

ANNEX 2- FW R R Notification

Part III.3.C - Supplementary information sheet on rescue aid, restructuring aid and/or temporary restructuring support: aid schemes

This supplementary information sheet must be filled with regard to rescue aid, restructuring aid and temporary restructuring support schemes covered by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹ ("Guidelines").

1. Scope of the scheme

1.1. Does the scheme concern provision of:

- | | | | | |
|--------------------------------------|-------------------------------------|-----|--------------------------|----|
| (a) rescue aid: | <input checked="" type="checkbox"/> | yes | <input type="checkbox"/> | no |
| (b) restructuring aid: | <input checked="" type="checkbox"/> | yes | <input type="checkbox"/> | no |
| (c) temporary restructuring support: | <input checked="" type="checkbox"/> | yes | <input type="checkbox"/> | no |

2. Eligibility

2.1. Is the scheme limited to SMEs² in difficulty or smaller State-owned undertakings in difficulty³ (unless clearly indicated otherwise hereafter together referred as "SMEs")?

yes no

2.2. Is the scheme limited to SMEs that fulfil one of the following eligibility criteria:

- (a) In relation to SMEs that are limited liability companies⁴: more than half of the subscribed share capital has disappeared as a result of accumulated losses⁵?

yes no

¹ OJ C 249, 31.7.2014, p. 1.

² As defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

³ 'Smaller State-owned undertakings' are economic units with an independent power of decision that would qualify as small or medium-sized enterprises under Recommendation 2003/361/EC but for the fact that 25% or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

⁴ This refers in particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁵ This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.

- (b) In relation to SMEs which are companies where at least some members have unlimited liability for the debt of the company⁶: more than half of the capital shown in the company accounts has disappeared as a result of accumulated losses?

yes no

- (c) SMEs that are subject to collective insolvency proceedings or fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors?

yes no

- (d) In relation to smaller State-owned undertakings: the undertaking's book debt to equity ratio has been greater than 7,5 and its EBITDA interest coverage ratio has been below 1,0 for the past two years?

yes no

- 2.3.** Does the scheme foresee that rescue aid or temporary restructuring support, or both, can be granted to SMEs that do not qualify as undertakings in difficulty but are merely facing acute liquidity needs due to exceptional and unforeseen circumstances?

yes no

- 2.4.** If the answer to point 2.3 is yes, please explain how it will be assessed whether an SME faces acute liquidity needs and which kinds of circumstances are qualified as exceptional and unforeseen.

Acute liquidity needs will be determined through a detailed and critical analysis of the SME's financial position and ability to meet its debts as they fall due. This will be undertaken by reference to the SME's historic and forecast profit and loss account and balance sheet, detailed cash flow forecast, and debtor and creditor positions. The assumptions underpinning the financial forecast, including the ability of the SME to accelerate receipts and delay payments will be tested, as will the extent to which headroom in existing funding lines may be utilised to meet the funding requirement. This testing will take the form of due diligence undertaken either by independent external experts or by our experienced team of finance professionals. Moreover, methods of raising new funds will be investigated, with due regard for the likely timescales associated with delivering such funding in the context of the timing of the liquidity crisis.

Exceptional and unforeseen circumstances are those that the SME could not reasonably be expected to have anticipated and planned for as part of the normal course of business. These may include, for example, the impact on the SME of acts of god such as flooding, loss of power or IT provision, terrorist incidents, etc. Similarly, other unforeseen circumstances impacting the SME could include more directly business-related situations, such as the end user in a supply chain cancelling

⁶

This refers in particular to the types of company mentioned in Annex II to Directive 2013/34/EU.

orders without notice, creating repercussions for businesses lower down that supply chain.

2.5. Does the scheme apply to newly-created SMEs?

yes no

2.6. Does the scheme apply to SMEs active in:

- (a) the coal sector⁷: yes no
(b) the steel sector⁸: yes no
(c) sectors covered by specific rules for financial institutions⁹:
 yes no

3. Maximum amount of aid

3.1. Is the maximum total amount of aid to be granted to any one SME under the scheme limited to a maximum of EUR 10 million, including any aid obtained from other sources or under other schemes?

yes no

3.2. Please indicate the maximum amount of aid to be granted to an SME under the scheme:

Euro 10 million to any one beneficiary

4. Compatibility with the internal market

In the case of rescue, restructuring aid and temporary restructuring support

4.1. Contribution to an objective of common interest:

a) Does the scheme apply only in cases where the failure of the beneficiary would be likely to involve social hardship or a market failure, in particular:

- the exit of an innovative SME or an SME with high growth potential would have potential negative consequences:

yes no

- the exit of an SME with extensive links to other local or regional SMEs would have potential negative consequences:

⁷ As defined in Decision 2010/787/EU.

