COMMUNICATION FROM THE COMMISSION

COMMUNITY GUIDELINES APPLYING ARTICLES 87 AND 88 OF THE TREATY TO THE GRANTING OF URGENCY AND/OR RESTRUCTURING AID TO FIRMS IN DIFFICULTY

1. INTRODUCTION

1. The Commission adopted its original Guidelines on State aid for rescuing and restructuring firms in difficulty\(^1\) in 1994, which were revised in 1999\(^2\) and will expire on 9 October 2004. In 1997, the Commission added specific rules for agriculture\(^3\).

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.

3. First, in the light of the Stockholm and Barcelona European Councils which called on Member States to continue to reduce State aid as a percentage of GDP while redirecting it towards more horizontal objectives of common interest including cohesion objectives, closer scrutiny of the distortion created by allowing aid for rescue and restructuring operations seems warranted. This lies also in the line of the Lisbon conclusions aiming at increasing the competitiveness of the European economy.

4. The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that a company which gets into difficulties is rescued by the State. Aid for rescue and restructuring operations gave rise to some of the most controversial state aid cases in the past and is among the most distortive types of state aid. Hence, the general principle of the prohibition of State aid as laid down in the Treaty should remain the rule and derogation therefrom should be limited.

5. Furthermore, the process of enlargement requires the Commission to dispose of the most adequate instruments to assure an effective State aid discipline in order to ensure a proper functioning of the internal market in a Community with 25 Member States.

6. The 1999 guidelines made a distinction between rescue aid and restructuring aid, whereby rescue aid was defined as temporary assistance to keep an ailing firm afloat for the time needed to work out a restructuring and/or a liquidation plan. In principle, no restructuring measures could be undertaken during this phase. However, such strict distinction between rescue and restructuring has given rise to difficulties. Firms in financial difficulties may need to take certain urgent structural measures to stop or reduce the worsening of the financial situation already in the rescue phase. Hence, a new concept of "urgency aid" is introduced, which has the

\(^{2}\) OJ C 288, 9.10.1999, p. 2
\(^{3}\) OJ C 283, 19.9.1997, p. 2. See also the footnote relating to the heading of Chapter 5.
same purposes as rescue aid, but would also allow the beneficiary to undertake urgent measures, even of a structural nature, like an immediate closure of a branch or another form of abandonment of loss making activities. Given the urgent character of such aids, the Member States will be given the opportunity of opting for a simplified procedure to obtain approval of these aids.

7. As regards restructuring aids, building on the 1994 guidelines, the 1999 guidelines continued to require a substantial contribution from the beneficiary to the restructuring. Within this revision, it is appropriate to reaffirm with greater clarity that this contribution will need to be real and free of aid. The beneficiary's contribution has a twofold purpose: on the one hand, it will demonstrate that the markets (owners, creditors) believe in the feasibility of the return to viability within a reasonable time period. On the other hand, it will ensure that restructuring aid is limited to the minimum required to restore viability without distorting competition. In this respect the Commission will also request compensatory measures to minimise the effect on competitors.

8. Providing urgency or restructuring State aid to firms in difficulty 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. On the other hand, it would not be justified to artificially keep alive a firm in a sector in long-term structural overcapacity or when it can only survive thanks to repeated State interventions.

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

2.1. CONCEPT OF "A FIRM IN DIFFICULTY"

9. 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.

10. 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 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 12 months; or

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(b) in the case of a company where at least some members have unlimited liability for the debt of the company\(^6\), 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 fulfills the criteria under its domestic law for being the subject of collective insolvency proceedings.

11. 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 from market sources.

12. For the purposes of these Guidelines, a newly created firm is not eligible for urgency 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. A firm will be considered as newly created up to \(5\) years since start of operations in the relevant field of activity. Only after that period it will become eligible for urgency or restructuring aid, provided that:

\(\begin{align*}
&\quad \text{it qualifies as firm in difficulty in the sense of these guidelines;}
&\quad \text{its difficulties originated from the period it has been in operation and not from a weak financial position from the time it was created, and}
&\quad \text{it does not form part of a larger business group, except under the conditions laid down hereafter.}
\end{align*}\)

13. A company belonging to or taken over by a larger business group is not normally eligible for urgency 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 URGENCY AND RESTRUCTURING AID**

14. Urgency 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 granting of urgency aid and the restructuring are often two parts of a single operation, even if they involve different processes.

15. Urgency aid is by nature temporary and reversible assistance. Its primary objective is to make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan. The general principle is that urgency aid has to

\(^6\) This refers in particular to the types of company mentioned in the second subparagraph of Article 1(1) of Council Directive 78/660/EEC, as amended.
make it possible to temporarily support a company confronted with an important deterioration of its financial situation reflected by an acute liquidity crisis or technical insolvency. Such temporary support should allow time to analyse the circumstances which gave rise to the difficulties and to develop an appropriate plan to remedy these difficulties. Moreover, the urgency aid must be limited to the minimum necessary. In other words, urgency aid offers a short respite, not exceeding six months, to a company in financial difficulties. The aid must consist of reversible liquidity support in the form of loan guarantees or loans, with an interest rate at least comparable to those observed for loans to healthy firms and in particular the reference rates adopted by the Commission. Structural measures which do not require immediate action, like for example the irremediable and automatic entry of the state in the own funds of the firm, could not be financed through urgency aid and would lead to the whole aid being assessed as restructuring aid.

