

Approved by the Decision of the
Plenum of the Competition Council
nr.6 of August 30, 2013

REGULATION **on State rescue aid for beneficiaries in difficulty**

This regulation transposes Annex I, Part III. 7 A, Part III. 7B, part III. 8A and Part III. 8B of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, published in Official Journal of the European Union L 140 of 30 April 2004, so as the Guidelines on State aid for rescuing and restructuring undertakings in difficulty published in the Official Journal of the European Union C244/02 from 1 October, 2004.

Object and scope of the law

1. In accordance with Article 5 Para. (1) Letter g) of Law No. 139 of 15 June 2012 on State aid can be considered compatible with a normal competitive environment aids for the rescue of the beneficiaries in need.
2. The present Regulation is applied to State aid granted to the beneficiaries in need and regulates the aid for the rescue and restructuring.
3. It can not be justified to keep a company's activity artificial in a sector which faces structural overcapacity in a long term or if it can survive only through repeated State interventions.

Section 2

General Provisions

4. In the meaning of the present Regulation, the definitions given below shall have the following meaning:

an undertaking in difficulty - an undertaking considered to be in difficulty when it is unable, either through their own financial resources or the resources which can be obtained from its owners / shareholders or creditors, in order to cover its losses. An undertaking is considered to be in difficulty in the following circumstances:

- a) in the case of an undertaking, while it is established the loss of more than half of the share of social capital and when more than one fourth of the share of social capital has been lost over the past 12 months;
- b) a company in which at least some members have unlimited liability for company debts when more than half of its capital as shown in the company accounts has been lost, over a quarter of that capital has been lost over the past 12 months;

c) no matter what form of undertaking organization, if it has become insolvent in accordance with the criteria set by the Insolvency Law No. 149 of 29 June 2012;

d) no matter what form of undertaking organization, if it shows the signs of a difficult situation such as: increasing losses, diminishing turnover, growing stock inventories, production overcapacity, decreased of financial means, increased debt and decrease or disappearance of the net asset value;

long-term structural overcapacity - exists when the existing production capacity already exceeds market demand for the certain product or when the rate of utilization of capacity of the sector / sub-sector concerned, defined according to the lowest level of the Classification of economic activities in Moldova (CEAM), calculated as the average of the last five years, is lower by at least 2% than that of the economic sector in its entirety;

rescue aid - is that reversible aid granted for a period of six months, which makes it possible to support a company in difficulty, which is manifested by an acute liquidity crisis or insolvency of the company whose main objective is to maintain the company in the economic cycle for a period during which it will be able to develop a restructuring or liquidation plan. Structural measures that do not require immediate action, such as automatic and direct participation of the state in company's own funds can not be funded by the aid for rescuing. Measures which have to be implemented immediately in order to stop losses, including the structural measures (egg immediate withdrawal from certain sphere of the activity that causes losses) can be funded by the aid for rescuing;

restructuring aid - is that aid granted to undertakings in difficulty in order to revive by implementing a feasible, coherent and far-reaching restructuring plan, which comprises restructuring measures which involve one or more of the following elements: the reorganization and rationalization of the company's activities on the more efficient basis, involving usually withdrawal from loss-making activities, the restructuring of existing activities that can become again competitive and eventually diversification towards new and viable activities. Industrial restructuring must be accompanied, as a rule, by financial restructuring (capital injections, debt reduction, etc.). Restructuring operations can not be limited to financial aid designed to compensate for losses without interfering with the causes that led to these losses. After establishing and beginning to implement a restructuring or liquidation plan concerning which the state aid was requested, any additional aid will be considered as a restructuring aid;

newly created undertaking - is an undertaking which was formed during the first three years from the beginning of the activities in the certain field, whether resulting from the liquidation of a previous undertaking or by taking over the assets of such an undertaking;

restructuring plan - is that plan that synthesizes the achievement of a set of financial, organizational, operational and legal measures, initiated by the owner of the company and shareholders (members) and / or its manager, the creditors or the central and local public authorities, orientated towards the financial and economic remedy of the undertaking based on capitalization and reorganization, change in the structure of assets and modification of the operational production process.

The duration of the restructuring plan is as short as possible (2-5 years) and the plan must restore the long term viability of the company within a reasonable timescale and

on the basis of realistic assumptions as to future operating conditions. The plan will contain all relevant details will include a market study and the present situation and future supply and demand in the relevant product market, with scenarios that reflect optimistic, pessimistic and intermediate assumptions, strengths and weaknesses of the company. The restructuring plan should enable the company to progress towards a new structure that can offer perspective of long-term of viability and allow it to operate with its own resources;

compensatory measures - are measures taken by the provider of restructuring aid for restructuring in order to minimize negative effects on market conditions, so that the positive effects pursued to counteract the negative effects. These measures include disposals of assets, reductions in capacity or in market presence and reduction of entry barriers on the markets concerned.

Section 3

Eligibility for state rescue and restructuring aid

5. An undertaking in difficulty is eligible for rescue or restructuring if it can not recover through its own resources or funds that can be gained from the owners / shareholders or from market sources.

6. A newly created undertaking is not eligible for rescue or restructuring aid even if its initial financial position is insecure.

7. An undertaking which belongs to or is taken over by a larger business group is not eligible for rescue or restructuring aid.