⁸ As defined in Annex IV to the Communication from the Commission: Guidelines on regional state aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1).

⁹ Communication from the Commission on the application, from 1 August 2013, of the State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ C 216, 30.7.2013, p. 1).

yes no

- the failure or adverse incentives of credit markets would push an otherwise viable SME into bankruptcy:

yes no

- similar situations of hardship duly substantiated by the beneficiary:

yes no

- b) If the answer to any of the questions in point (a) is yes, please fully substantiate the answer(s) and explain the criteria on the basis of which the national authorities are going to assess the contribution to the objectives of common interest.

The scheme will operate a detailed eligibility checklist in its assessment of each potential investment. In terms of ensuring compliance with the objective of common interest the scheme will consider the following:

- **The scheme will consider the impact on the market by the loss of the undertaking and any current or future employment, particularly where the growth is anticipated to result in further job creation**
- **The scheme will consider the negative impact of the loss of the beneficiary on other regional SMEs including possible failures of these entities resulting in further unemployment.**
- **The scheme will consider if all other funding sources have been exhausted and if funders are unable to support due to lack of information available.**
- **The scheme will consider situations of hardship such as increased unemployment.**

In the case of restructuring aid:

4.2. Restructuring plan and return to long-term viability

In relation to the grant of restructuring aid, does the scheme require the provision of a restructuring plan¹⁰ aiming at restoring the long-term viability¹¹ of the beneficiary within a reasonable timescale (please see an indicative restructuring plan in Annex II to the Guidelines)?

yes no

¹⁰ Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary's activities to a more efficient basis, typically involving withdrawal from loss-making activities, restructuring of those existing activities that can be made competitive again and, possibly, diversification towards new and viable activities. It typically also involves financial restructuring in the form of capital injections by new or existing shareholders and debt reduction by existing creditors.

¹¹ Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges. The restructured undertaking should be able to compete in the marketplace on its own merits.

5. Need for State intervention and incentive effect

- 5.1. In relation to the grant of restructuring aid, does the scheme require that the national authorities compare the measures set out in the restructuring plan with a credible alternative scenario not involving State aid¹² demonstrating that in such an alternative scenario the relevant objective or objectives of common interest, as described in section 4.1 above, would not be attained, or would be attained to a lesser degree? In particular, does the scheme require a demonstration that in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the objective or objectives of common interest, as described in section 4.1 above?

yes no

- 5.2. If the answer to point 5.1 is yes, please explain according to which criteria the national authorities will assess it.

The scheme will consider the following criteria to ensure compliance with the incentive effect:

A thorough assessment will first be made to identify whether the applicant can, for example with the support of stakeholders, creditors, and other interested parties, effect a restructure that does not require the award of aid.

If satisfied that such an outcome cannot be delivered, the finance professionals operating the scheme will draw on their experience of dealing with businesses in difficulty and of the insolvency process to demonstrate that in the absence of aid the objective of common interest would not be achieved through the sale or winding up of the beneficiary. This may include consideration of, inter alia:

- the likelihood of contracts being terminated;
- the use of Estimated Outcome Statements to determine the likely distribution to creditors;
- the market dynamics of the sector in which the beneficiary trades, such as barriers to entry;
- the loss of regulatory approvals arising from insolvency;
- the impact on other SMEs and the potential for further unemployment in the supply chain;
- the loss of experience and expertise, including intellectual property and know-how;

In instances where insolvency practitioners are advising beneficiaries an independent view may be obtained as to the likely outcome of insolvency proceedings and hence whether or not the objective of common interest will be achieved in the absence of aid.

¹²

The alternative scenario should not involve State aid. It may concern, for example: debt reorganisation, asset disposal, private capital raising, sale to a competitor or break-up, in each case either through entry into an insolvency or reorganisation procedure or otherwise.

It should also be noted that independent research has found that 70% of Administrations in the UK fail and that overall distributions to unsecured creditors arising from Administrations amount to just 7 pence in the pound. Accordingly, this research shows that, in the majority of cases, the entering into formal insolvency proceedings of UK businesses does not achieve the objective of common interest.