16. Once a restructuring or liquidation plan for which aid has been requested has been established and is being implemented, all further aid will be considered as restructuring aid. Measures which need to be implemented immediately to stem losses, including structural ones (e.g. immediate exit from loss-making field of activity), can be undertaken with the urgency aid, subject to the conditions mentioned hereafter in section 3.2 for individual aids and section 4.3 for aid schemes. Except where use is made of the simplified procedure mentioned in section 3.2.2, the Member State will need to demonstrate that such structural measures must be undertaken immediately. Urgency aid cannot normally be granted for financial restructuring.

17. 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

18. These Guidelines apply to firms in all sectors, except to those operating in the coal\(^7\) or steel sector\(^8\), without prejudice to any specific rules relating to firms in difficulty in the sector concerned\(^9\). With the exception of point 82\(^{10}\), they apply to the fisheries and aquaculture sector, subject to compliance with the specific rules laid down in the

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\(^{10}\) i.e., awards of aid to SMEs that do not fulfil the conditions set out in this point 82 may nevertheless be exempted from individual notification.
Guidelines for the examination of State aid to fisheries and aquaculture\textsuperscript{11}. Chapter 5 incorporates the specific rules for agriculture.

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

19. Granting urgency aid or aid to restructure 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.

20. 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 urgency aid, assistance must be limited to reimbursable loans or loan guarantees (see points 37 to 40).

21. The source of the aid can be any level of government\textsuperscript{12}, 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 between Member States and public undertakings\textsuperscript{13}. Thus, for example, urgency or restructuring aid may come from State holding companies or public investment companies\textsuperscript{14}.

22. 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\textsuperscript{15}. This provides that in circumstances where a rational private investor operating in a market economy would have made the finance available and where, therefore, a company would have had access to finance at the same conditions from market sources, the provision or guarantee of funding to that company is not regarded as involving aid.

23. Along the same lines, the Courts have developed a "market creditor" test\textsuperscript{16}. The Court determined that the test of aid, when the state decided whether or not to waive or reschedule debts, was whether a market creditor in similar circumstances, given probable market developments and the position of the undertaking would have acted in the same way and whether, therefore, the undertaking would have obtained the same waiver or rescheduling from such a market creditor.

24. However, where funding is provided or guaranteed by the State to an enterprise that is in financial difficulties, 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

\textsuperscript{11} OJ C 19, 20.1.2001, p. 7

\textsuperscript{12} Including in the case of aid co-financed from Community funds


scheme, in accordance with Article 88(3) of the Treaty. The likelihood that the transaction involves aid is higher 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.

25. The assessment of urgency or restructuring aid should not be affected by changes in the ownership of the business aided.

2.5. COMPATIBILITY WITH THE COMMON MARKET

26. 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 envisaged by Article 87(2)(b), in particular aid to make good the damage caused by natural disasters or exceptional occurrences, which are not covered here, the only basis whereby aid for 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."

27. The Commission considers that urgency or restructuring aid 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 which are to receive urgency or restructuring aid 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 63 and 64.

2.6. RECIPIENTS OF PREVIOUS UNLAWFUL AID

28. Where unlawful aid has been granted previously to the firm in difficulty, for which the Commission has adopted a negative decision with a recovery order, and no such recovery has taken place in compliance with Article 14 of Regulation 659/1999, no urgency and/or restructuring aid can be approved, even where this would lead to the bankruptcy of the firm concerned.

29. The Commission will pay particular attention to the need to prevent the use of these guidelines to circumvent the principles laid down in existing frameworks and guidelines.

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

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

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17 See in particular point 27 of the Communication on public undertakings in the manufacturing sector.
3.1. "One time, Last time"

31. Urgency aid is a one-off operation primarily designed to keep a company in business for a limited period, during which its future can be assessed. On the other hand, it should not be possible to allow repeated granting of urgency aids that would merely maintain the status quo, postpone the inevitable and in the meantime shift economic and social problems on to other, more efficient producers or other Member States. Hence, urgency aid should be granted only once ("one time, last time" condition). Similarly, in order to prevent firms from being unfairly assisted when they can only survive thanks to repeated State support, restructuring aid should be granted once only.

32. When planned urgency or restructuring aid is notified to the Commission the Member State must specify whether the firm concerned has in the past already received urgency or restructuring aid, including aid granted before entry into force of these Guidelines and any unnotified aid18. If so, and where less than 10 years has elapsed since the granting of urgency aid or the restructuring period came to an end or implementation of the plan has been halted (whichever comes the latest), the Commission will not allow further urgency or restructuring aid, except:

- where a restructuring aid follows the granting of an urgency aid as part of a single restructuring operation, or

- in exceptional and unforeseeable circumstances for which the company is not responsible.

