



EUROPEAN COMMISSION

Brussels, 28.12.2001
C(2001) 4766

**SUBJECT: STATE AID SCHEME N 718/A/2001 - UNITED KINGDOM
BUYING TIME ASSISTANCE (NORTHERN IRELAND)**

Sir,

I. PROCEDURE

By letter, dated 19 October 2001 and registered by the Commission on 24 October 2001, the UK authorities notified, pursuant to Article 88(3) of the EC Treaty, the aid scheme "Buying Time Assistance".

By letter No D/54690 of 13 November 2001, the Commission requested additional information regarding the scheme. By letter dated 5 December 2001, the UK authorities submitted the information requested.

In its letter of 13 November 2001, the Commission informed that UK authorities that it would split the notified scheme in two parts:

- the first part comprises the notified scheme in as far as it applies to undertakings engaged in the production of and/or trade in products of Annex I to the Treaty, including fisheries and aquaculture (State aid No N 718/B/01);
- the second part comprises the notified scheme in as far as it applies to all other sectors (State aid case No N 718/A/01).

The present decision covers exclusively the latter (State aid case No N 718/A/01).

The Right Hon Jack Straw MP
Secretary of State for Foreign and
Commonwealth Affairs
Downing Street
LONDON SW1A 2AL

II. DESCRIPTION OF THE SCHEME

Objective of the scheme :

The scheme is aimed at the rescue of small or medium enterprises from insolvency to provide time for an assessment of longer-term viability prospects and enabling a restructuring or liquidation plan to be developed.

Legal base of the scheme :

The legal basis of the scheme is the Industrial Development (Northern Ireland) Order 1982. The implementing provisions of the Act are laid down in the Buying Time Operating Guidelines, which were attached to the letter of 5 December 2001 from the UK authorities.

Geographical coverage:

The scheme applies only to Northern Ireland.

Sectoral coverage :

The scheme applies to all sectors, with the exception of the steel and coal industry covered by the ECSC Treaty.

Eligible companies:

Aid under the notified scheme can be granted only to small and medium enterprises in difficulty.

(a) Small and medium-sized companies are companies which:

- have fewer than 250 employees,
- and have either an annual turnover not exceeding €40 million, or an annual balance sheet not exceeding €27 million and
- conform to the criterion of independence, i.e. are not owned as to 25% or more of the capital or the voting rights by one enterprise or jointly by several enterprises, falling outside the definition of an SME.

(b) Enterprises are regarded as being in difficulty if either one of the following conditions is satisfied:

- 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;
- 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;
- If the company fulfils the criteria under the Insolvency (Northern Ireland) Order 1989 for the making of an Administration Order, or the appointment of a Receiver, or the appointment of a liquidator other than via a members voluntary winding up.

(c) Newly created firms are not eligible for aid under the present scheme.

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).

Forms of aid and conditions under which it is granted:

- (a) Aid under the scheme is provided in the form of a loan or a loan guarantee. The loans or loan guarantees are granted at an interest rate comparable to the reference rates adopted by the Commission. Where available, security for the loan or loan guarantee will be taken on the assets of the firm. 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.
- (b) The aid is conditional on the enterprise committing to present a restructuring plan in a time-scale enabling a decision to be made on the approval of such a plan. Should the restructuring plan not be approved within six months, then the buying-time aid will become repayable.
- (c) The aid is limited to the 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.
- (d) Rescue aid under the present scheme will normally be provided on a 'one time, last time' basis.

Maximum amount of aid:

The aid will be restricted to the minimum amount required to keep the enterprise concerned in business for a period up to six months, and shall not exceed €10 million to any one firm. The aid will be payable only to bridge a funding gap incapable of being addressed by the private sector. The funding gap must arise from the firm's inability to generate sufficient cash from trading to cover its cash costs.

Aid under this scheme can be cumulated with subsequent restructuring aid (under an approved aid scheme or ad hoc aid approved by the Commission) or with aid under other approved aid schemes, subject to a maximum of €10 million.

Budget of the scheme : Up to £2 million (around €3.2 million) per annum

Duration of the scheme : Indefinite

III. ASSESSMENT

Procedure :

The UK 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.

It is important to keep in mind that the *present decision covers exclusively the part of the notified 'Buying Time Assistance' aid scheme, which applies to undertakings engaged in activities other than the production of and/or trade in products of*

Annex I EC. The part of the scheme which applies to undertakings engaged in the production of and/or trade in products of Annex I EC will be the object of a separate Commission decision (under State aid No N 718/B/01).