Further details of insolvency events and outcomes in the UK can be found in Section 5 of the business case accompanying this notification.

6. Appropriateness

In the case of rescue aid:

6.1. Is the aid granted under the scheme restricted to loan guarantees or loans?

yes no

6.2. Does the scheme require that the financial cost of the loan (or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium) is set at a rate not lower than the reference rate set out by the Commission in its Reference Rate Communication¹³ for weak undertakings offering normal levels of collateralisation?

yes no

6.3. Does the scheme provide that rescue aid is granted for no longer than six months, during which an analysis must be made of the beneficiary's position?

yes no

6.4. Does the scheme provide that, within six months after granting the rescue aid, the loan will be reimbursed or the guarantee terminated, unless before that time either: (a) the national authorities have approved a restructuring plan, or liquidation plan, or (b) the beneficiary has submitted a simplified restructuring plan¹⁴ (in case of temporary restructuring support)?

yes no

6.5. Does the scheme provide that the rescue aid must not be used to finance structural measures, such as acquisition of significant businesses or assets, other than those required during the rescue period for the survival of the beneficiary?

¹³ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6) or any future communication which might replace it.

¹⁴ In line with point 115(e) of the Guidelines, that plan need not contain all the elements set out in points 47 to 52 of the Guidelines, but must, as a minimum, identify the actions that the beneficiary must take to restore its long-term viability without State support.

yes no

In the case of restructuring aid:

- 6.6. Please explain on basis of which criteria the national authorities will assess to what extent the problems of the beneficiary relate to liquidity or solvency or both, and how they will select the State aid instruments which will address the problems identified in the most appropriate way:

Each business will be assessed on its merits including a review of historic and forecast trading performance. In some instances the undertaking may already be taking advice from insolvency practitioners who will also be able to inform the extent to which the problems relate to liquidity or solvency or both, with an appropriate instrument selected to address the problems identified. For example, where a beneficiary's problems are identified as relating mainly to liquidity, assistance in the form of loans may be sufficient. However, in the case of solvency problems, recapitalisation might be appropriate.

In the case of temporary restructuring support:

- 6.7. Is the temporary restructuring support to be granted under the scheme restricted to loan guarantees or loans?

yes no

- 6.8. Does the scheme require that the financial cost of the loan (or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium) be set at a rate not lower than the reference rate set out by the Commission in its Reference Rate Communication for weak undertakings offering normal levels of collateralisation?

yes no

- 6.9. Does the scheme require that the remuneration for the temporary restructuring support be increased by at least 50 basis points 12 months after the disbursement of the first instalment to the beneficiary (less any immediately preceding period of rescue aid)?

yes no

- 6.10. Does the scheme provide that temporary restructuring support be granted for no longer than 18 months, less any immediately preceding period of rescue aid?

yes no

6.11. Does the scheme provide that not later than six months after disbursement of the first instalment of the temporary restructuring support to the beneficiary, less any immediately preceding period of rescue aid, the national authorities will approve a simplified restructuring plan?

yes no

6.12. Does the scheme provide that within 18 months from the date of granting of the temporary restructuring support, less any immediately preceding period of rescue aid, the loan will be reimbursed or the guarantee terminated, unless before that time a restructuring plan or liquidation plan of the beneficiary has been approved by the national authorities?

yes no

7. Proportionality of the aid or aid limited to the minimum

In the case of rescue aid and temporary restructuring support:

7.1. Amount of aid

(a) Does the scheme provide that the amount of aid will not exceed the result of the calculation on the basis of the formula set out in Annex I to the Guidelines?

yes no

(b) If the answer to point (a) is no, does the scheme require the preparation of a liquidity plan setting out the beneficiary's liquidity needs for the next six months (18 months in the case of temporary restructuring support)?

yes no

(c) If the answer to point (b) is yes, please explain on which basis and according to which information the national authorities will examine whether the liquidity plan setting out the beneficiary's liquidity needs for the next six months (18 months in the case of temporary restructuring support) is duly justified:

The liquidity plan will be thoroughly interrogated to ensure the aid is limited to the minimum amount necessary to keep the beneficiary in business for 6 months (18 months in the case of temporary restructuring support). This analysis will be undertaken through detailed review of the beneficiary's historic trading performance and our understanding of the business and the sector and market in which it operates, so as to inform the reasonableness of the assumptions underpinning the forecast period. The ability of the beneficiary to accelerate receipts or delay payments will be tested, as will the extent to which headroom in existing funding lines may be utilised to meet the liquidity needs. Where appropriate, the assumptions in the liquidity plan can be agreed back to supporting documentation. Methods of raising new funds will also be investigated,

with due regard for the likely timescales associated with delivering additional funding in the context of the timing of the liquidity crisis.