33. 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 undertaking that is continuing in business.

34. Where a business group has received urgency or restructuring aid, the Commission will normally not allow further urgency or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years has elapsed since the granting of urgency aid or the restructuring period came to an end or implementation of the plan has been halted, whichever comes the latest. Where an entity belonging to a business group has received urgency or restructuring aid, the group as a whole as well as the other entities of the group remain eligible for urgency or restructuring aid (subject to the respect of the other provisions of the present guidelines), with the exception of the earlier beneficiary of the aid. Member States must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

35. Where a firm takes over assets of another firm, and in particular one that has been the subject of one of the procedures listed in point 33 or of collective insolvency proceedings brought under national law, and has itself already received urgency or

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18 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 urgency or restructuring aid.
restructuring aid, the purchaser is not subject to the "one time, last time" requirement, provided that the following cumulative 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;

(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).

36. 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.

3.2. URGENCY AID

3.2.1. Conditions

37. In order to be approved by the Commission, urgency aid as defined in point 15 must:

(a) consist of liquidity support in the form of loan guarantees or loans. 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;

(b) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;

(c) 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 urgency 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;

(d) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. Such an amount may include aid for urgent structural measures as defined above. For determining the amount necessary (which should be based on the liquidity needs of the company stemming from losses), regard will be had to the outcome of the formula mentioned in Annex I. Any urgency aid exceeding the result from this formula will need to be duly motivated.

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19 An exception may be made in the case of urgency 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 (directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, OJ L 126, 26.5.2000, p.1). At any rate, aid granted in a form other than that described in subparagraph (a), should fulfil the general principles of urgency aid and cannot consist in structural financial measures related to the bank’s own funds. Any aid granted in a form other than that described in subparagraph (a), will be taken into account when any compensatory measures under a restructuring plan are examined in accordance with points 49 to 53.
38. The urgency aid will be authorised for a maximum of six months (which must also include the repayment of any urgency aid in the form of loans) or, where the Member State has submitted a restructuring plan within that period and upon an explicit request by the Member State concerned, until the Commission reaches its decision on the plan.

39. If the Member State fails to communicate:

(a) a credible and substantiated restructuring plan or a liquidation plan or

(b) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated before the six-month deadline expires,

the Commission will initiate proceedings under Article 88(2), without prejudice to Article 23 of Regulation 659/1999 and to the possibility of an action before the Court of Justice in accordance with Article 88 (2) second subparagraph.

In any event, the Commission may decide to initiate such proceedings, without prejudice to Article 23 of Regulation 659/1999 and to the possibility of an action before the Court of Justice in accordance with Article 88 (2) second subparagraph, if it considers that the loan or the guarantee have been misused, or that, after the six-month deadline has expired, the failure to reimburse the aid is no longer justified.

40. The approval of urgency 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.

3.2.2. Simplified procedure

41. The Commission shall as far as possible endeavour to take a decision within a period of one month for urgency aids respecting all conditions mentioned in section 3.2.1 and meeting the following cumulative requirements:

(a) where the enterprise concerned meets at least one of the three criteria set out in point 10;

(b) Where the urgency aid is limited to the amount resulting from the formula mentioned in Annex I and does not exceed [10 million €].

3.3. Restructuring Aid

3.3.1. Basic principle

42. 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 (for instance, 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 employment problems or, exceptionally, where the firm’s disappearance would result in a monopoly or tight oligopolistic situation) and, in principle, there are adequate compensatory measures in favour of competitors.

3.3.2. **Conditions for the authorisation of aid**

43. Subject to the special provisions for assisted areas, SMEs and the agricultural sector (see points 63, 64, 65, 66 and Chapter 5), the Commission will approve aid only under the following conditions:

(a) **Eligibility of the firm**

44. The firm must qualify as a firm in difficulty within the meaning of these Guidelines (see points 9 to 13).

(b) **Restoration of viability**

45. 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, except in the case of SMEs, as laid down hereafter in section 3.3.5.

46. 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 include, in particular, a market survey\(^{20}\). 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 only if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.

47. 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.

48. 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. Where the firm’s difficulties stem from flaws in its corporate governance system, appropriate adaptations will

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20 The items of information which the Commission needs in order to examine the aid satisfactorily are listed in Annex II.
have to be introduced. This may require the change in the system of check and balances or the departure of the existing management responsible for the firm’s difficulties.

(c) Avoidance of undue distortions of competition

49. Measures must be taken to mitigate as far as possible any adverse effects of the aid on competition at Community and at EEA level. Otherwise, the aid will be regarded as "contrary to the common interest" and therefore incompatible with the common market.

50. These measures may comprise divestment of assets to actual or potential competitors, reductions in capacity or market presence, reduction of entry barriers on the markets concerned. When assessing the appropriateness of the compensatory measures, the Commission shall take account of the market structure and the conditions of competition to ensure that any such measure does not lead to a deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation. If a Member State is able to prove that such a situation will arise, the compensatory measures should be construed in such a way to avoid this situation.

