

REVIEW OF THE EU RESCUE AND RESTRUCTURING AID GUIDELINES

QUESTIONNAIRE

The current Rescue and Restructuring Aid Guidelines expire in October 2009.¹ To prepare the revision of these Guidelines, the Commission would like to invite all Member States to convey their experience already at this stage on the basis of this questionnaire. We would also like to invite all other interested parties to submit their views (whenever possible). In addition, any comments beyond the scope of the questionnaire will be welcome.

Thank you in advance for your replies.

Deadline for replies is **30 November 2007**. They should be sent to the European Commission, DG COMP, State aid Registry, HT 1117, B-1049 Brussels, preferably via e-mail to stateaidgreffe@ec.europa.eu.

As the Commission plans to make accessible the replies to this questionnaire on its website, please indicate which information you consider confidential.

A. General Questions

1.a) Scope/application of the Guidelines

Have public authorities in your country granted rescue or restructuring aid to firms in difficulty since the year 2000?

If public authorities in your country have granted rescue and restructuring aid:

- Could you indicate the number of cases (in total and per year)? How many aid measures were granted under aid schemes?
- Please give your best estimate of the proportion of beneficiaries (a) which are publicly owned and (b) which are situated in assisted regions.
- What were the objectives pursued by the aid measures (saving jobs, regional considerations etc.)? For each objective mentioned, could you possibly indicate the percentage of cases in which it was applicable?
- Why do your authorities consider that State aid is appropriate to reach these objectives? Were the objectives pursued fulfilled in the end? To what extent does the economic context (e.g. strength and adaptability of the national or regional economy) play a role? What role is played by the legal context (effectiveness of bankruptcy/insolvency laws)?

¹ As general background with regard to the existing Guidelines and the Commission's decisions within its framework see also the Special focus chapter on Rescue and Restructuring Aid in the State Aid Scoreboard (Autumn 2006): http://ec.europa.eu/comm/competition/state_aid/studies_reports/2006_autumn_en.pdf

- Do your authorities systematically follow the development of firms having received aid? Based on this experience, do the firms having received aid survive over the long term? Please provide some (recent) examples.

If public authorities in your country have **not** granted rescue and restructuring aid:

- Is it a political choice (explicitly or implicitly) not to grant rescue or restructuring aid or were your authorities never asked by a firm in difficulty to provide support?
- If it is a political choice, why do your authorities consider it not appropriate to grant restructuring aid? Has past (unsuccessful) experience with rescue and restructuring aid played a role? To what extent does the economic context (e.g. strength and adaptability of the national or regional economy) play a role? What role is played by the legal context (effectiveness of bankruptcy/insolvency laws)?
- Do you use other instruments to facilitate the rescue and restructuring of firms in difficulty?

1.b) Scope/individual application of the Guidelines

Have you/has your company or a company in which you hold an interest ever received rescue or restructuring aid since the year 2000?

If yes:

- Could you indicate the year(s) and number of measures? Did the aid consist of rescue or restructuring aid (or both)? Was the aid granted as individual aid or under aid schemes? How much aid was granted?
- Is your company (a) publicly owned and/or (b) located in an assisted region?
- What were the objectives pursued by the aid measures (saving jobs, regional considerations etc.)? For each objective mentioned, could you possibly indicate its relative importance (e.g. main objective, secondary objective etc.)?
- Why did your authorities consider that State aid was appropriate to reach these objectives? Were the objectives met in the end? To what extent did the economic context (e.g. strength and adaptability of the national or regional economy) play a role? What role is played by the legal context (effectiveness of bankruptcy/insolvency laws)?
- Did your authorities systematically follow the development of your firm after it had received aid? Has your firm survived over the long term? Please provide some details.

If, despite being in difficulties, public authorities in your country have **not** granted your company rescue and restructuring aid:

- Was this a political choice (explicitly or implicitly), or did your company never ask your authorities to provide support?
- If this was a political choice, why did your authorities consider it not appropriate to grant restructuring aid? Has past (unsuccessful) experience with rescue and restructuring aid played a role? To what extent did the economic context (e.g. strength and adaptability of the national or regional economy) play a role? What role is played by the legal context (effectiveness of bankruptcy/insolvency laws)?
- Did other instruments facilitate the rescue and restructuring of your firm? If so, which ones?

