recalled in the draft Regulation that implements certain provisions of the scheme, therefore assuring compliance with the conditions set in point 84 of the Guidelines. In conformity with point 85 of the Guidelines, the Portuguese authorities confirmed that measures where one firm takes over assets of another firm which has itself already received rescue or restructuring aid are not covered by this scheme and will be notified to the Commission individually.

(33) In view of the above, the Commission considers that the scheme fulfils all the common conditions for the authorisation of rescue and/or restructuring aid schemes as requested in Section 4.5 of the Guidelines.

Annual reports

(34) The Portuguese authorities agreed to submit annual reports to the Commission in accordance with point 86 of the Guidelines (see above at point 23). Consequently, the Commission considers that also Section 4.6 is respected as regards the notified scheme.

Conclusion

(35) In view of the above, the Commission acknowledges that the proposed scheme fulfils all the conditions laid out by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, and concludes that the notified scheme is compatible with the internal market.

Decision

The Commission has accordingly decided:
that the notified Modification of the aid scheme for the modernisation of enterprises (SIRME) meets the criteria for compatibility with the TFEU, in accordance with Article 107(3)c).

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels

Fax No: +32 2 29 61242

Yours faithfully,

For the Commission
Joaquin ALMUNIA
Vice-President