51. However, this condition will not normally apply to small enterprises since it can be assumed that ad hoc aid to small enterprises does not normally distort competition to an extent contrary to the common interest, except where otherwise provided by rules on State aid in a particular sector or when the beneficiary is active in a market suffering from long-term overcapacity.

52. The measures 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. They must take place in the core market(s) in which the beneficiary is active. The degree of reduction shall be established on a case-by-case basis. 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 appropriate on the basis of any other information at the disposal of the Commission including that supplied by interested parties. The reduction is to be put into effect through the restructuring plan and any conditions attached thereto. Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be counted against reduction of capacity or market presence for the purpose of the assessment of the compensatory measures. Such an assessment will take account of any urgency aid granted beforehand.

53. When the beneficiary is active in a market suffering from long-term structural overcapacity, the reduction in the company's capacity or market presence may have to be as high as 100%.

(d) Aid limited to the minimum: real contribution, free of aid

54. 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

21 In such cases, the Commission will only allow aid to alleviate the social costs of the restructuring, in line with section 3.3.6.
of the company, its shareholders or the business group to which it belongs. Such assessment will take account of any urgency aid granted beforehand. 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. Such contribution is a sign that the markets believe in the feasibility of the return to viability. Such contribution must be real, i.e., actual, excluding all future expected profits such as cash flow. The beneficiary's contribution\(^{22}\) to the restructuring must be at least \([25\%]\) in the case of small enterprises. In exceptional circumstances and in cases of extreme hardship which need to be demonstrated by the Member State, the Commission may except a lower real own contribution, free of aid, but no less than \([20\%]\). For medium-sized enterprises, the minimum contribution must be at least \([40\%]\). In exceptional circumstances and in cases of extreme hardship which need to be demonstrated by the Member State, the Commission may except a lower real own contribution, free of aid, but no less than \([35\%]\). For large undertakings the minimum contribution shall be established on a case-by-case basis. Generally, large undertakings would be expected to contribute at least \([50\%]\).

55. 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\(^{23}\). Neither should any of the aid go to finance new investment that is not essential for restoring the firm's viability.

(e) Specific conditions attached to the authorisation of aid

56. In addition to the compensatory measures described in points 49 to 53, 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;

(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

\(^{22}\) See point 7. This minimum contribution of 25% must not contain any aid. This is not the case, for instance, where a loan carries an interest-rate subsidy or is backed by government guarantees containing elements of aid.

\(^{23}\) See point 10 (c).
57. The company must fully implement the restructuring plan 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, without prejudice to Article 23 of Regulation 659/1999 and to the possibility of an action before the Court of Justice in accordance with Article 88 (2) second subparagraph.

58. 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

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

(g) Monitoring and annual report

59. 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.

60. 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 77 to 80). 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.

61. 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.

3.3.3. Amendment of the restructuring plan

62. 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 time scale;
(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;

(e) if the conditions imposed or any other obligations are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.

Should the Member State introduce changes to an approved restructuring plan without duly informing the Commission, the Commission will initiate proceedings under Article 88(2), as provided for by Article 16 of Regulation 659/1999 (misuse of aid), without prejudice to Article 23 of Regulation 659/1999 and to the possibility of an action before the Court of Justice in accordance with Article 88 (2) second subparagraph.

3.3.4. Restructuring aid in assisted areas

63. 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, the Commission must take the needs of regional development into account 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.

64. Thus, the criteria listed in points 43 to 62 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 and the size of the beneficiary's contribution. If regional development needs justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas. In those cases, which need to be demonstrated by the Member State concerned, 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.

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24 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".
3.3.5. **Aid for restructuring small and medium-sized enterprises**

65. Aid to undertakings in the small to medium-sized category\(^{25}\) tends to affect trading conditions less than that granted to large undertakings. This also applies to aid to help restructuring, so that the conditions laid down in points 43 to 61 are applied less strictly: the grant of restructuring aid to small enterprises will not usually be linked to compensatory measures (see point 51), unless this is otherwise stipulated in rules on State aid in a particular sector. This applies as well to the requirements regarding the content of reports, which will be less stringent (see points 59, 60 and 61). On the other hand, the "one time, last time" principle (section 3.1) applies in full to SMEs.

66. For SMEs the restructuring plan does not need to be endorsed by the Commission. The grant of aid must however be conditional on full implementation of a restructuring plan which is communicated to the Commission and has been approved by the Member State concerned and meets the requirements laid down in points 46 to 48. The obligation to verify that these conditions are complied with lies with the Member State.

3.3.6. **Aid to cover the social costs of restructuring**

67. 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 capacity reductions that may be required as a condition for granting aid. Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.

68. 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).

69. 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\(^{26}\).

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\(^{26}\) 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.)
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.

The Commission has a positive approach to such aid when it is granted to undertakings in difficulty, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship.

