

## III

(Other acts)

## EUROPEAN ECONOMIC AREA

## EFTA SURVEILLANCE AUTHORITY DECISION

No 321/14/COL

of 10 September 2014

**amending for the one-hundredth time the procedural and substantive rules in the field of State aid by adopting new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty [2015/1856]**

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('Surveillance and Court Agreement'), in particular to Articles 5(2)(b) and 24 thereof and Article 1 in Part I of Protocol 3 thereof,

Whereas:

Under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

Under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

On 9 July 2014, the European Commission adopted 'Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty' <sup>(1)</sup>. The Guidelines set out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty can be declared compatible. They apply from 1 August 2014,

These guidelines are of relevance to the European Economic Area,

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

According to point II under the heading 'GENERAL' of Annex XV to the EEA Agreement, the Authority, after consultation with the European Commission, is to adopt new Guidelines, corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

HAVING consulted the EFTA States by letter dated 1 August 2014 on the subject,

HAS ADOPTED THIS DECISION:

*Article 1*

The substantive rules in the field of State aid shall be amended by introducing new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. The new Guidelines are annexed to this Decision and form an integral part of it.

<sup>(1)</sup> OJ C 249, 31.7.2014, p. 1.

*Article 2*

Only the English version is authentic.

Done at Brussels, 10 September 2014.

*For the EFTA Surveillance Authority*

Oda Helen SLETNES

*President*

Helga JÓNSDÓTTIR

*College Member*

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## ANNEX

**GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING NON-FINANCIAL UNDERTAKINGS  
IN DIFFICULTY**

**PART III  
HORIZONTAL RULES**

**Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(1)</sup>**

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<sup>(1)</sup> These guidelines correspond to the European Commission guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty adopted on 9 July 2014 (OJ C 249, 31.7.2014, p. 1).

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## 1. Introduction

- (1) In these guidelines, the EFTA Surveillance Authority (“the Authority”) sets out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty may be considered to be compatible with the functioning of the Agreement on the European Economic Area (“the EEA Agreement”) on the basis of Article 61(3)(c) of the EEA Agreement.
- (2) The Authority adopted its original Guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(1)</sup> in 1994. A modified version of the guidelines was adopted in 1999 <sup>(2)</sup>. In 2004 the Authority adopted new guidelines <sup>(3)</sup>, the validity of which was first extended until 30 November 2012 <sup>(4)</sup> and subsequently until their replacement by new rules <sup>(5)</sup>.
- (3) In its Communication of 8 May 2012 on EU State aid modernisation <sup>(6)</sup>, the European Commission (“the Commission”) announced three objectives in respect of modernising State aid control:
- (a) to foster sustainable, smart and inclusive growth in a competitive internal market;
  - (b) to focus Commission *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement;
  - (c) to streamline the rules and provide for faster decisions.

<sup>(1)</sup> Decision No 4/94/COL (OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32, 3.9.1994, p. 1). The validity of these guidelines was first extended to 31 December 1998 and thereafter to 31 December 1999.

<sup>(2)</sup> Decision No 329/99/COL (OJ L 274, 26.10.2000, p. 1, and EEA Supplement No 48, 26.10.2000, p. 14).

<sup>(3)</sup> Decision No 305/04/COL (OJ L 107, 28.4.2005, p. 28, and EEA Supplement No 21, 28.4.2005, p. 1).

<sup>(4)</sup> Decision No 433/09/COL (OJ L 48, 25.2.2010, p. 27, and EEA Supplement No 9, 25.2.2010, p. 12).

<sup>(5)</sup> Decision No 438/12/COL (OJ L 190, 11.7.2013, p. 91, and EEA Supplement No 40, 11.7.2013, p. 15).

<sup>(6)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State aid modernisation (SAM), COM(2012) 209 final.

- (4) In particular, the Communication called for a common approach to the revision of the different guidelines and frameworks, based on strengthening the internal market, promoting more effectiveness in public spending through a better contribution of State aid to objectives of common interest and greater scrutiny of the incentive effect, limiting aid to the minimum and avoiding the potential negative effects of the aid on competition and trade. The Authority also follows this approach.
- (5) The Authority has reviewed the guidelines concerning the rescue and restructuring of firms in difficulty on the basis of its experience in applying the existing rules and in line with the common approach referred to above. The revision also takes into account the Europe 2020 strategy adopted by the Commission <sup>(1)</sup> and the fact that the negative effects of State aid might interfere with the need to boost productivity and growth, preserve equal opportunities for undertakings and combat national protectionism.
- (6) Rescue and restructuring aid are among the most distortive types of State aid. It is well established that successful sectors of the economy witness productivity growth not because all the undertakings present in the market gain in productivity, but rather because the more efficient and technologically advanced undertakings grow at the expense of those that are less efficient or have obsolete products. Exit of less efficient undertakings allows their more efficient competitors to grow and returns assets to the market, where they can be applied to more productive uses. By interfering with this process, rescue and restructuring aid may significantly slow economic growth in the sectors concerned.
- (7) Where parts of a failing undertaking remain essentially viable, the undertaking may be able to carry out a restructuring that leads to its exit from certain structurally loss-making activities and allows the remaining activities to be reorganised on a basis that gives a reasonable prospect of long-term viability. Such restructuring should usually be possible without State aid, through agreements with creditors or by means of insolvency or reorganisation proceedings. Modern insolvency law should help sound companies to survive, help safeguard jobs and enable suppliers to keep their customers, and allow owners to retain value in viable companies <sup>(2)</sup>. Insolvency proceedings may also return a viable undertaking to the market by way of acquisition by third parties, whether of the undertaking as a going concern or its various production assets.
- (8) It follows that undertakings should only be eligible for State aid when they have exhausted all market options and where such aid is necessary in order to achieve a well-defined objective of common interest. Undertakings should be allowed to receive aid under these guidelines only once within 10 years (the “one time, last time” principle).
- (9) A further concern is the moral hazard problem created by State aid. Undertakings anticipating that they are likely to be rescued when they run into difficulty may embark upon excessively risky and unsustainable business strategies. In addition, the prospect of rescue and restructuring aid for a given undertaking may artificially reduce its cost of capital, giving it an undue competitive advantage in the marketplace.
- (10) State aid for rescuing and restructuring undertakings in difficulty may also undermine the internal market by shifting an unfair share of the burden of structural adjustment and the attendant social and economic problems to other Contracting Parties. This is undesirable in itself and may set off a wasteful subsidy race among Contracting parties. Such aid may also lead to the creation of entry barriers and the undermining of incentives for cross-border activities, contrary to the objectives of the internal market.
- (11) It is therefore important to ensure that aid is only allowed under conditions that mitigate its potential harmful effects and promote effectiveness in public spending. In relation to restructuring aid, the requirements of return to viability, own contribution and measures to limit distortions of competition have proved their value in terms of mitigating the potential harmful effects of such aid. They continue to apply under these guidelines, adapted as necessary to take account of the Authority’s recent experience. The notion of burden sharing has been

