EUROPEAN COMMISSION

Brussels, 06.10.2003

C(2003)3621

Subject: State aid N 281/2003 - United Kingdom
Rescue and restructuring aid scheme for Wales.

Sir,

PROCEDURE

1. By letter dated 23 June 2003 of their Permanent Representation and registered by the Commission on 30 June 2003, the U.K. authorities notified, pursuant to Article 88(3) of the EC Treaty, the above-mentioned aid scheme.

2. By letter D/54924 of 30 July 2003, the Commission requested additional information regarding the measure. The U.K. authorities submitted this information by letter dated 2 September 2003 and registered by the Commission on 3 September 2003.

DESCRIPTION OF THE SCHEME

Objective

3. The scheme contains two parts: one for rescue aid and one for restructuring aid. The rescue part of the scheme is aimed at helping small and medium-sized enterprises in difficulty to recover on the basis of temporary assistance aimed at keeping the firm afloat for the time needed to develop a restructuring or liquidation plan. The restructuring part of the scheme is aimed at helping small and medium-sized enterprises in difficulty to reorganise their activities on the basis of a plan to restore their long-term viability.

Legal base

4. The legal basis of the scheme is the Welsh Development Agency Act 1975 (as amended).
Geographical coverage
5. The scheme applies only to Wales.

Sectoral coverage
6. The scheme applies to all sectors, with the exception of steel, agriculture, aquaculture and fisheries. In the case of certain industrial sectors, such as shipbuilding, motor vehicles and aviation, for which specific state aid rules apply, the U.K. authorities have undertaken to comply with these rules.

Eligible companies
7. Rescue aid under the notified scheme can be granted only to small or medium-sized enterprises in difficulty. The U.K. authorities will use the Community definition of SME1.

8. Enterprises are regarded as being in difficulty if either one of the following conditions is satisfied:

(a) In the case of 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;

(b) In the case of 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;

(c) Whatever the type of company concerned, where it fulfils the criteria under English and Welsh law for being the subject of collective insolvency proceedings.

9. Restructuring aid under the notified restructuring scheme can be granted only to SMEs2 which have been the recipients of rescue aid, or which would fulfil the criteria for eligibility for rescue aid and who have presented a restructuring plan for consideration.

10. Newly created firms in the sense of paragraph 7 of the Guidelines on state aid for rescuing and restructuring firms in difficulty3 (hereinafter referred to as the R&R guidelines) are not eligible for aid under the present scheme.

11. Any aid granted to a firm not satisfying the above criteria will be the object of an individual notification in accordance with Article 88(3) of the EC Treaty.

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2 See footnote n° 1

Form of the aid and conditions under which it is granted

Rescue aid

12. Aid under the rescue part of the scheme will be granted exclusively in the form of a loan or a loan guarantee. The loans or loan guarantees are granted at an interest rate at least comparable to the reference rates adopted by the Commission. Security over firm's assets may also be taken in relation to the loan or loan guarantee. In addition, the scheme provides that the loans are to be reimbursed over a period of not more than twelve months after disbursement of the last instalment.

13. The aid is conditional on the enterprise committing to present a restructuring plan in a time-scale enabling a decision to be made by the granting authority on the approval of such a plan. Should the restructuring plan not be approved within six months, then the rescue aid will become repayable.

14. The amount and intensity of the aid is limited to the absolute minimum required to keep the firm in business for a period of up to six months, during which time an analysis must be made of the firm’s position.

15. Rescue aid under the present scheme will be provided on ‘a one time, last time’ basis in accordance with paragraph 25 of the R&R guidelines.

Restructuring aid

16. Aid under the restructuring part of the scheme will be granted in different forms, including equity injections, debt write-offs, grants, loans and loan guarantees.

17. Restructuring assistance will be granted on a selective basis, and always on the basis of a restructuring plan, to which the Welsh Development Agency and/or Finance Wales commits. The plan must provide a reasonable prospect of the firm attaining viability in the period covered by the plan. Plans that do not demonstrate that the underlying reasons for previous loss-making have been addressed will not be supported. The decision on whether the restructuring plan merits support will be taken on the basis of an in-depth review of the plan arranged by the Welsh Development Agency and/or Finance Wales or by an independent consultant. For the company to qualify for assistance, the review must conclude that the assumptions as to future operating conditions in the plan are realistic and capable of being delivered by the company in the time-scale covered by the plan.

18. The period covered by the restructuring plan will be the shortest possible in which the firm can demonstrate a restoration of long-term viability. Viability will be demonstrated by a financial structure and performance that enables the company to cover all its costs including depreciation and financial charges, and to compete without the need for further outside assistance. During the restructuring period potential recipient firms must not plan to increase their capacity in existing markets.

