



State aid for rescue and restructuring non-financial undertakings in difficulty

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Unit E3: State aid – Industrial restructuring
5 November 2019

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Rescue and Restructuring aid (R&R)

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I. Legislative Framework

- Legal basis: Article 107(3)(c) TFEU "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."
- 2014 guidelines (OJ C 249, 31.7.2014, p. 1-28) applicable from 01/08/2014 until 31/12/2020. The Commission intends to extend their validity until 31/12/2022 and is also conducting, in line with the Commission's Better Regulation Guidelines, an evaluation of these guidelines in the form of a "fitness check".
- Material scope of the guidelines: undertakings in difficulty
- Sectoral scope of the guidelines: all sectors, except coal and steel (no R&R aid at all) and financial institutions (covered by specific rules)

II. Company in difficulty?

To be eligible for Rescue or Restructuring aid, a company must meet the criteria of point 20 R&R guidelines. In particular, an undertaking is in difficulty if at least:

- more than half of its capital has disappeared as a result of accumulated losses.
- the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic laws for being placed in collective insolvency proceedings at the request of its creditors.
- for an undertaking that is not an SME, when for the last two years:
 - ✓ The undertaking's book debt to equity ratio has been greater than 7,5 and
 - ✓ The undertaking's EBITDA interest coverage ratio has been below 1,0.

II. Company in difficulty? (2)

- The following types of companies are not eligible for R&R aid:
 - Newly created companies (= during the first three years following the start of operations in the relevant field of activity)
 - Company belonging to or being taken over by a larger business group
- A company in difficulty is excluded from access to most of the other types of aid (see various Commission guidelines, frameworks, etc.) and from the benefit of Commission Regulation 651/2014 declaring certain categories of aid compatible with the internal market ([GBER](#)).

III. Types of aid that can be granted

If a company is in difficulty, it is eligible for:

- Rescue aid
- Restructuring aid
- Temporary restructuring support (SMEs only)

Exceptionally, rescue aid – and for SMEs also temporary restructuring support – can be granted to a company that does not fulfill the criteria of point 20 R&R guidelines but that faces « acute liquidity needs due to exceptional and unforeseen circumstances ».

A company can receive aid under the R&R guidelines only once in a ten-years period – « one time, last time principle ».

IV. General compatibility criteria

In assessing whether aid is compatible with the internal market, the Commission will consider whether each of the following criteria is met:

- (a) contribution to a well-defined objective of common interest
- (b) need for State intervention
- (c) appropriateness of the aid measure
- (d) incentive effect
- (e) proportionality of the aid (aid limited to the minimum)
- (f) avoidance of undue negative effects on competition and trade between Member States
- (g) transparency of aid

V. Rescue aid

- Rescue aid is a temporary and reversible measure that must be restricted to what is needed to keep the beneficiary in business while it works out a way to address its difficulties – based on the formula in Annex 1 of the R&R guidelines or on a liquidity plan. It cannot finance structural measures.
- It can only be provided in the form of loans or guarantees (no grants) for a duration of maximum 6 months.
- The remuneration has to be set at a rate not less than 1-year IBOR + 400 basis points.
- After 6 months, the Member State must communicate to the Commission one of the following:
 1. Proof that the loan has been reimbursed in full and/or the guarantee has been terminated.
 2. A credible and substantiated restructuring plan.
 3. A liquidation plan setting out in a substantiated way the steps leading to the liquidation of the aid beneficiary within a reasonable time frame

VI. Restructuring aid (1)

- Restructuring aid often involves more permanent support and must restore the long-term viability of the beneficiary on the basis of a feasible, coherent and far-reaching restructuring plan that addresses the problems that caused the company's difficulties.
- The restructuring plan must also limit the distortions of competition brought about by the State aid, by implementing compensatory measures and ensuring that the aid beneficiary and the company owners adequately contribute to the restructuring effort.
- Member States are free to choose the form that restructuring aid takes (loans, equity, grants, etc). However, they must ensure that the instrument chosen is appropriate for addressing the problem it intends to solve.

VI. Restructuring aid (2)

- A significant own contribution to the restructuring costs is required from the own resources of the aid beneficiary, its shareholders or creditors or the business group to which it belongs, or from new investors.
- This own contribution must be real, actual and free of aid. In principle, for large undertakings it should amount to at least 50% of the restructuring costs. For companies in assisted areas according to Art. 107(3)(a) TFEU or for SMEs under an R&R scheme, a lower own contribution can be accepted in duly justified cases.
- The own contribution should normally be comparable to the aid in terms of its effects on the solvency or liquidity position of the beneficiary.
- Moreover, company owners must share the burden of restructuring, for example through the recognition of losses, write down of subordinated debt, a dividend ban, appropriate share of upside for State equity injections, etc.

VI. Restructuring aid (3)

- Measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised.
- Compensatory measures should usually take the form of structural measures, for example divestments of viable stand-alone businesses or capacity reductions. In exceptional cases, the Commission may accept behavioral or market opening measures.
- The compensatory measures have to be calibrated so as not to compromise the viability of the undertaking nor to deteriorate the market structure. They have to be implemented within the restructuring period,

VII. R&R Schemes

- SMEs and small State owned enterprises can receive R&R aid under simplified conditions in the framework of R&R schemes, previously approved by the Commission.
- Types of aid: rescue aid, restructuring aid, temporary restructuring support.
- Schemes must specify the maximum amount of R&R aid (all types) to any one beneficiary.
- Aid recipients can benefit from simplified conditions, adapted to their size (objective of common interest, amount of own contribution, compensatory measures).

VIII. Temporary restructuring support

- Temporary restructuring support can only be granted under a scheme that has been previously approved by the Commission.
- It can only take the form of liquidity assistance over maximum 18 months.
- Temporary restructuring support may only be granted to SMEs and to smaller State-owned undertakings.
- It is also available to companies that do not meet the criteria of “undertaking in difficulty” of point 20 of the R&R Guidelines but that are confronted with an acute liquidity need.



Thank you for your attention!