<sup>(1)</sup> Communication from the Commission: EUROPE 2020 — A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final.

<sup>(2)</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A new European approach to business failure and insolvency, COM(2012) 742 final. See also Commission Recommendation of 12.3.2014 on a new approach to business failure and insolvency, C(2014) 1500 final, in particular recital 12.

introduced, inter alia, to better address the issue of moral hazard. In the case of rescue aid and temporary restructuring support, potential harmful effects are mitigated by means of restrictions on the duration and form of aid.

- (12) Where aid takes the form of liquidity assistance that is limited in both amount and duration, concerns about its potential harmful effects are much reduced, allowing it to be approved on less stringent conditions. While such aid could in principle be used to support an entire restructuring process, the limitation of the rescue aid period to 6 months means that this rarely happens; instead, rescue aid is commonly followed by restructuring aid.
- (13) To encourage the use of less distortive forms of aid, these guidelines introduce a new concept of “temporary restructuring support”. In common with rescue aid, temporary restructuring support can only take the form of liquidity assistance that is limited in both amount and duration. To allow it to support an entire restructuring process, however, the maximum duration of temporary restructuring support is set at 18 months. Temporary restructuring support may only be granted to SMEs <sup>(1)</sup> and to smaller State-owned undertakings <sup>(2)</sup>, which face greater challenges than large undertakings in terms of access to liquidity.
- (14) Where aid to providers of services of general economic interest (“SGEI”) in difficulty falls under these guidelines, the assessment should be carried out in accordance with the standard principles of the guidelines. However, the specific application of those principles should be adapted where necessary to take account of the specific nature of SGEI and, in particular, of the need to ensure continuity of service provision in accordance with Article 59(2) of the EEA Agreement.
- (15) In the present conditions of significant European and global overcapacity, State aid for rescuing and restructuring steel undertakings in difficulty is not justified. The steel sector should therefore be excluded from the scope of these guidelines.
- (16) In the European Union, Council Decision 2010/787/EU <sup>(3)</sup> sets out the conditions under which operating, social and environmental aid may be granted until 2027 to uncompetitive production in the coal sector <sup>(4)</sup>. The current rules follow previous sector-specific rules applied between 2002 and 2010 <sup>(5)</sup> and 1993 and 2002 <sup>(6)</sup>, which facilitated the restructuring of uncompetitive undertakings active in the coal sector. As a result, and in view of the persistent need to provide support for structural adjustment of coal production in the Union, the current rules are stricter than previous ones and require the permanent cessation of production and sale of aided coal production and the definitive closure of uncompetitive production units by 31 December 2018 at the latest. In application of those rules, several Member States of the European Union have adopted and are implementing plans leading to the definitive closure of coal mines in difficulty operated by undertakings in this sector <sup>(7)</sup>. The Authority notes that Decision 2010/787/EU does not apply to the EEA/EFTA States. The Authority has decided to exclude the coal sector from the scope of these guidelines, given its special characteristics.
- (17) The Authority’s experience with the rescue and restructuring of financial institutions during the financial and economic crisis has shown that specific rules applicable to the financial sector can be beneficial in view of the specific characteristics of financial institutions and financial markets. Undertakings covered by dedicated rules for the financial sector are therefore excluded from the scope of these guidelines.

<sup>(1)</sup> For the purposes of these guidelines, “SME”, “small enterprise” and “medium-sized enterprise” have the meanings given to those terms 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). The Authority Guidelines on aid to micro, small and medium-sized enterprises (SMEs), adopted by Decision 94/06/COL (OJ L 36, 5.2.2009, p. 62), incorporate the definition set out in the Commission Recommendation. A “large undertaking” means an undertaking that is not an SME.

<sup>(2)</sup> For the purposes of these guidelines, to avoid discrimination between public and private ownership of undertakings, “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.

<sup>(3)</sup> Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

<sup>(4)</sup> OJ L 336, 21.12.2010, p. 24.

<sup>(5)</sup> Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ L 205, 2.8.2002, p. 1).

<sup>(6)</sup> Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry (OJ L 329, 30.12.1993, p. 12).

<sup>(7)</sup> See Commission Decisions in cases N 175/10 — Slovenia, SA 33013 — Poland, N 708/07 — Germany, SA 33033 — Romania and SA 33861 — Hungary.

## 2. Scope of the guidelines

### 2.1. Sectoral scope

- (18) The Authority will apply these guidelines to aid for all undertakings in difficulty, except to those operating in the coal sector <sup>(1)</sup> or the steel sector <sup>(2)</sup> and those covered by specific rules for financial institutions <sup>(3)</sup>, without prejudice to any specific rules relating to undertakings in difficulty in a particular sector <sup>(4)</sup>.