8. An undertaking which belongs to or is taken over by a larger group may be eligible for the aid in situation where it is shown that the difficulties of the undertaking are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties can not be resolved within the group. If an undertaking in difficulty creates a subsidiary, the subsidiary together with the undertaking in difficulty, which controls it, will be considered a group and can receive aid on conditions stipulated in the present point.

Section 4

“One time, last time” principle

9. Rescue and restructuring aid is granted only once in a period of six years.

10. Six-year period begins on the date when the aid was granted for rescue, the end of the restructuring or stop achieving restructuring plan, or the recent one.

11. The rules stipulated in point 9 and 10 of this Regulation are applied and where it is planned to grant rescue aid to an undertaking which has already received restructuring aid.

12. When the Competition Council is notified about a rescue or restructuring aid, the providers will specify whether the company has already received rescue or restructuring aid, including any kind of other aid notified or non-notified.

13. Regarding non-notified aid, the Competition Council will take into account the possibility that the aid can be declared compatible with the normal competitive

environment otherwise than as rescue or restructuring in accordance with Article 4 or Article 5 of Law No. 139 of June 15, 2012 on State aid.

14. Exceptions to the “One time, last time” principle are permitted in the following cases:

a) where restructuring aid follows the granting of rescue aid as part of a single restructuring operation;

b) where rescue aid has been granted in accordance with the Section 5 of the present Regulation and this aid was not followed by restructuring operation supported by the state if:

- the beneficiary could reasonably be believed to be viable in the medium term following the granting of rescue aid, and

- new rescue or restructuring aid becomes necessary after at least five years due to unforeseeable circumstances for the appearance of which the undertaking is not responsible;

c) in exceptional and unforeseeable circumstances for which the undertaking is not responsible.

15. For the cases mentioned in letter b) and c) point 14 of the present Regulation, the simplified procedure mentioned in point 26 of the present Regulation cannot be used.

16. The application of the rule laid down in point 14 of the present Regulation will in no way be affected by any changes in ownership of the beneficiary following the grant of aid or by any judicial or administrative procedure which has the effect of putting its balance sheet on a sounder footing, reducing its liabilities or wiping out its previous debts where it is the same undertaking that is continuing in business.

17. If an companies group received rescue or restructuring aid, the Competition Council will not allow to grant aid for rescuing and restructuring by the group or to other undertakings in that group of companies.

18. Where an entity belonging to a business group has received rescue aid, restructuring aid, the group as a whole as well as the other entities of the group remains eligible for rescue or restructuring aid, with the exception of the earlier beneficiary of the aid. Aid provider must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

19. Where an undertaking takes over assets of another undertaking, and in particular one that has been the subject of one of the procedures referred to in point 16 of the present Regulation, or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid, the purchaser is not subject to the ‘one time, last time’ requirement, if the following conditions are met cumulative:

a) the purchaser is clearly separated from the old undertaking;

b) the purchaser has acquired the assets of the old company on the market price

c) winding up or administration aimed at the court and acquisition of old company is not just instruments to elude the application of the “first time, last time” principle: Competition Council may concluded that principle is being eluded if the difficulties met by the purchaser were predictable when acquiring of the assets of the old company has occurred.

Section 5

The state rescue aid compatibility, individually notified

20. In order to be approved by the Plenum of the Competition Council, rescue aid must meet the following conditions:

- a) be granted to an undertaking in difficulty;
- b) be a liquidity support in the form of loan guarantees or loans as, in both cases, the loans should be granted with an interest rate equal to or greater than the base rate of the National Bank of Moldova; any loan must be reimbursed and any guarantee shall expire within a period of up to six months since the payment date of the first installment to the undertaking.

The exceptions from the provisions of the letter b) can be done if rescue aid from the banking sector is granted in order to allow the concerned credit institution to continue temporarily to carry out banking activities in accordance with the law in force. In any case, the aid granted in another form than loan guarantees or loans which fulfill the conditions set out in letter a) should meet the general principles of rescue aid and can not consist in structural financial measures related to bank's own funds. Any aid granted in a form other than loan guarantees or loans which fulfill the conditions stipulated in letters a) and b) will be taken into consideration in case of examination of any compensatory measure under a restructuring plan, according to the Section 7 of this Regulation.

- c) be justified on grounds of serious social difficulties and have no side effects on the competitive environment;
- d) be accompanied to the notification by a commitment of the provider the by which he is obliged to communicate to the Competition Council a restructuring or liquidation plan or to proof that the loan has been repaid in full and / or that the guarantee has expired, no later than six months after the rescue aid measure has been approved. In the case of non-notified aid the provider must communicate within maximum six months from the implementation of the first rescue measures, a restructuring or liquidation plan or proof that the loan has been reimbursed in full and / or that the guarantee has expired;
- e) be limited to the amount needed to keep the undertaking in economic circuit for the duration for which the aid was approved. The required amount should be based on the liquidity needs of the company in order not anymore to suffer losses and may include aid for urgent structural measures. For determining the amount will be taken into account the result of application the formula set out in Annex 1 of this Regulation. Any rescue aid which exceeds the result of applying this formula must be explained in detail;
- f) be complied with the principle stipulated in the Section 4 of the present Regulation.