2. Refined economic approach

a) Objective of the aid

The State Aid Action Plan stipulates that in assessing whether an aid measure can be deemed compatible with the common market, the Commission shall carry out a balancing test. One important element of the balancing test is the existence of a well-defined objective of common interest. The revised Rescue and Restructuring Aid Guidelines will thus have to clearly define the objectives that can be invoked by Member States to justify rescue and restructuring aid.

In your view, what are valid objectives/justifications of rescue and restructuring aid? Should rescue and restructuring aid measures be used when it is from an economic point of view efficient to do so (if yes, please explain the exact objective, e.g. because the aid allows a company that faces short term financial problems to remain active and create wealth in the medium to long run), or should they be used for equity objectives (if yes, please explain the exact objective, e.g. avoiding social hardship following a possible bankruptcy) or both of them alternatively/cumulatively?

In your view, whose interests are to be protected by the Commission's policy on rescue and restructuring aid as set out in the Guidelines (e.g. workforce of the rescued company, its customers/suppliers, its management, its competitors, workforce of competitors, market position/market shares of competitors, competition in the market, overall employment in the EU, consumers in general)?

b) Distortions of competition and trade

One further step of the balancing test refers to the negative effects of State aid, notably on competition and trade. In the course of the balancing exercise it has to be verified whether these distortions are limited so that the overall balance remains positive.

What are, in your view, the most important distortions of competition and trade that rescue and restructuring aid measures bring about?

To what extent and through which channels (e.g. loss of clients, market shares, employment or missed expansion opportunities) do you think that companies can be harmed by rescue and restructuring aid granted to a competitor in your or another Member State? Could you provide (recent) examples?

c) Appropriateness – availability of national bankruptcy/insolvency law

Bankruptcy/insolvency laws and procedures might influence restructuring, as they affect the options available to companies in difficulty. Could you (shortly!) outline the main characteristics of your bankruptcy/insolvency law and proceedings? Could bankruptcy/insolvency laws be seen as alternatives to rescue and restructuring aid

measures? What are the main elements, if any, in your bankruptcy/insolvency law that impair a smooth continuation of (important parts of) the productive assets concerned?

Have your authorities carried out, before granting restructuring aid, a hypothetical comparison between the intervention with aid and the alternative scenario without aid (potentially leading to a continuation of - part of - the economic activity after bankruptcy/insolvency proceedings), showing the different effects on employment and activity? If so, what were the results of these exercises?

Do companies in your country benefit from other support if they are in insolvency, e.g. from payments under Council Directive 80/987/EEC² on the approximation of the laws of the Member States relating to the protection of employees in the event of insolvency?

Do you think that a stronger link between bankruptcy/insolvency proceedings with rescue and restructuring aid would be useful, e.g. by allowing rescue and restructuring aid only in the context of formal insolvency procedures?

B. Specific provisions of the current Guidelines

1. *Definition of a firm in difficulty*

There is no Community definition of what constitutes a "firm in difficulty". However, points 9 to 12 of the current Guidelines put forward some criteria.

- Please provide your experience with the application of these criteria.
- Do you think these criteria are too wide/too strict, also with a view to the fact that firms in difficulty are not eligible under other instruments like De minimis, the R&D&I Framework or the Risk Capital Guidelines?
- Do you have any proposals to modify these criteria to render them more workable/objective?

2. *Group of companies*

Point 13 of the current Guidelines sets out particular rules for firms belonging or being taken over by a larger business group.

- Did/does applying this rule pose any particular problems, also with a view to particular provisions in national law on what constitutes a group of companies and on how different parts of a group are allowed to rely on each other in the course of bankruptcy proceedings?
- Did the provision that a firm being taken over by a larger business group is not normally eligible for restructuring aid pose any particular problems in the context of the privatisation of State-owned companies?