### 2.2. Material scope: Meaning of “undertaking in difficulty”

- (19) A Contracting Party which proposes to grant aid in accordance with these guidelines to an undertaking must demonstrate on objective grounds that the undertaking concerned is in difficulty within the meaning of this section, subject to the specific provisions for rescue aid and temporary restructuring support under point 29.
- (20) For the purposes of these guidelines, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:
- (a) In the case of a limited liability company <sup>(5)</sup>, where more than half of its subscribed share capital <sup>(6)</sup> has disappeared as a result of accumulated losses. 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 the case of a company where at least some members have unlimited liability for the debt of the company <sup>(7)</sup>, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
  - (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
  - (d) In the case of an undertaking that is not an SME, where, for the past 2 years:
    - i. the undertaking’s book debt to equity ratio has been greater than 7,5 and
    - ii. the undertaking’s EBITDA interest coverage ratio has been below 1,0.
- (21) A newly created undertaking is not eligible for aid under these guidelines even if its initial financial position is insecure. This is the case, for instance, where a new undertaking emerges from the liquidation of a previous undertaking or merely takes over that undertaking’s assets. An undertaking will in principle be considered as newly created for the first 3 years following the start of operations in the relevant field of activity. Only after that period will it become eligible for aid under these guidelines, provided that:
- (a) it qualifies as an undertaking in difficulty within the meaning of these guidelines, and
  - (b) it does not form part of a larger business group <sup>(8)</sup> except under the conditions laid down in point 22.

<sup>(1)</sup> As defined in Decision 2010/787/EU.

<sup>(2)</sup> As defined in Annex II to the Guidelines on regional State aid for 2014-2020, Decision No 407/13/COL (OJ L 166, 5.6.2014, p. 44, and EEA Supplement No 33, 5.6.2014, p. 1).

<sup>(3)</sup> Guidelines on the application, from 1 December 2013, of the State aid rules to support measures in favour of banks in the context of the financial crisis (“2013 Banking Guidelines”), Decision No 464/13/COL (OJ L 264, 4.9.2014, p. 6).

<sup>(4)</sup> Specific rules of this nature exist for the rail freight sector — see Guidelines on State aid for railway undertakings, Decision No 788/08/COL (OJ L 105, 21.4.2011, p. 32, and EEA Supplement No 23, 21.4.2011, p. 1).

<sup>(5)</sup> This refers in particular to the types of company mentioned in Annex I of 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).

<sup>(6)</sup> Where relevant, “share capital” includes any share premium.

<sup>(7)</sup> This refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

<sup>(8)</sup> To determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Recommendation 2003/361/EC will be taken into account.

- (22) A company belonging to or being taken over by a larger business group is not normally eligible for aid under these guidelines, except where it can be demonstrated that the company's difficulties are intrinsic 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. Where a company in difficulty creates a subsidiary, the subsidiary, together with the company in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.
- (23) Given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Authority considers that aid to undertakings in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the common interest only if the conditions set out in these guidelines are met, even if such aid is granted in accordance with a scheme that has already been authorised.
- (24) A number of regulations and communications in the field of State aid and elsewhere therefore prohibit undertakings in difficulty from receiving aid. For the purposes of such regulations and communications, and unless otherwise defined therein:
- (a) "undertakings in difficulty" or "firms in difficulty" should be understood to mean undertakings in difficulty within the meaning of point 20 of these guidelines, and
  - (b) an SME that has been in existence for less than 3 years will not be considered to be in difficulty unless it meets the condition set out in point 20(c).

#### 2.3. *Rescue aid, restructuring aid and temporary restructuring support*

- (25) These guidelines deal with three types of aid: rescue aid, restructuring aid and temporary restructuring support.
- (26) Rescue aid is by nature urgent and temporary assistance. Its primary objective is to make it possible to keep an ailing undertaking afloat for the short time needed to work out a restructuring or liquidation plan. The general principle is that rescue aid makes it possible to provide temporary support to an undertaking facing a serious deterioration of its financial situation, involving an acute liquidity crisis or technical insolvency. Such temporary support should allow time to analyse the circumstances which gave rise to the difficulties and to develop an appropriate plan to remedy those difficulties.
- (27) Restructuring aid often involves more permanent assistance and must restore the long-term viability of the beneficiary on the basis of a feasible, coherent and far-reaching restructuring plan, while at the same time allowing for adequate own contribution and burden sharing and limiting the potential distortions of competition.
- (28) Temporary restructuring support is liquidity assistance designed to support the restructuring of an undertaking by providing the conditions needed for the beneficiary to design and implement appropriate action to restore its long-term viability. Temporary restructuring support may only be granted to SMEs and smaller State-owned undertakings.
- (29) By way of derogation to point 19, rescue aid as well as, in the case of SMEs and smaller State-owned undertakings, temporary restructuring support may also be granted to undertakings that are not in difficulty within the meaning of point 20 but that are facing acute liquidity needs due to exceptional and unforeseen circumstances.

#### 2.4. *Aid to cover the social costs of restructuring*

- (30) Restructuring normally entails reductions in or abandonment of the affected activities. Such retrenchments are often necessary in the interests of rationalisation and efficiency, quite apart from any capacity reductions that may be required as a condition for granting aid. Regardless of the underlying reasons, such measures will generally lead to reductions in the beneficiary's workforce.