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 when it is granted to undertakings in difficulty.

The type of aid described in points 67 to 72 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 49 to 53.

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.

3.3.7. Individual notification of any aid for tangible investment during the restructuring period

Where a large enterprise receives restructuring aid examined under these Guidelines, the grant of any other 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.

During the period for restructuring such an enterprise, any other aid must be notified individually, unless it is covered by the de minimis rule or by an exemption regulation.

3.3.8. Need to inform the Commission of any aid granted to the recipient firm

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 75 and 76.

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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 or by exemption regulations.

Likewise, the reports to be submitted in accordance with points 59, 60 and 61 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.

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.

4. AID SCHEMES FOR SMES

4.1. GENERAL PRINCIPLES

The Commission will authorise schemes for providing urgency and/or restructuring aid to 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. Section 3.2.2 does not apply to aid schemes. 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

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 10. 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. Aid to enterprises active in a market suffering from long-term structural overcapacity, irrespective of the size of the beneficiary, must also be notified individually to the Commission so that it can assess the application of point 53.

4.3. CONDITIONS FOR THE AUTHORISATION OF URGENCY AID SCHEMES

In order to be approved by the Commission, urgency aid schemes must satisfy the conditions set out in (a), (b), (c) and (e) of point 37. Condition (d) set out in point 37 is replaced by the following, for the purposes of this Chapter:

(d) Urgency 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 urgency aid granted for longer than six months or not reimbursed after six months must be individually notified to the Commission.
4.4. CONDITIONS FOR THE AUTHORISATION OF RESTRUCTURING AID SCHEMES

84. 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 45 to 48 apply;

(b) Avoidance of undue distortions of competition: since aid to small enterprises tends to distort competition less, the principle set out in points 49 to 53, 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. For medium-sized enterprises points 49 to 53 apply;

(c) Aid limited to the minimum necessary: the principles set out in points 54 and 55 apply;

(d) Amendment of the restructuring plan: any changes to the plan must comply with the rules set out in point 62.

4.5. COMMON CONDITIONS FOR THE AUTHORISATION OF URGENCY AND/OR RESTRUCTURING AID SCHEMES

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

86. In addition, the "One time, last time"-principle must be respected: the rule laid down in section 3.1 applies.

Member States must also notify measures individually to the Commission where a firm takes over assets of another firm which has itself already received urgency or restructuring aid;

4.6. MONITORING AND ANNUAL REPORTS

87. Points 59, 60 and 61 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. The reports must also include a list of all beneficiary firms indicating, for each of them:

(a) the company name;

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28 See Annex III (standardised reporting format for existing State aid) to Commission Regulation .../2003 adopting provisions for the implementation of Council regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards time-limits and recovery interest rates.
(b) its sectoral code, using the NACE\textsuperscript{29} \footnotesize[three]-digit sectoral classification codes;
(c) the number of employees;
(d) annual turnover and balance sheet value;
(e) the amount of aid granted;
(f) the amount and form of the beneficiary's contribution;
(g) where appropriate, the form and the degree of the compensatory measures;
(h) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
(i) 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\textsuperscript{30}

5.1. **COMPENSATORY MEASURES**

88. Points 49 to 53, and 65 and 84(b) provide that the requirement for compensatory measures is not normally applied in the case of small 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 49 to 53, 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 sections 5.4 and 5.5.

5.2. **DEFINITION OF EXCESS CAPACITY**

89. 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 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.

\textsuperscript{29} Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

\textsuperscript{30} Covering, for the purpose of these Guidelines, all operators involved in the primary production of products of Annex I to the Treaty (farming). Aid measures in favour of enterprises processing and marketing agricultural products are not covered by this chapter. Aid to processing and marketing companies is to be assessed in line with the general rules of the present guidelines, except as far as point 3.1. "one time last time" is concerned, where the specific provision for agriculture applies. Fisheries and aquaculture are not covered by this chapter.
5.3. **ELIGIBILITY FOR URGENCY AND RESTRUCTURING AID SCHEMES**

90. In the agriculture sector and under aid schemes authorised from now on, awards of aid to SMEs that do not fulfil the conditions set out in point 82 may nevertheless be exempted from individual notification.

5.4. **CAPACITY REDUCTIONS**

91. The Commission will, at the request of the Member State concerned, and as an alternative to the general provisions of these Guidelines concerning compensatory measures, apply the following provisions for operators active at the level of primary agricultural production (farming).

92. Where there is a structural excess of production capacity, the requirement of irreversibly reducing or closing capacity set out in points 49 to 53 applies.

93. Where the aid measure is targeted on particular products or operators, the production capacity reduction must attain at least 10% of that for which the restructuring aid is effectively granted. For measures not so targeted, the production capacity reduction must attain at least 5%. For restructuring aid granted in less favoured areas\(^{31}\), the capacity reduction requirement will be reduced by two percentage points.

94. The requirement of irreversibly reducing or closing capacity may 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.