State aid character of the scheme :

Under the scheme, the State grants loans and/or loan guarantees to undertakings in difficulty. The interest rate charged for these loans and loan guarantees is comparable to the reference rate adopted by the Commission. Given that the beneficiaries of these loans and/or loan guarantees are always companies in difficulty and given that, at least in some cases, the loans and/or loan guarantees are not fully secured, it must be concluded that the interest rate charged is lower than the market rate (the reference rate is supposed to reflect the average level of interest rates charged to healthy companies on medium and long-term loans backed by normal security¹). The aid element contained in the loans and/or loan guarantees provided under the scheme gives an economic advantage on 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:

Aid under the scheme is granted exclusively to rescue small or medium-sized enterprises in difficulty. In view of this, the Commission has examined the scheme in the light of Article 87(3)(c) and more in particular on the basis of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty² (hereinafter referred to as the Rescue and Restructuring Guidelines).

Sectoral coverage :

The Commission notes that the ECSC sector is excluded from the scheme. In addition, the UK authorities have undertaken to ensure that the special Community rules applicable to State aid in the sensitive sectors will be respected (shipbuilding³, synthetic fibres⁴, transport and motor vehicles⁵).

Eligible companies:

Eligibility for aid under the scheme is limited to SMEs in difficulty as required in points 64 to 66 of the Rescue and Restructuring Guidelines. In this context, the Commission takes note of the following:

- 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

¹ Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p.3).
² OJ C 288, 9.10.1999, p. 2.

³ Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding (OJ L 202, 18.7.1998).

⁴ Code on aid to the synthetic fibres industry (96/C 94/07), and the notice on its extension (OJ C 24, 29.1.1999).

⁵ Community framework for state aid to the motor vehicle industry (OJ C 279, 15.9.1997).

- the criteria applied to determine whether an enterprise is in difficulty are in conformity with the provisions of points 5 to 8 of the Rescue and Restructuring Guidelines.

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).

Forms of aid and conditions under which it is granted

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 Rescue and Restructuring Guidelines:

- (a) 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 point 23a of the Guidelines.
- (b) 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 in point 23b of the Guidelines.
- (c) Point 23(d) of the Rescue and Restructuring 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:
 - The Northern Irish economy is still relatively weak and faces significant structural handicaps (unstable political climate, peripheral location, over-dependence on public sector employment, low levels of enterprise, ...). The weakness of the regional economy is reflected in a relatively low per capita GDP (in 1998, GDP per capita was only 76.6% of the EU average; this is only just above the 75% threshold which is used to define eligibility under Article 87(3)(a)). In addition, the unemployment rate in the region is well above the national average. The difficulties of Northern Ireland have also been recognised by the Commission in the Guidelines on national regional aid, which provide that “in view of its particularly difficult situation, Northern Ireland will retain its status as an exceptional (Article 87(3)(c)) region”⁶. It can therefore be argued that the provision of State aid for rescuing Northern Irish SMEs in difficulty to enable them to prepare a restructuring programme can be justified not only on social grounds, but also on regional policy grounds.
 - At the same time, the Commission notes that the total budget of the scheme remains modest (limited to € 3.2 million annually), that eligibility for aid under the scheme is restricted to SMEs and that the aid is limited to the minimum required to keep the recipient 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 Guidelines are satisfied.

⁶ OJ C 74, 10.3.1998, p.9 (footnote 44).

- (d) The aid is made conditional on the beneficiaries presenting a restructuring plan in good time to enable the UK 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 buying-time assistance will become repayable. This is in line with the requirements laid down in paragraph (d) of point 66 of the Guidelines.
- (e) 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 in point 23(e) of the Guidelines.
- (f) The scheme provides that the total amount of aid granted to any individual firm under this scheme and under any other approved scheme should be restricted to €10 million, as required in point 68 of the Guidelines. In this context the Commission notes that the UK authorities have confirmed that the cash grant equivalent of a loan or a loan guarantee granted in the context of a rescue and/or restructuring operation will be calculated as 100% of the amount of the loan or of the amount of the loan guaranteed.
- (g) The scheme also provides that aid under the scheme will be granted as a one-off operation ('one time, last time'), as required in point 25 of the Guidelines.

Reporting

The UK authorities have confirmed that they will submit reports on the scheme's operation in conformity with point 69 of the Guidelines.

IV. DECISION

The Commission has accordingly decided to consider the "Buying Time Assistance" aid scheme to be compatible with the EC Treaty.

The UK 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.

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:

European Commission
Directorate-General for Competition
State aid Greffe
Rue Joseph II / Jozef II-straat 70
B - 1000 Bruxelles/Brussel
Fax No: (+32.2) 296.12.42

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

Yours faithfully,

For the Commission

Mario MONTI
Member of the Commission