21. If the provider has submitted a restructuring plan within six months from the date of authorization or, in the case of non-notified aid, the implementation of the measure, the deadline for repayment of the loan or guarantee is extended until the Plenum of the Competition Council will adopt a decision on plan, except cases when the Plenum of the Competition Council considers such extension as unjustified.

22. The Plenum of the Competition Council will open an investigation if the provider does not submit:

- a) a restructuring plan;
- b) a liquidation plan; or

c) a proof that the loan has been repaid in full and / or that the guarantee has expired before the running out of the six months.

23. The Plenum of Competition Council will open an investigation if the loan or guarantee has been misused or if, after the expiration of six months, failure to repay aid cannot longer be justified, and the provider has not communicated a restructuring or liquidation plan under the provisions of the point 20 letter d) of the present Regulation.

24. The authorization for rescue aid does not result in the mandatory approval of the restructuring plan, such aid should be assessed on its own merits.

25. The provider will demonstrate the urgency of adopting structural measures, except the use of the simplified procedure mentioned in the Section 6 of the present Regulation.

Section 6

Simplified procedure of rescue aid granting

26. The Plenum of the Competition Council will take a decision within one month about the rescue aids which meet the conditions set out in point 20 of the present Regulation and which meet cumulative the following criteria:

a) an undertaking is in difficulty

b) rescue aid is limited by the amount resulted from the application of the formula set out in Annex 1 to this Regulation and shall not exceed 10 million lei.

Section 7

The compatibility of the individual restructuring state aid

27. The restructuring aid is compatible and will be approved by the Plenum of the Competition Council only if it will be granted to an undertaking in difficulty and the conditions stipulated in Sections 4 and 8 to 12 of the Regulation are fulfilled. The survival benefits of undertakings will compensate any distortion of competition (egg, when it is clear that the net effect of redundancies resulting from the insolvency of the company, combined with the effects it can have on providers, would intensify the problems related to unemployment or exceptionally, when the undertaking disappearance would lead to monopoly or tight oligopoly situation) taking compensatory measures in favor of competitors.

28. The aid granting is conditional by the implementation of the restructuring plan in which is engaged state aid grantor, which underlies the assessment by the Competition Council in case of all individual aid measures, except those aimed at small and medium undertakings, as mentioned in Section 10 of the present Regulation.

29. The restoring long-term viability must derive from internal measures contained in the restructuring plan; it cannot rely on external factors such as fluctuation of prices and demand over which the company has no influence, but only if the assumptions about market development are generally recognized. Restructuring must include the abandonment of the activities which would remain loss-making even after restructuring.

30. The restructuring plan should ensure a radical change that will allow the company, after completing its restructuring, to cover all costs including depreciation and financial expenses.

31. The expected return on investment must be sufficient so as to allow the restructured undertaking to compete in the market on their own. If the company's difficulties come from the company's governance deficiencies, there must be made appropriate adjustments.

32. In order to consider that the aid is compatible with the normal competitive environment, compensatory measures will be applied as appropriate.

33. In assessment of the adequacy of compensatory measures, the Competition Council will consider the goal of restoring the long-term viability, market structure and competitive conditions, to ensure that none of these measures will not damage the structure of the market, with, for example, the indirect effect of creating a monopoly or a tight oligopolistic situation, and the provisions of Section 10 of this Regulation. If the provider can demonstrate that such a situation could occur when compensatory measure should be established to avoid those situations.

34. Measures should be proportionate to the distorting effects of aid and the size and relative importance of the enterprise market. They should take place primarily in markets where the company will have a significant market position after restructuring.

35. The Plenum of the Competition Council will determine the degree of necessity of the measure based on market survey attached to the restructuring plan and on any other information available to the Competition Council, including those provided by interested parties. The reduction must be integral part of the restructuring, as it is stipulated in the restructuring plan. This principle will be applied whether asset sales occurring before or after the granting of state aid, as long as they are part of the restructuring.

36. Write-offs and closures loss activities will not be considered the reductions of capacity or market presence in the sense used in the analysis of compensatory measures. Such analysis will take into account any rescue aid granted previously.

37. The condition stipulated in point 36 of the present Regulation will not be applied to small businesses, because individual aid granted to small businesses does not affect normal competitive environment, unless otherwise provided in the rules of State aid in a particular sector, or if the beneficiary operates on a market affected by long-term structural overcapacity.

38. When the beneficiary operates on a market affected by overcapacity in the long term it may be necessary to reduce the ability of the undertaking or of its presence on the market by exactly 100%. In these cases, the Plenum of the Competition Council will approve only that aid, which alleviates the social costs of restructuring in accordance with Section 11 of the present Regulation and the rules on environmental aid for decommissioning contaminated locations which would otherwise be abandoned.

39. The amount and intensity of the aid must be strictly limited to the minimum needed for the restructuring, taking into the account the existing financial resources of the company, shareholders or group of companies of which it is part. Such an assessment will take into account any previous rescue aid.

40. Aid beneficiaries must make a significant contribution to the restructuring plan from their own resources, including the sale of assets not essential to the survival of the company or from external financing at market conditions. Such contribution must be effective, excluding all future expected profits such as liquidity.

41. The Competition Council will consider the following contributions to the restructuring as relevant:

- a) at least 25% for small undertakings;
- b) at least 40% for medium undertakings;
- c) at least 50% for large undertakings.