19. The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs and must not exceed €10 million to any one firm. 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. Any contribution provided by a private sector source must invariably be at market conditions and must contain no element of state aid. 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.

20. The award of restructuring aid will be conditional on the full implementation of a restructuring plan by the recipient company.

21. The aid must be used only for the purpose of restoring the firm’s viability and must not be used by the recipient during the implementation of the restructuring plan to expand production capacity, except insofar as this is essential for restoring viability without unduly distorting competition.

22. Restructuring aid will be provided on ‘a one time, last time’ basis in strict accordance with section 3.2.3. of the R&R guidelines. Any proposal to provide further restructuring aid to the same firm will be notified to the Commission.

Maximum amount of the aid

23. Rescue and restructuring aid under this scheme shall not exceed €10 million to any one firm, including where the restructuring plan is modified. Rescue aid can be cumulated with any restructuring aid subsequently approved or with aid from other sources or under other approved schemes, provided that the total amount of aid from all sources does not exceed the global maximum of €10 million. Cumulation of the aid will be calculated using 100%, in terms of the cash grant equivalent, of any equity, loan or loan guarantee offered.

Budget of the scheme

24. For the rescue part of the aid scheme the maximum budget is £2 million (around €2.9 million) per annum.

25. For the restructuring part of the aid scheme the maximum budget is £5 million (around €7.2 million) per annum.

Duration of the scheme

26. The scheme will be in place until 31 December 2009.

ASSESSMENT

Procedure

27. The U.K. authorities have complied with the procedural requirements of Article 88(3) of the EC Treaty by notifying the above-mentioned aid scheme before putting it into effect.

State aid character of the scheme

28. Under the scheme, the State provides funds in the form of equity injections, grants, debt write-offs, loans, loan guarantees and others to undertakings in difficulty. The terms on which the funding is provided are more favourable than the terms these companies would have been able to obtain in the open market. The aid element contained in the different instruments foreseen under the scheme gives an economic advantage to the beneficiaries. The aid granted in this manner may strengthen the position of these beneficiaries compared to that of their competitors in other Member
States and must therefore be regarded as distorting competition and affecting trade between Member States. Article 87(1) of the EC Treaty is therefore applicable.

**Basis for exemption**

29. Aid under the scheme is granted exclusively to assist the rescuing and restructuring of small and medium-sized enterprises in difficulty. In view of this, the Commission has examined the scheme in the light of Article 87(3)(c) of the EC Treaty and, more in particular, on the basis of the R&R guidelines.

**Sectoral coverage**

30. The Commission notes that the steel sector, agriculture, aquaculture and fisheries are excluded from the scheme. In addition, the U.K. authorities have undertaken to ensure that the special Community rules applicable to State aid in the sensitive sectors will be respected.

**Eligible companies**

31. Eligibility for receiving rescue aid under the scheme is limited to SMEs in difficulty as required by paragraphs 64 and 65 of the R&R guidelines. In this context, the Commission takes note of the following:

(a) SMEs are defined in conformity with the criteria laid down in Annex I of Commission Regulation (EC) 70/2001 of 12 January 2001 on the application of articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises; and

(b) The criteria applied to determine whether an enterprise is in difficulty are in conformity with the provisions of points 5 to 8 of the R&R guidelines.

32. Eligibility for receiving restructuring aid under the scheme is limited to SMEs which have been recipients of rescue aid or which fulfil the criteria for eligibility for rescue aid. This is in compliance with paragraph 30 of the R&R guidelines.

33. In addition, the Commission notes that new enterprises are excluded from the scheme and that any aid granted to a firm not satisfying the above criteria will be the object of an individual notification in accordance with Article 88(3) of the EC Treaty.

**Conditions under which the aid is granted**

34. The forms of the aid provided under the proposed scheme and the conditions under which this aid is granted are in line with the provisions of the R&R guidelines:

**Rescue aid**

35. Aid granted under the scheme consists of liquidity support that takes the form of loans and/or loan guarantees only. The loans are granted at a rate which is at least comparable to the reference rate. This is in conformity with the conditions laid down in paragraph 23(a) of the R&R guidelines.

36. The rescue loans provided under the scheme are to be reimbursed over a period of not more than twelve months after disbursement of the last instalment to the firm, as required by paragraph 23(b) of the R&R guidelines.
37. Point 23(c) of the R&R guidelines requires that rescue aid must be warranted on the grounds of serious social difficulties and have no unduly adverse spill-over effects on other Member States. In this context, the Commission notes the following:

(a) The Welsh economy is still relatively weak and faces structural problems (peripheral location, over-dependence on public sector employment and agriculture, low level of manufacturing productivity). The weakness of the regional economy is reflected in a relatively low per capita GDP (in 1999, GDP per capita was only 80.5% of the U.K. national average). In addition, the unemployment rate in the region is above the national average.