- (31) Contracting Parties' labour legislation may include general social security schemes under which certain benefits are paid directly to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 61(1) of the EEA Agreement.
- (32) Besides such social security benefits for employees, general social support schemes frequently provide for the government to cover the cost of benefits which an undertaking grants to redundant workers and which go beyond its statutory or contractual obligations. Where such schemes are available generally without sectoral limitations to any worker meeting predefined and automatic eligibility conditions, they are not deemed to involve aid under Article 61(1) of the EEA Agreement for undertakings carrying out restructuring. On the other hand, if the schemes are used to support restructuring in particular industries, they may well involve aid because of the selective way in which they are used <sup>(1)</sup>.
- (33) The obligations an undertaking itself bears under employment legislation or collective agreements with trade unions to provide certain benefits to redundant workers, such as redundancy payments or measures to increase their employability, are part of the normal costs of business which an undertaking must meet from its own resources. That being so, any contribution by the State to those costs must be counted as aid. This is true regardless of whether the payments are made directly to the undertaking or are administered through a government agency to the employees.
- (34) The Authority has no *a priori* objection to such aid when it is granted to an undertaking in difficulty, for it brings economic benefits above and beyond the interests of the undertaking concerned, facilitating structural change and reducing hardship.
- (35) Besides providing direct financial support, such aid is commonly provided in connection with a particular restructuring scheme for training, counselling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. Given that such measures, which increase the employability of redundant workers, further the objective of reducing social hardship, the Authority consistently takes a favourable view of such aid when it is granted to undertakings in difficulty.

### 3. Compatibility with the functioning of the EEA Agreement

- (36) The circumstances in which State aid to undertakings in difficulty may be approved as compatible with the functioning of the EEA Agreement are set out in Article 61(2) and (3) of the EEA Agreement. Under Article 61(3)(c), the Authority has the power to authorise "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". In particular, this could be the case where the aid is necessary to correct disparities caused by market failures or to ensure economic and social cohesion.
- (37) Aid measures in favour of large undertakings must be notified individually to the Authority. Under certain conditions, the Authority may authorise schemes for smaller amounts of aid to SMEs and smaller State-owned undertakings: those conditions are set out in Chapter 6 <sup>(2)</sup>.
- (38) In assessing whether notified aid can be declared compatible with the functioning of the EEA Agreement, the Authority will consider whether each of the following criteria is met:
- (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 61(3) of the EEA Agreement (section 3.1).
  - (b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern (section 3.2).

<sup>(1)</sup> In its judgment in Case *France v Commission*, C-241/94, EU:C:1996:353 (Kimberly Clark Sopalin), the Court of Justice confirmed that the system of financing on a discretionary basis by the French authorities, through the National Employment Fund, was liable to place certain undertakings in a more favourable situation than others and thus to qualify as aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the internal market.

<sup>(2)</sup> For the avoidance of doubt, this does not prevent Contracting Parties from notifying individually aid to SMEs and smaller State-owned undertakings. In such cases, the Authority will assess the aid under the principles established in these guidelines.

- (c) appropriateness of the aid measure: an aid measure will not be considered compatible if other, less distortive measures allow the same objective to be achieved (section 3.3).
  - (d) incentive effect: it must be shown 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 of common interest (section 3.4).
  - (e) proportionality of the aid (aid limited to the minimum): the aid must not exceed the minimum needed to achieve the objective of common interest (section 3.5).
  - (f) avoidance of undue negative effects on competition and trade between Contracting Parties: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive (section 3.6).
  - (g) transparency of aid: Contracting Parties, the Authority, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded (section 3.7).
- (39) If any of the above criteria is not met, the aid will not be considered to be compatible with the functioning of the EEA Agreement.
- (40) The overall balance of certain categories of schemes may also be made subject to a requirement of *ex post* evaluation, as described in points 118, 119 and 120 of these guidelines.
- (41) Moreover, if an aid measure or the conditions attached to it (including its financing method when that forms an integral part of the aid measure) entails a non-severable violation of EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement <sup>(1)</sup>.
- (42) In this Chapter, the Authority sets out the conditions under which it will assess each of the criteria referred to in point 38.

### 3.1. Contribution to an objective of common interest

- (43) Given the importance of market exit to the process of productivity growth, merely preventing an undertaking from exiting the market does not constitute a sufficient justification for aid. Clear evidence should be provided that aid pursues an objective of common interest, in that it aims to prevent social hardship or address market failure (section 3.1.1) by restoring the long-term viability of the undertaking (section 3.1.2).

#### 3.1.1. Demonstration of social hardship or market failure

- (44) Contracting Parties must demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure, in particular by showing that:
- (a) the unemployment rate in the region or regions concerned (at NUTS level 2) is either:
    - i. higher than the EEA average, persistent and accompanied by difficulty in creating new employment in the region or regions concerned, or
    - ii. higher than the national average, persistent and accompanied by difficulty in creating new employment in the region(s) concerned;
  - (b) there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (for example, a national infrastructure provider);
  - (c) the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (for example as a supplier of an important input);

<sup>(1)</sup> See for instance Case *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78 and Case *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94-116.

- (d) there is a risk of interruption to the continuity of provision of an SGEI;
- (e) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy;
- (f) the exit of the undertaking concerned from the market would lead to an irremediable loss of important technical knowledge or expertise; or
- (g) similar situations of severe hardship duly substantiated by the Contracting Party concerned would arise.

### 3.1.2. Restructuring plan and return to long-term viability

- (45) Restructuring aid within the scope of these guidelines cannot be limited to financial aid designed to make good past losses without tackling the reasons for those losses. In the case of restructuring aid, therefore, the Authority will require that the Contracting Party concerned submit a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability<sup>(1)</sup>. Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary's activities on 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.
- (46) The granting of the aid must therefore be conditional on implementation of the restructuring plan, which must be endorsed by the Authority in all cases of ad hoc aid.
- (47) The restructuring plan must restore the long-term viability of the beneficiary within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions that should exclude any further State aid not covered by the restructuring plan. The restructuring period should be as short as possible. The restructuring plan must be submitted in all relevant detail to the Authority and must include, in particular, the information set out in this section 3.1.2.
- (48) The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.
- (49) The restructuring plan must provide information on the business model of the beneficiary, demonstrating how the plan will foster its long-term viability. This should include, in particular, information on the beneficiary's organisational structure, funding, corporate governance and all other relevant aspects. The restructuring plan should assess whether the beneficiary's difficulties could have been avoided through appropriate and timely management action and, where that is the case, should demonstrate that appropriate management changes have been made. Where the beneficiary's difficulties stem from flaws in its business model or corporate governance system, appropriate changes will be required.
- (50) The expected results of the planned restructuring should be demonstrated in a baseline scenario as well as in a pessimistic (or worst-case) scenario. For this purpose, the restructuring plan should take account, inter alia, of the current state and future prospects of supply and demand on the relevant product market and the main cost drivers of the industry, reflecting baseline and adverse scenario assumptions, as well as the beneficiary's specific strengths and weaknesses. Assumptions should be compared with appropriate sector-wide benchmarks and should, where appropriate, be adapted to cater for country- and sector-specific circumstances. The beneficiary should provide a market survey and a sensitivity analysis identifying the driving parameters of the beneficiary's performance and the main risk factors going forward.
- (51) The beneficiary's return to viability should derive mainly from internal measures, entailing in particular withdrawal from activities which would remain structurally loss-making in the medium term. The return to viability must not be dependent on optimistic assumptions about external factors such as variation in prices,