42. In the exceptional circumstances and in extreme difficult cases, which must be proved by the provider, the Plenum of the Competition Council may accept a lower contribution.

43. In order to limit the distorting effect of the amount of aid or the form in which it is granted, it will be of such nature as to prevent the undertaking to receive a cash surplus, as it could be used for aggressive activities, market distorting, unrelated to the restructuring process. The Competition Council will, therefore, analyze the level of the company's liabilities after restructuring, including the situation resulted from any postponements or debt reduction, including in the context of activity continuing after the initiation of insolvency proceedings under the law in force.

44. No aid will be granted in order to finance new investment which is not essential for restoring the undertaking's viability.

45. Besides compensatory measures described in points 32-38 of the present Regulation, the Competition Council may request from the provider fulfillment of some conditions and obligations which it deem necessary in order to ensure that aid does not distort normal competitive environment as the concerned provider does not committed to adopt the following provisions:

- a) the provider himself takes certain measures (to open up certain markets directly or indirectly connected to the undertaking's activities for other operators);
- b) the provider imposes certain obligations to the beneficiary undertaking;
- c) the provider refrains from granting other types of aid to the beneficiary undertaking during the restructuring period.

46. The beneficiary will fully implement the restructuring plan and will fulfill any other obligations stipulated in the decision authorizing the aid of the Plenum of the Competition Council. Any deviation from the plan realization or fulfillment of the obligations represents the misuse of aid.

47. If the restructuring operations cover several years and involve significant amounts of state aid, the Plenum of the Competition Council will require that the payment of restructuring aid to be divided into installments and the following conditions will determine the payment of each installment:

- a) conundertakingation before each payment, of the completion of each stage of the restructuring plan, according to schedule;
- b) authorization of the Plenum of the Competition Council before each payment, after it had been verified that the plan is implemented satisfactorily.

48. The Competition Council will ensure that the restructuring plan is adequately achieved by frequent and detailed reports submitted by the provider.

49. In the case of aid to large companies, the first of these reports will be submitted to the Competition Council no later than six months after the aid authorization. Subsequent reports will be submitted to the Competition Council once a year, on a determined date, until the restructuring plan objectives are met.

50. The reports submitted by the supplier include the necessary information to the Competition Council in order to monitor implementation of the restructuring plan, payments program to the company and its financial position, how were respected the conditions and obligations stipulated in the decision authorization of aid and relevant information on any other aid the company has received or on an individual basis or under a general scheme during the restructuring period.

51. If the Competition Council needs immediate confirmation of certain information, such as about the closure or reductions of capacity, it may require more frequent reports.

52. In case of the restructuring aid for small and medium undertakings, the annual submission of certified copies of the financial report will be sufficient, unless more stringent conditions were imposed in the decision authorization of the aid.

Section 8

The modification of the restructuring plan

53. If restructuring aid has been approved, the provider may request the Plenum of the Competition Council to approve changes to the restructuring plan and the amount of the aid. The Competition Council can approve such changes on the following conditions:

a) the revised plan must continue to indicate a return to viability within a reasonable time;

b) in case the amount of the aid is increased, all the necessary compensatory measures need to be more comprehensive than those initially imposed;

c) if the proposed compensatory measures are smaller than originally planned, the amount of the aid will be reduced proportionally;

d) new program of implementation of the compensatory measures may be postponed to the initially adopted program only if the reasons are independent from the undertaking or the aid provider otherwise, the amount of aid will be reduced accordingly.

54. If the conditions are imposed by the Plenum of the Competition Council or commitments of the provider are less constraining, the amount of the aid will be reduced accordingly or will be imposed other conditions.

55. If the provider makes changes to an approved restructuring plan without any notice in time to the Competition Council, than the Plenum of the Competition Council will initiate the procedure stipulated in the Article 11 of Law No. 139 of 15 June 2012 on State aid.

Section 9

The individual restructuring aid granted to SMEs

56. Restructuring aid to small undertakings will not be linked to compensatory measures from point 37 of the present Regulation, unless otherwise is stated in the rules of state aid on a particular sector.

57. “One time, last time” principle stipulated in Section 4 of this Regulation is applied to SMEs as well.

58. For SMEs, the restructuring plan should not be approved by the Plenum of the Competition Council. However, the plan must meet the requirements of the concept of restructuring plan and point 30 of this Regulation, to be approved by the concerned provider and sent to the Competition Council.

59. Restructuring aid must be granted by the provider on the conditions of the complete implementation of the restructuring plan.

60. The obligation to verify that these conditions are fulfilled lies with the provider of state aid.

Section 10

The individual aid which covers the social restructuring costs

61. Any contribution of the State in order to reduce the financial obligations that the undertaking has towards its employees according to the labor law constitutes state aid. Classification as the State aid is applied regardless of whether the payments are made directly to the undertaking or are administered by state for the employees.

62. The state aid are also considered the funds granted under a certain restructuring schemes for training, consulting and practical assistance, in order to identify alternative employment, assistance for relocation and professional training and assistance for employees who wish to start a business.

63. State aid type described in points 61 and 62 of the present Regulation will be clearly identified in the restructuring plan.

64. The aid for social measures for the exclusive benefit of the employees laid off is not taken into account for determining the area of expansion of the compensatory measures specified in points 32-38 of this Regulation.