In the case of restructuring aid:

7.2. Own contribution

- (a) Does the scheme require provision of a real and aid-free contribution to the restructuring costs from the own resources of the beneficiary, its shareholders, creditors, the business group to which it belongs or from new investors amounting to at least 40% of the restructuring costs in the case of medium-sized enterprises or 25% of the restructuring costs in the case of small enterprises?

yes no

- (b) If the answer to point (a) is yes, please explain which elements the national authorities will take into account to assess whether the own contribution is real and aid-free:

Documentary evidence of the beneficiary's own contribution will be obtained. This may take several forms, such as offer letters/loan agreements from private sector lenders and/or creditors and bank statements evidencing for example the injection of cash from stakeholders such as directors/shareholders. Moreover, beneficiaries will be required to explain where their own contribution funds have been sourced and this will form part of the due diligence associated with the appraisal of requests for aid. This will ensure that the beneficiary's own contribution is both real and aid-free.

- (c) Does the scheme require that the own contribution should be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary¹⁵?

yes no

- (d) If the answer to point (c) is yes, please explain how the national authorities will assess it:

The finance professionals operating the scheme will draw on their experience of successfully operating predecessor schemes over the past 14 years and their knowledge and understanding of financial instruments to ensure that aid granted will be comparable to the own contribution from the beneficiary in terms of effects on the solvency or liquidity position of the beneficiary.

¹⁵ For example, where the aid to be granted enhances the beneficiary's equity position, the own contribution should similarly include measures that are equity-enhancing, such as raising fresh equity from incumbent shareholders, the write-down of existing debt and capital notes or the conversion of existing debt to equity, or the raising of new external equity on market terms.

7.3. Burden-sharing

To be completed if the scheme provides that the State aid can be granted in a form enhancing the beneficiary's equity position¹⁶:

- (a) Does the scheme provide that State intervention may only take place after losses have been fully accounted for and attributed to the existing shareholders and/or subordinated debt holders?

yes no

- (b) Will cash outflows from the beneficiary to holders of equity and subordinated debt be prevented during the restructuring period to the extent legally possible?

yes no

- (c) If the answer to point (b) is no, please explain on the basis of which criteria the national authorities will assess whether such cash outflows would not disproportionately affect those that have injected fresh equity.

.....
.....

- (d) Will the national authorities allow any exceptions from the conditions described in points (a) and (b) above?

no
 yes. If so, please explain.

Situations could include cases where the aid amount is small in comparison with the own contribution, or it can be demonstrated that subordinated creditors would receive less in economic terms than under normal insolvency proceedings and if no State aid were granted.

- (e) Does the scheme provide that the State will receive a reasonable share of the future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for?

yes no

¹⁶ For example where the State provides grants, injects capital or writes off debt.

8. Negative effects

8.1. 'One time, last time' principle:

Does the scheme exclude¹⁷ the provision of aid to any SME which has received rescue aid, restructuring aid or temporary restructuring support in the past¹⁸ and/or any non-notified aid?

yes no

In the case of restructuring aid:

8.2. Measures to limit distortions of competition¹⁹:

Structural measures – divestments and reduction of business activities

(a) Does the scheme require from beneficiaries divestments of assets, reduction of capacity or market presence²⁰ together with indication of the relevant markets on which those divestments will take place²¹ and their timing²²?

yes no

(b) Does the scheme state that structural measures should normally take the form of divestments on a going-concern basis of viable stand-alone businesses that, if operated by a suitable purchaser, can compete effectively in the long term?

yes no

¹⁷ Please note where less than 10 years have elapsed since the rescue aid or temporary restructuring support was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), further rescue aid, restructuring aid or temporary restructuring support can be only granted: (a) where temporary restructuring support follows the granting of rescue aid as part of a single restructuring operation; (b) where restructuring aid follows the granting of rescue aid or temporary restructuring support as part of a single restructuring operation; (c) where rescue aid or temporary restructuring support has been granted in accordance with these guidelines and that aid was not followed by restructuring aid, if: (i) it could reasonably have been believed that the beneficiary would be viable in the long term when the aid pursuant to these guidelines was granted, and (ii) new rescue or restructuring aid or temporary restructuring support becomes necessary after at least five years due to unforeseeable circumstances for which the beneficiary is not responsible; (d) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.