(b) At the same time, the Commission notes that the total budget of the rescue part of the scheme remains modest (limited to €2.9 million annually), that eligibility for aid under the scheme is restricted to SMEs and that the amount and intensity of the aid is limited to the absolute minimum required to keep the firm in business for a period of up to six months. It therefore considers that the aid granted under the proposed scheme should not have unduly adverse spill-over effects on other Member States.

In view of the above, the Commission is of the opinion that the conditions set out in point 23(c) of the R&R guidelines are satisfied.

38. The aid is made conditional on the beneficiaries presenting a restructuring plan in sufficient time to enable the U.K. authorities to examine and approve it within six months. The scheme also provides that, if the restructuring plan is not approved within six months, the rescue aid will become repayable. This is in line with the requirements laid down in paragraph 66(d) of the R&R guidelines.

39. The aid will be the minimum required to keep the company concerned in business for a period of no more than six months, as required by paragraph 23(e) of the R&R guidelines.

40. Rescue aid under the scheme can be cumulated with any restructuring aid and with aid under any other approved schemes and will be subject to a global maximum per beneficiary of €10 million (including where the restructuring plan is modified) as required by paragraph 68 of the R&R guidelines. The cash grant equivalent of a loan or a loan guarantee granted in the context of a rescue operation will be calculated as 100% of the amount of the loan or of the amount of the loan guaranteed.

41. The scheme also provides that aid under the scheme will be granted as a one-off operation (‘one time, last time’), as required by paragraph 25 of the R&R guidelines.

Restructuring aid

42. Restructuring aid under the scheme is conditional on the full implementation by the recipient of a restructuring plan approved by the Welsh Development Agency and/or Finance Wales, as required by paragraph 67 of the R&R guidelines.

43. The period covered by the restructuring plan is the shortest possible in which the firm can demonstrate a restoration of long-term viability. The U.K. authorities have confirmed that the plan will include all the elements mentioned in paragraphs 32 and 33 of the R&R guidelines. It will also provide for a turnaround that will enable the company to cover all its costs including depreciation and financial charges and to
compete without the need for further outside assistance as required by paragraph 34 of the R&R guidelines.

44. The Commission takes note of the fact that restructuring aid will be granted only if the review of the plan (carried out by an independent consultant or by the Welsh Development Agency and/or Finance Wales) concludes that the assumptions as to future operating conditions in the plan are realistic and capable of being delivered by the company in the time-scale covered by the plan.

45. The scheme provides that recipient firms must not plan to increase their capacity in existing markets during the restructuring period, as required by paragraph 67(b) of the Guidelines.

46. In addition, the scheme provides that the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken. In this context, the Commission notes the following:

(a) Aid beneficiaries are required to make a significant contribution to the restructuring plan from their own resources.

(b) 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.

(c) The aid must be used only for the purpose of restoring the firm’s viability and must not be used by the recipient during the implementation of the restructuring plan to expand production capacity, except insofar as this is essential for restoring viability without unduly distorting competition.

(d) In view of the above, the Commission considers that the conditions laid down in paragraphs 40 and 41 of the R&R guidelines are satisfied.

47. The scheme provides that aid under the notified scheme will be provided on ‘a one time, last time’ basis in strict accordance with section 3.2.3 of the R&R guidelines. The Commission notes that the U.K. authorities have undertaken to notify any proposal to provide further restructuring aid to the same firm.

48. Aid under the scheme can be cumulated with any rescue aid and with aid under any other approved schemes within the restructuring period and will be subject to a global maximum per beneficiary of €10 million (including where the restructuring plan is modified), as required by paragraph 68 of the R&R guidelines. The cash grant equivalent of equity injections, debt write-offs, grants, loans and loan guarantees granted in the context of a restructuring operation will be calculated using 100%, in terms of the cash grant equivalent, of the instrument concerned.

49. The scheme also provides that aid under the scheme will be granted as a one-off operation (‘one time, last time’), as required by section 3.2.3. of the R&R guidelines.

**Reporting**

50. The U.K. authorities have confirmed that they will submit reports on the scheme’s operation in conformity with paragraph 69 of the Guidelines.
DECISION

51. The Commission has accordingly decided that the Rescue and restructuring aid scheme for Wales is compatible with the EC Treaty.

52. The U.K. authorities are reminded that, pursuant to Article 88(3) of the EC Treaty, they are obliged to inform the Commission of any plan extend or amend the scheme.

53. If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids Your request should be sent by registered letter or fax to:

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In all your correspondence, please specify the name of the case and the case number.

Yours faithfully,
For the Commission

Mario MONTI
Member of Commission