² Council Directive of 20 October 1980 on the protection of employees in the event of the insolvency of their employer; OJ L 283 of 20.10.1980, p.23 amended by Directive of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer; OJ L 270 of 8.10.2002, p. 10.

3. *Rescue aid*

In order to determine the amount needed to keep a firm in difficulty in business point 25 (d) refers to a formula set out in the annex of the current Guidelines. Did/does applying this formula pose any problems? Would you propose any modifications?

Point 26 of the current Guidelines sets out that, when a Member State has submitted a restructuring plan within six months of the date of authorisation, the deadline for reimbursing the loan or for putting an end to the guarantee is extended until the Commission reaches its decision on the plan. Were there/could there be situations, in which a company would have needed more liquidity support to be kept afloat until the Commission approves the plan?

4. *Restoration of viability*

According to point 35 of the current Guidelines a restructuring plan must restore the long-term viability of the firm. The guidelines do not provide precise financial ratios for what is understood by long term viability.

- Should in your view precise indicators be introduced in the Guidelines?
- If yes, what kind of indicators could be used (i.e. return on capital, operating margin in comparison to healthy companies active in the same sector)?

5. *Compensatory measures*

Point 38 of the current Guidelines sets out that compensatory measures must be taken in order to ensure that the adverse effects on trading conditions are minimized.

- What kinds of distortions should, in your view, be targeted/avoided by compensatory measures?
- What kind of compensatory measures (i.e. divestment of assets, reductions in capacity, reduction of entry barriers) are in your opinion most adequate to address competition concerns? How should these measures be applied to medium-sized companies? How should they be applied to mono-product firms (i.e. those firms from which a subsidiary cannot be separated in order to be divested)?
- Point 40 of the current Guidelines stipulates that compensatory measures must be proportionate to the size and the relative importance of a firm on its market(s) and that they should take place in particular in the market(s) where a firm will have a significant market position after restructuring. Did/does applying this rule pose any problems, especially with regard to the question of how to define the relevant market(s)?
- In your experience, have compensatory measures ever hampered the (medium to long run) viability of the aided firm concerned? To what extent have compensatory measures impacted (positively or negatively) upon the degree of competition in the markets concerned? For instance, have consumers been affected?
- What kind of problems surfaced when proposing/implementing compensatory measures? Were the compensatory measures in particular cases adequate to address the competition problems? Have any evaluations of the market situation after the implementation of compensatory measures been performed?

6. *Own contribution*

Aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources. Point 44 quantifies the level of own contribution according to the size of the beneficiaries.

- In your view, do you think that the thresholds as set out in point 44 are adequate?
- Did any problems surface in calculating the own contribution in particular cases?

7. *Restructuring plans for SMEs*

According to point 59 of the current Guidelines the restructuring plan for SMEs does not need to be endorsed by the Commission. However, the plan must be approved by the Member State and communicated to the Commission.

- What is your experience with these provisions? In particular, what kind of problems did you encounter when assessing restructuring plans for SMEs?
- How did you carry out this assessment and how is this internally organised, i.e. who is the approving authority?
- Have you carried out any ex-post assessment of restructuring aid granted to SMEs?

8. *Form of rescue aid/restructuring aid*

Point 25(a) of the current guidelines sets out that rescue aid must in general consist of liquidity support in the form of loan guarantees or loans. For restructuring aid such limitation as to the form of aid does not exist.

- Would you consider it adequate to limit restructuring aid to some particular forms of aid?
- If yes, which forms of aid should be eligible as restructuring aid?

9. *Monitoring and annual reports*

Points 49 to 51 and 86 of the current Guidelines set out specific annual reporting provisions. These provisions foresee in particular (a) regular detailed reports for individual cases until the objectives of the restructuring plan can be deemed to have been achieved (with simplified rules for SMEs), and (b) specific reporting requirements for restructuring schemes.

- What is your experience with complying with these provisions?
- In your view, are there alternative (at least equally effective) measures for ensuring compliance with Commission decisions on restructuring aid?

C. *Miscellanea*

Do you have any other comments on the application of the Rescue and Restructuring Guidelines or proposals for its modification on issues other than the ones covered in the previous questions?