65. In the context of the analyses of the restructuring plan, the Competition Council will ensure that the social effects of restructuring of the undertaking are kept to the necessary minimum.

Section 11

The report to the Competition Council on the any aid granted the beneficiary undertaking during the restructuring period

66. During the analysis of the restructuring aid received by a large or medium-sized undertaking, the granting of any other aid during the restructuring period, even in accordance with a scheme that has already been approved, will influence the analysis of the Competition Council on the extent of expansion of the requested compensatory measures.

67. Notifications of restructuring aid for large or medium undertakings must indicate ex-ante any other aid which will be granted to the beneficiary undertaking during the restructuring period, except the cases when they are subject of the rule of de minimis aid, defined in art. 3 of Law No. 139 of 15 June 2012 on State aid.

68. During the analysis of the restructuring aid the Competition Council will take into account the aid mentioned in the notification according to the point 67 of the present Regulation.

69. Any aid actually granted to large or medium undertakings during the restructuring period, including aid granted under a approved scheme will be individually notified to the Competition Council if it was not informed in this regard at the time of adoption of the decision on the authorization of restructuring aid.

70. The Competition Council will ensure that aid granted under approved schemes not circumvent the requirements of the present Regulation.

Section 12

General principles of the aid schemes for the SMEs in difficulty

71. The Plenum of the Competition Council will approve schemes of rescue and/or restructuring aid granting for small and medium undertakings in difficulty, only in cases in which undertakings fall under the provisions of Law No. 206 of 7 July 2006 on the support of sector of small and medium enterprises. In accordance with the following specific provisions, the compatibility of such schemes will be assessed on the grounds of the general conditions stipulated in points 5-70 of the present Regulation.

72. The provisions of point 26 of the present Regulation will not be applied to the aid schemes.

73. An aid that will be granted under a scheme but which does not meet the scheme conditions must be notified individually and authorized by the Plenum of the Competition Council.

74. Aid to small and medium undertakings based on schemes that have been approved, will be exempted from individual notification only when those undertakings meet one of the criteria set out in point 5 the definitions ‘undertaking in difficulty’ letter a)-c) of this Regulation.

75. Aid granted for undertakings that do not meet any of the criteria set out in point 5 the definition “undertaking in difficulty” a)-c) of this Regulation, must be individually notified to the Competition Council so that it can assess whether the undertakings can be considered as undertakings in difficulty.

76. Aid granted to undertakings active on a market where there are long-term structural overcapacity, regardless of the size of the beneficiary, must also be individually notified to the Competition Council, so that it can assess under point 38 of the present Regulation.

Section 13

The Conditions for the authorization of rescue aid scheme for SMEs

77. In order to be approved by the Plenum of the Competition Council, rescue aid schemes must satisfy the conditions set out in letters a), b), c), e) and f) of point 20 of this Regulation. Rescue aid can not be granted for more than six months, the period

during which the analysis of the situation of the concerned undertakings needs to be done.

78. Before completion of the period of six months, aid provider must either approve a restructuring plan or a liquidation plan, or require reimbursement by beneficiaries of the loan and the aid corresponding to risk premium.

79. Any aid granted for a period exceeding six months or reimbursed after expiry of that period, the must be individually notified to the Competition Council.

Section 14

Conditions for authorization of restructuring aid schemes for SMEs

80. The Competition Council will approve restructuring aid schemes only if the aid granting is conditional on full implementation by the beneficiary of a restructuring plan, which was approved by the respective aid provider and meet the following conditions:

a) restoration of viability: the criteria stipulated in points 30-34 of the present Regulation;

b) avoiding distortions of competition:

- for small businesses, the criteria referred to points 32-38 of this Regulation shall not be applied, except the cases where otherwise stipulated in rules on State aid for the specific sectors;

- schemes will provide that beneficiary undertakings will not increase their capacity during the restructuring period;

- for medium undertakings, provisions of points 32-38 of this Regulation are applied;

c) aid limited to the necessary minimum: the conditions stipulated in points 39-43 of this Regulation;

d) change the restructuring plan: any changes to the restructuring plan must be in accordance with the rules specified in Section 8 of the present Regulation.

Section 15

Common conditions for authorization of rescue and / or restructuring schemes for SMEs

81. Schemes must specify the maximum amount of aid that can be granted to any undertaking as part of an operation that provides rescue and / or restructuring aid, including the cases where the plan is modified.

82. Maximum amount of state aid for rescue and restructuring combined aid can not be more than 10 million lei, including any aid from other sources or under other schemes. Any aid which exceeds that amount must be individually notified to the Competition Council.

83. In addition to the mentioned above, “one time, last time” principle established in Section 4 of this Regulation shall be complied with.

84. Aid provider must also notify individually the Competition Council in case the undertaking takes over the assets of another undertaking which, in turn, received rescue and / or restructuring aid.

Section 16

Monitoring and annual reports of rescue and restructuring aid schemes

85. The decision of the Competition Council which approve the aid will include as a authorizing condition, the requirement that reports must be submitted according to the operation of the scheme each year, containing the information specified in Annex 1 to the Regulation on State aid Register.