<sup>(1)</sup> An indicative model restructuring plan is set out in Annex II.

demand or supply of scarce resources, nor can it be linked to the beneficiary outperforming the market and its competitors or entering and expanding into new activities where it has no experience and track record (unless duly justified and required for reasons of diversification and viability).

- (52) 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.

### 3.2. *Need for State intervention*

- (53) Contracting Parties that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating how the relevant objective or objectives in section 3.1.1 would not be attained, or would be attained to a lesser degree, in the case of that alternative scenario. Such scenarios may, for example, include 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.

### 3.3. *Appropriateness*

- (54) Contracting Parties should ensure that aid is awarded in the form that allows the objective to be achieved in the least distortive way. In the case of undertakings in difficulty, that can be achieved by ensuring that aid is in the appropriate form to address the beneficiary's difficulties and that it is properly remunerated. This section sets out the requirements that must be complied with in order to demonstrate that an aid measure is appropriate.

#### 3.3.1. *Rescue aid*

- (55) In order to be approved by the Authority, rescue aid must fulfil the following conditions:
- (a) it must consist of temporary liquidity support in the form of loan guarantees or loans;
  - (b) 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, must comply with point 56;
  - (c) except as otherwise specified in point (d) below, any loan must be reimbursed and any guarantee must come to an end within a period of not more than 6 months after disbursement of the first instalment to the beneficiary;
  - (d) Contracting Parties must undertake to communicate to the Authority, not later than 6 months after the rescue aid measure has been authorised or, in the case of non-notified aid, not later than 6 months after disbursement of the first instalment to the beneficiary;
    - i. proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; or
    - ii. provided that the beneficiary qualifies an undertaking in difficulty (and not only faces acute liquidity needs in the circumstances foreseen in point 29 above), a restructuring plan as set out in section 3.1.2; upon submission of a restructuring plan, the authorisation of the rescue aid will be automatically extended until the Authority reaches its final decision on the restructuring plan, unless the Authority decides that such extension is not justified or should be limited in time or scope; once a restructuring plan for which aid has been requested has been put in place and is being implemented, all further aid will be considered as restructuring aid; or
    - iii. a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.

- (e) Rescue aid may not be used to finance structural measures, such as acquisition of significant businesses or assets, unless they are required during the rescue period for the survival of the beneficiary.
- (56) The level of remuneration that a beneficiary is required to pay for rescue aid should reflect the underlying credit-worthiness of the beneficiary, discounting the temporary effects of both liquidity difficulties and State support, and should provide incentives for the beneficiary to repay the aid as soon as possible. The Authority will therefore require remuneration to be set at a rate not less than the reference rate set out in the Reference Rate Guidelines <sup>(1)</sup> for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) <sup>(2)</sup> and to be increased by at least 50 basis points for rescue aid the authorisation of which is extended in accordance with point 55(d)ii.
- (57) Where there is evidence that the rate identified in point 56 does not represent an appropriate benchmark, for example where it differs substantially from the market pricing of similar instruments recently issued by the beneficiary, the Authority may adapt the required level of remuneration accordingly.

### 3.3.2. Restructuring aid

- (58) Contracting Parties are free to choose the form that restructuring aid takes. However, in doing so, they should ensure that the instrument chosen is appropriate to the issue that it is intended to address. In particular, Contracting Parties should assess whether beneficiaries' problems relate to liquidity or solvency and select appropriate instruments to address the problems identified. For instance, in the case of solvency problems, increasing assets through recapitalisation might be appropriate, whereas in a situation where the problems mainly relate to liquidity, assistance through loans or loan guarantees might be sufficient.

### 3.4. Incentive effect

- (59) Contracting Parties that intend to grant restructuring aid must demonstrate 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 of common interest identified in section 3.1.1. This demonstration can form part of the analysis presented in accordance with point 53.

### 3.5. Proportionality of the aid/aid limited to the minimum

#### 3.5.1. Rescue aid

- (60) Rescue aid must be restricted to the amount needed to keep the beneficiary in business for 6 months. In determining that amount, regard will be had to the outcome of the formula set out in Annex I. Any aid exceeding the result of that calculation will only be authorised if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 6 months.

#### 3.5.2. Restructuring aid

- (61) The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs. In particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured, as set out in more detail in this section (3.5.2). Such assessment will take account of any rescue aid granted beforehand.

<sup>(1)</sup> Rules regarding applicable rates: reference and discount rates ("Reference Rate Guidelines"), Decision No 788/08/COL.

<sup>(2)</sup> For the avoidance of doubt, the note regarding remuneration of rescue aid to the table of loan margins contained in that communication will not apply to aid assessed under these guidelines.