95. The Member State must demonstrate that the capacity reduction would be supplementary to any reduction which would take place in the absence of the restructuring aid.

96. 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 one year after the aid has been granted.

97. In order to ensure the effectiveness of the closure of capacity undertaken at the relevant market level, the Member State must commit not to grant State aid for capacity increases in the sector concerned. This commitment shall remain in force for a period of five years from the date where the required capacity reduction actually has been achieved.

98. 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 at the level of individual operators.

5.5. "ONE TIME, LAST TIME" CONDITION

99. The principle that urgency or restructuring aid should be granted once only also applies to the agricultural sector. However, the period of ten years as set out in section 3.1 is replaced by five years.

5.6. MONITORING AND ANNUAL REPORT

100. 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 (point 87(a) to (i)) Where recourse has been had to the provisions of points 91 to 98, the report must also include data showing the capacity of production which has effectively benefited from restructuring aid and the capacity reduction achieved.

6. APPROPRIATE MEASURES UNDER ARTICLE 88(1)

101. 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.

102. Member States must adapt their existing urgency and restructuring aid schemes which are to remain in operation after 9 October 2004 in order to bring them into line with these Guidelines, and in particular with the requirements of Chapters 3.3.7, 3.3.8 and 4, after that date.

103. To enable the Commission to monitor the adaptation process, Member States must let it have a list of all such schemes before [1 August 2004]. They must subsequently, and in any event before 9 October 2004, 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. ENTRY INTO FORCE AND DURATION

104. Subject to the provisions set out below, these Guidelines shall enter into force on 10 October 2004. They shall remain in force, unless otherwise stipulated in any new decision, for five years.

105. Any scheme is nevertheless subject to the appropriate measure referred to in points 102 and 103 where the scheme is intended to remain in operation after 9 October 2004.

7.2. NON-NOTIFIED AID

106. The Commission will examine the compatibility with the common market of any urgency 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 Union;

(b) on the basis of the Guidelines in force at the time the aid is granted in all other cases.
Annex I

Formula\textsuperscript{32} to calculate maximum amount of urgency aid to qualify for the simplified procedure:

\[
\frac{\text{EBIT}_t + \text{depreciation}_t + (\text{working capital}_t - \text{working capital}_{t-1})}{2}
\]

The formula is based on the operating results of the company (EBIT, earnings before interest and taxes) recorded in the year before granting/notifying the aid (indicated as t). To this amount depreciation has been added. Then changes in working capital must be added to the total. The change in working capital is calculated as the difference between the current assets and current liabilities\textsuperscript{33} for the latest closed accounting periods. If there was any deferring event (e.g. reclassification of assets) during the relevant financial years, its effect has to be taken into account when establishing the amount of working capital. The notifying party has the obligation to indicate and justify such reclassification. Similarly, if, exceptionally, there would be provisions at the level of the operating result, this will need to be clearly indicated and the result should not include such provisions.

The formula aims at estimating the negative operating cash flow of the company in the year preceding the application for the aid (or before the award of the aid in case of non-notified aids). Half of this amount should keep the company in business for a six-month period. Thus the result of the formula has to be divided by 2.

This formula can only be applied where the result is a negative amount\textsuperscript{34}.

Examples:

\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots

\textsuperscript{32} EBIT (earnings before interest and taxes as set out in the annual accounts of the year before the application, indicated as t-1) must be increased with depreciation in the same period plus the changes in working capital over a 2 year period (year before the application and preceding year), divided by two to determine an amount over 6 months, i.e. normal period for permitting urgency aid.

\textsuperscript{33} Current assets: liquid funds, receivables, other assets and prepaid expenses, inventories.

\textsuperscript{34} In case the formula leads to a positive result, a detailed explanation will need to be submitted demonstrating that the firm is in difficulties as defined in points 10 and 11.
Annex II
Supplementary information sheets

SUPPLEMENTARY INFORMATION SHEET ON URGENCY AID FOR FIRMS IN DIFFICULTY

This annex must be used for the notification of individual urgency aid covered by the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty.

1. ELIGIBILITY

1.1 Is the firm a limited 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 12 months?
☐ yes  ☐ no

1.2 Is the firm an unlimited 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 12 months?
☐ yes  ☐ no

1.3 Does the firm fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?
☐ yes  ☐ no

If you have answered yes on any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law). Also indicate whether you wish to make use of the simplified procedure.

☐ yes  ☐ no

If you have answered no to all of the above questions, please submit evidence supporting that the firm is in difficulties, for it to be eligible for urgency aid.

1.4 When has the firm been created? …………..

1.5 Since when is the firm operating? …………………………………

1.6 Does the company belong to a larger business group?
☐ yes  ☐ no

If you have answered yes, please submit full details about the group (organisation chart, showing the links between the group's members with details on capital and voting rights) and attach proof 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.

1.7 Has the firm (or the group to which it belongs) in the past received any rescue, urgency or restructuring aid?

☐ yes  ☐ no

If yes, please provide full details (date, amount, reference to previous Commission decision if applicable, etc.)