86. The reports must also include a list of all beneficiaries, indicating for each of them:

- a) undertaking name;
- b) the undertaking code CEAM;
- c) the number of employees;
- d) annual turnover and balance sheet value;
- e) amount of granted aid;
- f) the amount and form of beneficiary contribution;
- g) the form and extent of compensatory measures;
- h) any restructuring aid or other form of support that was previously received;
- i) whether the beneficiary undertaking or not liquidated or if were applied insolvency proceedings before the completion of the restructuring period.

Section 17

Other common provisions for State aid beneficiaries in need

87. A company in difficulty cannot receive state aid during the restructuring period only under the conditions of this Regulation.

88. During the analysis of rescue and restructuring aid for undertakings in difficulty, the Competition Council will take into account regional considerations based regional map of Moldova.

89. Analysis of rescue and restructuring aid should not be affected by changes in the ownership company receiving support.

90. In case to a n undertaking was granted illegal aid a undertaking in difficulty earlier unlawful aid was granted in connection with the Competition Council Plenum adopted a negative decision, and there has been a recovery of it in accordance with Law No. 139 of 15 June 2012 on State aid analysis of any rescue and / or restructuring for the same company, will take into account, first of the cumulative effect of the old and the new aid help and then that old aid has not been repaid.

Section 18

Appropriate measures on existing aid schemes

91. Aid providers shall take all measures concerning existing aid provided for in Article 12 of Law No. 139 of 15 June 2012 on State aid to eliminate its incompatibility. The Competition Council will condition future authorization of any scheme in compliance with the referred provisions.

92. Aid providers who have accepted the proposal of the Competition Council must modify existing aid schemes which will remain in force for six months from the entry into force of this Regulation, in order to eliminate the inconsistencies.

93. Aid providers are obliged to announce the acceptance of these measures within one month of receipt of the letter which proposes appropriate measures.

Section 19

Final provisions

94. Rules shall be implemented in accordance with the regulations adopted by the Plenum of the Competition Council.

Annex 1
to the Regulation on State
rescue aid for beneficiaries in difficulty

Maximum amount of rescue aid which may be granted under the simplified procedure, is calculated by the formula:

$$\text{Maximum amount of rescue aid} = \frac{EBIT_t + depreciation_t - (workingcapital_t - workingcapital_{t-1})}{2}$$

EBIT_t - income before interest and taxes, as stated in the annual accounts, the prior to the year in which the aid is granted, is indicated by t;

EBIT – earnings before interest and taxes

Depreciation t - the amount of fixed assets depreciated and amortization of intangible assets in period t;

working capital - the difference between current assets and short term liabilities.

The formula is based on the operating results of the beneficiary (EBIT, earnings before interest and taxes) recorded in the year before granting/notifying the aid (indicated as t).

The change in working capital is calculated as the difference between the current assets and current liabilities for the latest closed accounting periods. Similarly, any provisions at the level of the operating result will need to be clearly indicated and the result should not include such provisions.

The formula aims at estimating the negative operating cash flow of the beneficiary in the year preceding the application for the aid (or before award of the aid in the case of non-notified aid). Half of this amount should keep the beneficiary in business for a six-month period. Thus the result of the formula has to be divided by 2.

This formula can only be applied where the result is a negative amount.

If it leads to a positive result, a detailed explanation will need to be submitted demonstrating that the beneficiary is an undertaking in difficulty as defined in points 21 and 22.

Example

Earnings before interest and taxes (million lei)	(12)	
Depreciation (million lei)	(2)	
Balance sheet (million lei)	December 31,X	December 31, XO
Accounts receivable	30	20
Inventories	50	45
Short term investments	20	10
Cash funds	10	5
Other current assets	20	20
<i>Total current assets</i>	130	100
Short-term financial liabilities	15	10
Short-term trade payables	5	5
Calculated Short term liabilities	20	25
<i>Total current liabilities</i>	40	40
Working capital	90	60
Change in working capital	(30)	

$[-12 + 2 - 30] / 2 = -20$ million lei.

As the outcome of the formula is higher than 10 million lei, the accelerated procedure described in Section 6 of this Regulation cannot be used, but and the initiator / provider of State aid is required to explain how they determined cash-flow needs of the beneficiary and the amount of aid have been determined.

**SPECIAL FORM FOR NOTIFICATION OF STATE AID SCHEME FOR
RESCUING UNDERTAKINGS IN DIFFICULTY**

This special form for notification must be used for the notification of rescue aid schemes covered by the provisions of Art.5 Para (1) of the Law No139 of 15 June 2012 on State aid.

1. Eligibility

1.1. Is the scheme limited to undertakings that fulfill at least one of the eligibility criteria below:

a) Is the scheme limited to undertakings, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months? (please tick)

	YES		NO	

b) Are the undertakings unlimited companies, where more than half of their 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? (please tick)

	YES		NO	

c) Do the undertakings fulfill the criteria under domestic law for being the subject of collective insolvency proceedings? (please tick)

	YES		NO	

1.2. Is the scheme limited to rescuing small or medium-sized enterprises in difficulty which correspond to the Community definition of SMEs? (please tick)

	YES		NO	

2. Form of aid

2.1. Is the aid granted under the scheme in the form of a loan guarantee or loans? (please tick)

	YES		NO	

2.2. If yes, will the loan be granted at an interest rate at least comparable to those observed for loans to healthy undertakings, and in particular the reference rate adopted by the National Bank of Moldova? (please tick)

	YES		NO	

Please provide detailed information.