### 3.5.2.1. Own contribution

- (62) A significant contribution <sup>(1)</sup> 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. Such own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. 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. The Authority will take account of the extent to which own contribution has a comparable effect to the aid granted when assessing the necessary extent of the measures to limit distortions of competition in accordance with point 90.
- (63) Contributions must be real, that is to say actual, excluding future expected profits such as cash flow, and must be as high as possible. Contribution by the State or a public company may only be taken into account provided that it is free of aid. That could be the case, in particular, where the contribution is made by an entity which is independent from the aid-granting authority (such as a State-owned bank or public holding company) and that takes the decision to invest on the basis of its own commercial interests <sup>(2)</sup>.
- (64) Own contribution will normally be considered to be adequate if it amounts to at least 50 % of the restructuring costs. In exceptional circumstances and in cases of particular hardship, which must be demonstrated by the Contracting Party, the Authority may accept a contribution that does not reach 50 % of the restructuring costs, provided that the amount of that contribution remains significant.

### 3.5.2.2. Burden sharing

- (65) Where State support is given in a form that enhances the beneficiary's equity position, for example where the State provides grants, injects capital or writes off debt, this can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary. That can create moral hazard and undermine market discipline. Consequently, aid to cover losses should only be granted on terms which involve adequate burden sharing by existing investors.
- (66) Adequate burden sharing will normally mean that incumbent shareholders and, where necessary, subordinated creditors must absorb losses in full. Subordinated creditors should contribute to the absorption of losses either via conversion into equity or write-down of the principal of the relevant instruments. Therefore, State intervention should only take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders <sup>(3)</sup>. In any case, cash outflows from the beneficiary to holders of equity or subordinated debt should be prevented during the restructuring period to the extent legally possible, unless that would disproportionately affect those that have injected fresh equity.
- (67) Adequate burden sharing will also mean that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of 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.
- (68) The Authority may allow exceptions from full implementation of the measures set out in point 66 where those measures would otherwise lead to disproportionate results. Such situations could include cases where the aid amount is small in comparison with the own contribution, or the Contracting Party concerned demonstrates that subordinated creditors would receive less in economic terms than under normal insolvency proceedings and if no State aid were granted.
- (69) The Authority will not systematically require a contribution by senior debt holders to restoring a beneficiary's equity position. However, it may treat any such contribution as grounds for a reduction in the necessary extent of measures to limit distortions of competition in accordance with point 90.

<sup>(1)</sup> This contribution must not contain any aid. This is not the case, for instance, where a loan carries an interest-rate subsidy or is backed by government guarantees containing elements of aid.

<sup>(2)</sup> See for example Commission Decision in Case SA.32698 *Air Åland*.

<sup>(3)</sup> For this purpose, the firm's balance-sheet situation will have to be established at the time of the provision of the aid.

### 3.6. Negative effects

#### 3.6.1. "One time, last time" principle

- (70) In order to reduce moral hazard, excessive risk-taking incentives and potential competitive distortions, aid should be granted to undertakings in difficulty in respect of only one restructuring operation. This is referred to as the "one time, last time" principle. The need for an undertaking that has already received aid pursuant to these guidelines to obtain further such aid demonstrates that the undertaking's difficulties are either of a recurrent nature or were not dealt with adequately when the earlier aid was granted. Repeated State interventions are likely to lead to problems of moral hazard and distortions of competition that are contrary to the common interest.
- (71) When planned rescue or restructuring aid is notified to the Authority, the Contracting Party must specify whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past, including any such aid granted before the entry into force of these guidelines and any non-notified aid <sup>(1)</sup>. If so, and where less than 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted (whichever occurred the latest), the Authority will not allow further aid pursuant to these guidelines.
- (72) Exceptions to that rule 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 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 becomes necessary after at least 5 years due to unforeseeable circumstances <sup>(2)</sup> for which the beneficiary is not responsible;
  - (c) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.
- (73) The application of the one time, last time principle 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.
- (74) Where a business group has received rescue aid, restructuring aid or temporary restructuring support, the Authority will normally not allow further rescue or restructuring aid to the group itself or any of the entities belonging to the group unless 10 years have elapsed since the aid was granted or the restructuring period came to an end or implementation of the restructuring plan was halted, whichever occurred the latest. Where an entity belonging to a business group has received rescue aid, restructuring aid or temporary restructuring support, the group as a whole as well as the other entities of the group remain eligible for rescue or restructuring aid (subject to compliance with the other provisions of these guidelines), with the exception of the earlier beneficiary of the aid. Contracting Parties must demonstrate that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.
- (75) 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 73 or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid or temporary restructuring support, the purchaser is not

<sup>(1)</sup> With regard to non-notified aid, the Authority will take account in its appraisal of the possibility that the aid could have been declared compatible with the functioning of the EEA Agreement otherwise than as rescue or restructuring aid.

<sup>(2)</sup> An unforeseeable circumstance is one which could in no way be anticipated by the beneficiary's management when the restructuring plan was drawn up and which is not due to negligence or errors of the beneficiary's management or decisions of the group to which it belongs.

subject to the “one time, last time” principle, provided that there is no economic continuity between the old undertaking and the purchaser <sup>(1)</sup>.

### 3.6.2. Measures to limit distortions of competition

- (76) When restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. The Authority will assess the appropriate form and scope of such measures in accordance with this section (3.6.2).

#### 3.6.2.1. Nature and form of measures to limit distortions of competition

- (77) Without prejudice to point 84, measures to limit distortions of competition will usually take the form of structural measures. Where appropriate to address the distortions of competition in particular cases, the Authority may accept behavioural measures other than those set out in point 84 or market opening measures in place of some or all of the structural measures that would otherwise be required.