2. FORM OF AID

2.1 Is the aid in the form of a loan guarantee or loans? Copies of the relevant documents should be provided.

☐ yes  ☐ no

2.2 If yes, is the loan granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rate adopted by the Commission?

☐ yes  ☐ no

Please provide detailed information.

2.3 Is the aid limited to maximum 6 months (including repayment of the urgency aid in the case of loans)

☐ yes  ☐ no

3. OTHER ELEMENTS

3.1 Is the aid warranted on the grounds of serious social difficulties? Please justify.

3.2 Does the aid have no unduly adverse spillover effects on other Member States? Please justify.

3.3 Do you undertake, not later than six months after the urgency aid measure has been authorised, to communicate to the Commission 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?

☐ yes  ☐ no

3.4 In case you have opted for the simplified procedure, please submit all necessary proof demonstrating that the amount of urgency aid is limited to the positive amount resulting from the formula mentioned in Annex I to the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty and does not exceed 10 million €.

3.5 In all other cases, please explain why you think that the aid is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the firm in business for the period during which the aid is authorised or for urgent structural
measures such as the immediate exit from a loss-making field of activity). This should be done in the light of the formula mentioned in Annex I to the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty.
## SUPPLEMENTARY INFORMATION SHEET
### ON RESTRUCTURING AID FOR FIRMS IN DiffICULTY

This annex must be used for the notification of individual restructuring aid covered by the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty

### 1. ELIGIBILITY

1.1 Is the firm a limited 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 12 months?

<table>
<thead>
<tr>
<th></th>
<th>yes</th>
<th>no</th>
</tr>
</thead>
</table>

1.2 Is the firm an unlimited 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 12 months?

<table>
<thead>
<tr>
<th></th>
<th>yes</th>
<th>no</th>
</tr>
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</table>

1.3 Does the firm fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?

<table>
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<tr>
<th></th>
<th>yes</th>
<th>no</th>
</tr>
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</table>

If you have answered yes on any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law).

If you have answered no to all of the above questions, please submit evidence supporting that the firm is in difficulties, for it to be eligible for restructuring aid.

1.4 When has the firm been created? ……………

1.5 Since when is the firm operating? …………………………………

1.6 Does the company belong to a larger business group?

<table>
<thead>
<tr>
<th></th>
<th>yes</th>
<th>no</th>
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</table>

If you have answered yes, please submit full details about the group (organisation chart, showing the links between the group's members with details on capital and voting rights) and attach proof 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.

1.7 Has the firm (or the group to which it belongs) in the past received any rescue, urgency or restructuring aid?

<table>
<thead>
<tr>
<th></th>
<th>yes</th>
<th>no</th>
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</table>
If yes, please provide full details (date, amount, reference to previous Commission decision if applicable, etc.)

2. RESTRUCTURING PLAN

2.1 In the case of SMEs, has the granting of aid been made conditional on full implementation of a restructuring plan that has been approved by the Member State and which meets the requirements in points 46 to 48 of the Guidelines?

☐ yes  ☐ no

If yes, please go immediately to section 3 hereafter.

2.2 Please 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:

2.2.1. A precise definition of the product and geographical market(s).

2.2.2. The names of the company's main competitors with their shares of the world, Community or domestic market, as appropriate.

2.2.3. The evolution of the company's market share in recent years.

2.2.4. An assessment of total production capacity and demand at Community level, concluding whether or not there is excess capacity on the market.

2.2.5. Community-wide forecasts for trends in demand, aggregate capacity and prices on the market over the five years ahead.

2.3 Please attach the restructuring plan. At least the following information should be included:

2.3.1. Presentation of the different market assumptions arising from the market survey.

2.3.2. Analysis of the reason(s) why the firm has run into difficulty.

2.3.3. Presentation of the proposed future strategy for the firm and how this will lead to viability.

2.3.4. Complete description and overview of the different restructuring measures planned and their cost.

2.3.5. Timetable for implementing the different measures and the final deadline for implementing the restructuring plan in its entirety.

2.3.6. Information on the production capacity and market presence of the company, and in particular on utilisation of capacity and capacity reductions or reductions in market presence.

2.3.7. Full description of the financial arrangements for the restructuring, including:
– Use of capital still available;
– Sale of assets or subsidiaries to help finance the restructuring;
– Financial commitment by the different shareholders and third parties (like creditors, banks);
– Amount of public assistance and demonstration of the need for that amount;

2.3.8. Projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;

2.3.9. Name(s) of the author(s) of the restructuring plan and date on which it was drawn up.

3. AVOIDANCE OF UNDUE DISTORTIONS OF COMPETITION

Describe the compensatory measures proposed with a view to mitigating the distortive effects on competition at Community level.

Is the beneficiary active in a market suffering from long-term structural overcapacity?

☐ yes ☐ no

4. OWN CONTRIBUTION

Please provide details as to the own minimum contribution, free of aid which is being provided by the beneficiary.