2.3. Will the aid under the scheme be linked to loans that are to be reimbursed over a period of not more than 12 months after disbursement of the last installment to the undertaking? (please tick)

	YES		NO	

3. Other elements

3.1. Will aid under the scheme be warranted on the grounds of serious social difficulties? Please justify.

3.2. Will aid under the scheme have no unduly adverse spillover effects on other Member States? Please justify.

3.3. Please explain why you think that the aid scheme is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the undertaking in business for the period during which the aid is authorised. This should not go beyond a period of 6 months).

3.4. Do you undertake, within six months after granting the aid, to either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary? (please tick)

	YES		NO	

Please specify the maximum amount of the aid that can be awarded to any one undertaking as part of the rescue operation:.....

3.5. Provide all relevant information on aid of any kind which may be granted to the undertakings eligible for receiving rescue aid during the same period of time.

4. Annual report

4.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Annex 1 of this Regulation on State aid register? (please tick)

	YES		NO	

4.2. Do you undertake in such a report to include a list of beneficiary undertakings with at least the following information:

- (a) the company name;
- (b) its sectoral code, using the CEAM two-digit sectoral classification codes;
- (c) the number of employees;
- (d) annual turnover and balance sheet value;
- (e) the amount of aid granted;
- (f) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
- (g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period. (please tick)

	YES		NO	

5. Other Information

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under this Regulation.

**SPECIAL FORM FOR NOTIFICATION OF INDIVIDUAL STATE AID FOR
RESCUE BENEFICIARIES IN DIFFICULTY**

This special form for notification must be used for the notification of individual rescue aid covered by the provisions of Art.5 Para (1) g) of the Law No139 of 15 June 2012 on State aid.

1. Eligibility

1.1. Is the undertaking a undertaking, 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? (please tick)

	YES	NO	

1.2. Is the undertaking 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 months? (please tick)

	YES	NO	

1.3. Does the undertaking fulfill the criteria under domestic law for being the subject of collective insolvency proceedings? (please tick)

	YES	NO	

If you have answered yes to any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law)

If you have answered no to all of the above questions, please submit evidence supporting that the undertaking is in difficulties, for it to be eligible for rescue aid.

1.4. When has the undertaking been created?

.....

1.5. Since when is the undertaking operating?

.....

1.6. Does the undertaking belong to a larger business group? (please tick)

	YES		NO	

If you have answered yes, please submit full details about the group (organisation chart, showing the links between the group's members with details on capital and voting rights) and attach proof that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too serious to be dealt with by the group itself.

1.7. Has the undertaking (or the group to which it belongs) in the past received any rescue aid? (please tick)

	YES		NO	

If yes, please provide full details (date, amount, reference to previous Competition Council decision of authorization if applicable, etc.)

2. Form of aid

2.1. Is the aid in the form of a loan guarantee or loans? Copies of the relevant documents should be provided. (please tick)

	YES		NO	

2.2. If yes, is the loan granted at an interest rate at least comparable to those observed for loans to healthy undertakings, and in particular the reference rate adopted by the National Bank of Moldova? (please tick)

	YES		NO	

Please provide detailed information.

2.3. Is the aid linked to loans that are to be reimbursed over a period of not more than 12 months after disbursement of the last installment to the undertaking? (please tick)

	YES		NO	

3. Other elements

3.1. Is the aid warranted on the grounds of serious social difficulties? Please justify.

3.2. Does the aid have no unduly adverse spillover effects on other Member States? Please justify.

3.3. Please explain why you think that the aid is limited to the minimum necessary (i.e. is restricted to the amount needed to keep the undertaking in business for the period during which the aid is authorised). This should be done on the basis of a liquidity plan for the 6 months ahead and on the basis of a comparison with operating costs and financial charges over the previous 12 months.

3.4. Do you undertake, not later than six months after the rescue aid measure has been authorised, to communicate to the Competition Council a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated? (please tick)

	YES		NO	

4. Other Information

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under this Regulation.

**SPECIAL FORM FOR NOTIFICATION OF STATE AID SCHEME FOR
RESTRUCTURING UNDERTAKINGS IN DIFFICULTY**

This special form for notification must be used for the notification of state aid scheme for restructuring covered by the provisions of Art.5 Para (1) g) of the Law No139 of 15 June 2012 on State aid.

1. Eligibility

1.1. Is the scheme limited to undertakings that fulfill at least one of the eligibility criteria below:

a) Is the scheme limited to undertakings, where more than half their registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months? (please tick)

	YES		NO	

b) Are the undertakings unlimited companies, where more than half of their capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding months? (please tick)

	YES		NO	

c) Do the undertakings fulfill the criteria under domestic law for being the subject of collective insolvency proceedings? (please tick)

	YES		NO	

1.2. Is the scheme limited to restructuring small or medium-sized enterprises in difficulty which correspond to the Community definition of SMEs? (please tick)

	YES		NO	

2. Return to viability

A restructuring plan is must be implemented which must assure restoration of viability. At least the following information should be included:

- a) presentation of the different market assumptions arising from the market survey;
- b) analysis of the reason(s) why the undertaking has run into difficulty;
- c) presentation of the proposed future strategy for the undertaking and how this will lead to viability;
- d) complete description and overview of the different restructuring measures planned and their cost;
- e) timetable for implementing the different measures and the final deadline for implementing the restructuring plan in its entirety;
- f) Information on the production capacity of the company, and in particular on utilisation of this capacity, capacity reductions;
- g) full description of the financial arrangements for the restructuring, including:
 - use of capital still available;
 - sale of assets or subsidiaries to help finance the restructuring;
 - financial commitment by the different shareholders and third parties (like creditors, banks);
 - amount of public assistance and demonstration of the need for that amount;
- h) projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;
- i) name(s) of the author(s) of the restructuring plan and date on which it was drawn up.