#### Structural measures — divestments and reduction of business activities

- (78) On the basis of an assessment in accordance with the criteria for calibration of measures to limit distortions of competition (set out in section 3.6.2.2), undertakings benefiting from restructuring aid may be required to divest assets or reduce capacity or market presence. Such measures should take place in particular in the market or markets where the undertaking will have a significant market position after restructuring, in particular those where there is significant excess capacity. 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 <sup>(2)</sup>, and in any case within the duration of the restructuring plan. 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, in the light of the principles set out in section 3.6.2.2, to address distortions of competition.
- (79) In order for such measures to strengthen competition and contribute to the internal market, they should favour the entry of new competitors, the expansion of existing small competitors or cross-border activity. Retrenchment within national borders and fragmentation of the internal market should be avoided.
- (80) Measures to limit distortions of competition should not lead to a deterioration in the structure of the market. Structural measures should therefore 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. In the event that such an entity is not available, the beneficiary could 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. Structural measures that take the form of divestment of assets alone and do not involve the creation of a viable entity able to compete in the market are less effective in preserving competition and will therefore only be accepted in exceptional cases where the Contracting Party concerned demonstrates that no other form of structural measures would be feasible or that other structural measures would seriously jeopardise the economic viability of the undertaking.
- (81) The beneficiary should facilitate divestitures, for example through ring-fencing of activities and by agreeing not to solicit clients of the divested business.

<sup>(1)</sup> See Joined Cases *Italy and SIM 2 Multimedia v Commission*, C-328/99 and C-399/00, EU:C:2003:252; Joined Cases *Greece and others v Commission*, T-415/05, T-416/05 and T-423/05, EU:T:2010:386; Case *Ryanair v Commission*, T-123/09, EU:T:2012:164 (confirmed on appeal by the European Court of Justice in Case C-287/12 P, EU:C:2013:395).

<sup>(2)</sup> For example, sale of a portfolio or of individual assets may be possible, and should therefore take place, in a significantly shorter time than sale of a business as a going concern, particularly when that business must first be carved out from a wider entity.

- (82) Where it appears that it may be difficult to find a buyer for the assets which a beneficiary proposes to divest, it will be required, as soon as it becomes aware of such difficulties, to identify alternative divestments or measures to be taken in relation to the market or markets concerned if the primary divestment fails.

#### Behavioural measures

- (83) Behavioural measures aim at ensuring that aid is used only to finance the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition.
- (84) The following behavioural measures must be applied in all cases, to avoid undermining the effects of structural measures, and should in principle be imposed for the duration of the restructuring plan:
- (a) Beneficiaries must be required to refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of the beneficiary. This aims at ensuring that the aid is used to restore viability and not to fund investments or to expand the beneficiary's presence in existing or new markets. Upon notification, any such acquisitions may be authorised by the Authority as part of the restructuring plan;
- (b) Beneficiaries must be required to refrain from publicising State support as a competitive advantage when marketing their products and services.
- (85) Under exceptional circumstances, it may be necessary to require beneficiaries to refrain from engaging in commercial behaviour aimed at a rapid expansion of their 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. 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. For the purposes of applying such a requirement, the Authority will compare the terms offered by the beneficiary with those offered by credible competitors with a substantial market share.

#### Market opening measures

- (86) In its overall assessment, the Authority will consider possible commitments from the Contracting Party concerning the adoption of measures, either by the Contracting Party itself or by the beneficiary, that are aimed at promoting more open, sound and competitive markets, for instance by favouring entry and exit. This could in particular include measures to open up certain markets directly or indirectly linked to the beneficiary's activities to other operators in the EEA, in compliance with EEA law. Such initiatives may replace other measures to limit distortions of competition that would normally be required of the beneficiary.

#### 3.6.2.2. Calibration of measures to limit distortions of competition

- (87) Measures to limit distortions of competition should address both moral hazard concerns and possible distortions in the markets where the beneficiary operates. The extent of such measures will depend on several factors, such as, in particular: the size and nature of the aid and the conditions and circumstances under which it was granted; the size<sup>(1)</sup> and the relative importance of the beneficiary in the market and the characteristics of the market concerned; and the extent to which moral hazard concerns remain following the application of own contribution and burden-sharing measures.
- (88) In particular, the Authority will consider the size, where appropriate by means of approximations, and nature of the aid both in absolute terms and in relation to the beneficiary's assets and the size of the market as a whole.

<sup>(1)</sup> In this respect the Authority may also take into account whether the beneficiary is a medium-sized or a large enterprise.

- (89) As regards the size and the relative importance of the beneficiary on its market or markets both before and after the restructuring, the Authority will assess them in order to evaluate the likely effects of the aid on those markets as compared to the likely outcome in the absence of State aid. The measures will be tailored to market characteristics <sup>(1)</sup> to make sure that effective competition is preserved.
- (90) With regard to moral hazard concerns, the Authority will also assess the degree of own contribution and burden sharing. Greater degrees of own contribution and burden sharing than those required under section 3.5.2, by limiting the amount of aid and moral hazard, may reduce the necessary extent of measures to limit distortions of competition.
- (91) Since restructuring activities may threaten to undermine the internal market, measures to limit distortions of competition that help to ensure that national markets remain open and contestable will be considered positively.
- (92) Measures limiting distortions of competition should not compromise the prospects of the beneficiary's return to viability, which might be the case if a measure is very costly to execute or, in exceptional cases duly substantiated by the Contracting Party concerned, would reduce the activity of the beneficiary to such an extent that its return to viability would be compromised, nor should they come at the expense of consumers and competition.
- (93) Aid to cover the social costs of restructuring of the type described in points 32 to 35 must be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees will be disregarded for the purposes of determining the extent of measures to limit distortions of competition. In the common interest the Authority will ensure, in the context of the restructuring plan, that the social effects of the restructuring in Contracting Parties other than the one granting aid are kept to the minimum.

#### 3.6.3. Recipients of previous unlawful aid

- (94) Where unlawful aid has previously been granted to the undertaking in difficulty, in respect of which the Authority has adopted a negative decision with a recovery order, and where no such recovery has taken place in violation of Article 14 in Part II of Protocol 3 <sup>(2)</sup>, the assessment of any aid pursuant to these guidelines to be granted to the same undertaking will take into account, first, the cumulative effect of the old aid and of the new aid and, secondly, the fact that the old aid has not been repaid <sup>(3)</sup>.