5. EFFECTS ON EMPLOYMENT

Please provide an initial appraisal of the estimated impact on employment, at local, regional or national level, of the firm's possible disappearance, as well as of the predictable employment impact of any viability restoration and/or compensatory measures.

6. OTHER ELEMENTS

Provide 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.
SUPPLEMENTARY INFORMATION SHEET
ON URGENCY AID FOR FIRMS IN DIFFICULTY: SCHEMES

This annex must be used for the notification of urgency aid schemes covered by the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty.

1. ELIGIBILITY

1.1. Is the scheme limited to firms that fulfil at least one of the eligibility criteria below:

1.1.1. Is the scheme limited to firms, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months?

☐ yes  ☐ no

1.1.2. Are the firms unlimited companies, where more than half of their 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?

☐ yes  ☐ no

1.1.3. Do the firms fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?

☐ yes  ☐ no

1.2. Is the scheme limited to rescuing small enterprises in difficulty which correspond to the Community definition of SMEs?

☐ yes  ☐ no

2. FORM OF AID

2.1. Is the aid granted under the scheme in the form of a loan guarantee or loans?

☐ yes  ☐ no

2.2. If yes, is the aid limited to maximum 6 months (including repayment of the urgency aid in the case of loans)

☐ yes  ☐ no

3. OTHER ELEMENTS

3.1. Will aid under the scheme be warranted on the grounds of serious social difficulties? Please justify.

3.2. Will aid under the scheme have no unduly adverse spillover effects on other Member States? Please justify.
3.3. Please explain why you think that the aid scheme is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the firm in business for the period during which the aid is authorised or for urgent structural measures such as the immediate exit from a loss-making field of activity).

3.4. Do you undertake, within six months after granting the aid, to 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?

☐ yes ☐ no

3.5. Please specify the maximum amount of the aid that can be awarded to any one firm as part of the rescue operation: ………………………………………

3.6. Provide all relevant information on aid of any kind which may be granted to the firms eligible for receiving urgency aid.

4. ONE TIME, LAST TIME

Is it excluded that recipient firms receive urgency aid more than once over a period of ten years?

☐ yes ☐ no

All cases where this principle is not respected must be notified individually.

5. ANNUAL REPORT

5.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Commission's instructions on standardised reports?

☐ yes ☐ no

5.2. Do you undertake in such report to include a list of beneficiary firms with at least the following information:

(a) the company name;
(b) its sectoral code, using the NACE [three]-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 urgency aid, or other support treated as such, which it has received in the past;
(g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

☐ yes ☐ no
SUPPLEMENTARY INFORMATION SHEET
ON RESTRUCTURING AID FOR FIRMS IN DIFFICULTY: SCHEMES

This annex must be used for the notification of restructuring aid schemes covered by the Community guidelines applying Articles 87 and 88 of the Treaty to the granting of urgency and/or restructuring aid to firms in difficulty

1. ELIGIBILITY

1.1. Is the scheme limited to firms that fulfil at least one of the eligibility criteria below:

1.1.1. Is the scheme limited to firms, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months?
☐ yes ☐ no

1.1.2. Are the firms companies, where more than half of their 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?
☐ yes ☐ no

1.1.3. Do the firms fulfil the criteria under domestic law for being the subject of collective insolvency proceedings?
☐ yes ☐ no

1.2. Is the scheme limited to rescuing small enterprises in difficulty which correspond to the Community definition of SMEs?
☐ yes ☐ no

2. RETURN TO VIABILITY

Does the Member State confirm that the granting of aid will be made conditional on full implementation of a restructuring plan that has been approved by the Member State and which meets the requirements mentioned in points 46 to 48 of the Guidelines?
☐ yes ☐ no

3. AVOIDANCE OF UNDUE DISTORTIONS OF COMPETITION

Describe the compensatory measures which will be required with a view to mitigating the distortive effects on competition at Community level.

4. OWN CONTRIBUTION

Please provide details as to the own minimum contribution, free of aid which will be required from the beneficiary.
5. **ONE TIME, LAST TIME**

Is it excluded that recipient firms receive restructuring aid more than once over a period of ten years?

☐ yes  ☐ no

All cases where this principle is not respected must be notified individually.

6. **AMOUNT OF AID**

6.1. Please specify the maximum amount of the aid that can be awarded to any one firm as part of the restructuring operation: …………………………….

Provide all relevant information on aid of any kind which may be granted to the firms eligible for receiving restructuring aid.

7. **ANNUAL REPORT**

7.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Commission's instructions on standardised reports?

☐ yes  ☐ no

7.2. Do you undertake in such report to include a list of beneficiary firms with at least the following information:

(a) the company name;
(b) its sectoral code, using the NACE [three]-digit sectoral classification codes;
(c) the number of employees;
(d) annual turnover and balance sheet value;
(e) the amount of aid granted;
(f) the amount and form of the beneficiary's contribution;
(g) where appropriate, the form and the degree of the compensatory measures;
(h) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
(i) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

☐ yes  ☐ no