¹⁸ Including any such aid granted before the date from when the Commission applies the Guidelines, i.e. before 1.8.2014.

¹⁹ Member States are not obliged to require such measures from small enterprises, except where otherwise provided by rules on State aid in a particular sector. However, small enterprises should not normally increase their capacity during a restructuring period.

²⁰ Divestments, write-offs and closure of loss-making activities which would at any rate be necessary to restore long-term viability will generally not be considered sufficient.

²¹ Such measures should take place in the market(s) where the beneficiary will have a significant market position after the restructuring, in particular those where there is significant excess capacity.

²² Divestments to limit distortions of competition should take place without undue delay, taking into account the type of asset being divested and any obstacles to its disposal, and in any case within the duration of the restructuring plan.

(c) If the answer to point (b) is no, does the scheme provide that, where there is a lack of such entities, the beneficiary might carve out and subsequently divest an existing and appropriately funded activity, creating a new and viable entity that should be able to compete in the market?

yes no

(d) If the scheme allows for structural measures in the form of divestment of assets alone, without involving the creation of a viable entity able to compete in the market, does it require a demonstration by the beneficiary that no other form of structural measures would be feasible or that other structural measures would seriously jeopardise the economic viability of the undertaking?

yes no

Behavioural measures

(e) Does the scheme require that the beneficiary refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability?

yes no

(f) Does the scheme require that the beneficiary refrain from publicising State support as a competitive advantage when marketing their products and services?

yes no

(g) Does the scheme provide for the beneficiary to refrain from engaging in commercial behaviour aimed at a rapid expansion of its market share relating to specific products or geographic markets by offering terms (for example as regards prices and other commercial conditions) which cannot be matched by competitors that are not in receipt of State aid?

yes no

(h) If the answer to point (g) is yes, under what circumstances? Please explain.

Such restrictions will only be applied where no other remedy, structural or behavioural, can adequately address the competition distortions identified, and where such a measure will not itself restrict competition in the market concerned. Moreover, as measures limiting distortions of competition are likely to have a disproportionate impact on small enterprises, such restrictions may not be applied to small enterprises, except where otherwise provided by rules on State aid in a particular sector

(i) Does the scheme foresee any other behavioural measures?

no
 yes. If so, please describe.

.....

Market opening measures

(j) Does the scheme allow for any measures to be adopted by the national authorities or by the beneficiary that are aimed at promoting more open, sound and competitive markets, for instance by favouring entry and exit²³?

yes no

(k) If the answer to point (j) is yes, please describe:

In respect of medium-sized enterprises where this provision applies the scheme may consider measures which open up certain markets directly or indirectly linked to the beneficiary's activities to other Union operators, in compliance with Union law. Such initiatives may replace other measures to limit distortions of competition that would normally be required of the beneficiary.

9. General

9.1. Does the scheme apply to SMEs in an assisted area?

yes no

9.2. Do specific provisions apply to SMEs in assisted areas under the scheme?

yes no

9.3. If the answer to point 9.2 is yes, please explain which specific provisions apply and why they are justified.

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.....

9.4. Do the national authorities intend to accept a contribution which constitutes less than 40% of the restructuring costs in the case of medium-sized enterprises or less than 25% of the restructuring costs in the case of small enterprises?

yes no

9.5. If the answer to point 9.4 is yes, please explain how the national authorities will apply the requirements concerning the measures to limit distortions of competition in order to limit the negative systematic impacts for the region:

.....
.....

²³ This could in particular include measures to open up certain markets directly or indirectly linked to the beneficiary's activities to other Union operators, in compliance with Union law. Such initiatives may replace other measures to limit distortions of competition that would normally be required of the beneficiary.

10. Other information

Please provide any other information that would be of relevance to assess the notified aid measure under the Guidelines (e.g. as regards measures to increase employability of redundant workers or assistance with finding new employment):

See business case for further information on the proposed Scheme operation