3. Avoidance of undue distortion of competition

Does the scheme provide that recipient undertakings must not increase their capacity during the restructuring plan? (please tick)

	YES		NO	

4. Aid limited to the minimum necessary

Describe how it will be assured that the aid granted under the scheme is limited to the minimum necessary.

5. One time, Last time

Is it excluded that recipient undertakings receive restructuring aid more than once over a period of ten years? (please tick)

	YES		NO	

All cases where this principle is not respected must be notified individually

6. Amount of aid

6.1. Please specify the maximum amount of the aid that can be awarded to any one undertaking as part of the restructuring operation:

6.2. Provide all relevant information on aid of any kind which may be granted to the undertakings eligible for receiving restructuring aid.

7. Annual report

7.1. Do you undertake to provide reports, at least on an annual basis, on the scheme's operation, containing the information specified in the Annex 1 of the Regulation on the State aid register

Commission's instructions on standardized reports?

	YES		NO	

7.2. Do you undertake in such report to include a list of beneficiary undertakings with at least the following information:

- (a) the company name;
- (b) its sectoral code, using the CEAM two-digit sectoral classification codes;
- (c) the number of employees;
- (d) annual turnover and balance sheet value;
- (e) the amount of aid granted;
- (f) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;
- (g) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

	YES		NO	
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8. Other Information

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the this Regulation.

**SPECIAL FORM FOR NOTIFICATION OF INDIVIDUAL STATE AID FOR
RESTRUCTURING BENEFICIARIES IN DIFFICULTY**

This special form for notification must be used for notification of individual restructuring aid covered by the provisions of the Art.5 Para (1) g) of Law No139 of 15.06.2012 on state aid.

1. Eligibility

1.1. Is the undertaking 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? (please tick)

	YES	NO

1.2. Is the undertaking 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? (please tick)

	YES	NO

1.3. Does the undertaking fulfill the criteria under domestic law for being the subject of collective insolvency proceedings? (please tick)

	YES	NO

If you have answered yes on any of the above questions, please attach the relevant documents (latest profit and loss account with balance sheet, or court decision opening an investigation into the company under national company law).

If you have answered no to all of the above questions, please submit evidence supporting that the undertaking is in difficulties, for it to be eligible for restructuring aid.

1.4. When has the undertaking been created?

1.5. Since when is the undertaking operating?

1.6. Does the company belong to a larger business group? (please tick)

	YES		NO	

If you have answered yes, please submit full details about the group (organization chart, showing the links between the group's members with details on capital and voting rights) and attach proof that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too serious to be dealt with by the group itself.

1.7. Has the undertaking (or the group to which it belongs) in the past received any restructuring aid? (please tick)

	YES		NO	

If yes, please provide full details (date, amount, reference to previous Competition Council decision of authorization if applicable, etc.)

2. Restructuring plan

2.1. Please supply a copy of the survey of the market(s) served by the undertaking in difficulty, with the name of the organization which carried it out. The market survey must give in particular:

- a) A precise definition of the product and geographical market(s).
- b) The names of the company's main competitors with their shares of the world, Community or domestic market, as appropriate.
- c) The evolution of the company's market share in recent years.
- d) An assessment of total production capacity and demand at Community level, concluding whether or not there is excess capacity on the market.
- e) Community-wide forecasts for trends in demand, aggregate capacity and prices on the market over the five years ahead.

2.2. Please attach the restructuring plan. At least the following information should be included:

- a) Presentation of the different market assumptions arising from the market survey.
- b) Analysis of the reason(s) why the undertaking has run into difficulty.
- c) Presentation of the proposed future strategy for the undertaking and how this will lead to viability.
- d) Complete description and overview of the different restructuring measures planned and their cost.
- e) Timetable for implementing the different measures and the final deadline for implementing the restructuring plan in its entirety.
- f) Information on the production capacity of the company, and in particular on utilisation of this capacity, capacity reductions.
- g) Full description of the financial arrangements for the restructuring, including:
 - Use of capital still available;
 - Sale of assets or subsidiaries to help finance the restructuring;
 - Financial commitment by the different shareholders and third parties (like creditors, banks);
 - Amount of public assistance and demonstration of the need for that amount;
- h) Projected profit and loss accounts for the next five years with estimated return on capital and sensitivity study based on several scenarios;
- i) Name(s) of the author(s) of the restructuring plan and date on which it was drawn up.

2.3. Describe the compensatory measures proposed with a view to mitigating the distortive effects on competition at national level.

2.4. Provide all relevant information on aid of any kind granted to the undertaking receiving restructuring aid, whether under a scheme or not, until the restructuring period comes to an end.

3. Other Information

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under this Regulation.