#### 3.6.4. Specific conditions attached to approval of aid

- (95) The Authority may impose any conditions and obligations it considers necessary to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Contracting Party concerned has not given a commitment that it will adopt such provisions. For example, it may require the Contracting Party to take certain measures itself, to impose certain obligations on the beneficiary or to refrain from granting other types of aid to the beneficiary during the restructuring period.

#### 3.7. Transparency

- (96) Contracting Parties shall ensure the publication of the following information on a comprehensive State aid website, at national or regional level:
- the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it,

<sup>(1)</sup> In particular, concentration levels, capacity constraints, the level of profitability and barriers to entry and to expansion may be taken into account.

<sup>(2)</sup> Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3").

<sup>(3)</sup> Case *Textilwerke Deggendorf v Commission and others*, C-355/95 P, EU:C:1997:241.

- the identity of the granting authority/(ies),
- the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level 2) and the principal economic sector in which the beneficiary has its activities (at NACE group level) <sup>(1)</sup>.

Such a requirement can be waived with respect to individual aid awards below EUR 500 000. For schemes in the form of tax advantage, the information on individual aid amounts <sup>(2)</sup> can be provided in the following ranges (in EUR million): [0,5-1]; [1-2]; [2-5]; [5-10]; [10-30]; [30 and more].

Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions <sup>(3)</sup>. Contracting Parties will not be required to publish the abovementioned information before 1 July 2016 <sup>(4)</sup>.

#### 4. Restructuring aid in assisted areas

- (97) On the basis of Article 61(3)(a) and Article 61(3)(c) of the EEA Agreement, the Authority may consider State aid that has the objective of promoting the economic development of certain disadvantaged areas within the EEA to be compatible with the functioning of the EEA Agreement. The Authority will therefore also take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an ailing undertaking is located in an assisted area does not, however, justify a permissive approach to aid for restructuring: in the medium to long term it does not help a region to prop up companies artificially. Furthermore, in order to promote regional development it is in the region's own best interests to apply its resources in such a way as to rapidly develop activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to undertakings in assisted areas. In this context, regard must also be had to possible harmful spill-over effects which could occur in the area concerned and other assisted areas.
- (98) Thus, the criteria listed in Chapter 3 are equally applicable to assisted areas, even when the needs of regional development are considered. In assisted areas, however, and unless otherwise stipulated in rules on State aid in a particular sector, the Authority will apply the provisions of section 3.6.2 on measures to limit distortions of competition in such a way as to limit the negative systemic impacts for the region. That could, in particular, involve less stringent requirements in terms of reductions of capacity or market presence. A distinction will be drawn in such cases between areas eligible for regional aid under Article 61(3)(a) of the EEA Agreement and those eligible under Article 61(3)(c), to take account of the greater severity of the regional problems in the former areas. Where the specific circumstances of assisted areas so require, for example where a beneficiary faces particular difficulties in raising new market financing as a result of its location in an assisted area, the Authority may accept a contribution which is less than 50 % of the restructuring costs for the purposes of point 64.

#### 5. Aid to SGEI providers in difficulty

- (99) In assessing State aid to SGEI providers in difficulty, the Authority will take account of the specific nature of SGEI and, in particular, of the need to ensure continuity of service provision in accordance with Article 59(2) of the EEA Agreement.

<sup>(1)</sup> With the exception of business secrets and other confidential information in duly justified cases and subject to the Authority's agreement (Chapter on professional secrecy in State aid decisions, Decision No 15/04/COL (OJ L 154, 8.6.2006, p. 27, and EEA Supplement No 29, 8.6.2006, p. 1)).

<sup>(2)</sup> The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

<sup>(3)</sup> This information shall be published within 6 months from the date of granting (or, for aid in the form of tax advantage, within 1 year from the date the tax declaration is due). In case of unlawful aid, the Contracting Parties will be required to ensure the publication of this information *ex post*, at least within 6 months from the date of the Authority decision. The information shall be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

<sup>(4)</sup> Publication of information on aid awards granted before 1 July 2016 and, for fiscal aid, publication for aid claimed or granted before 1 July 2016, will not be required.

- (100) SGEI providers may require State aid in order to continue to provide SGEI on terms that are compatible with their long-term viability. For the purposes of point 47, therefore, the restoration of long-term viability may be based on the assumption, in particular, that any State aid that meets the compatibility requirements of the SGEI Framework <sup>(1)</sup>, the SGEI Decision <sup>(2)</sup>, Regulation (EC) No 1370/2007 of the Parliament and the Council <sup>(3)</sup>, Regulation (EC) No 1008/2008 of the Parliament and the Council <sup>(4)</sup> and the Aviation Guidelines <sup>(5)</sup> or Council Regulation (EEC) No 3577/92 <sup>(6)</sup> and the Maritime Guidelines <sup>(7)</sup>, will continue to be available for the duration of any entrustment entered into before or during the restructuring period.
- (101) Where the Authority assesses aid to SGEI providers in difficulty under these guidelines, it will take into account all State aid received by the provider in question, including any compensation for public service obligations. However, since SGEI providers can derive a large proportion of their normal revenues from public service compensation, the total amount of aid determined in this manner may be very large in comparison with the size of the beneficiary and may overstate the burden on the State in relation to the beneficiary's restructuring. When determining the own contribution required under section 3.5.2.1, therefore, the Authority will disregard any public service compensation that meets the compatibility requirements of the SGEI Framework, the SGEI Decision or Regulation (EC) No 1370/2007 or Regulation (EC) No 1008/2008 and the Aviation Guidelines or Council Regulation (EEC) No 3577/92 and the Maritime Guidelines.
- (102) To the extent that assets are necessary for the provision of SGEI, it may not be practicable to require the divestment of such assets by way of measures to limit distortions of competition for the purposes of section 3.6.2. In such cases, the Authority may require alternative measures to be taken to ensure that competition is not distorted to an extent contrary to the common interest, in particular by introducing fair competition in respect of the SGEI in question as soon as possible.
- (103) Where an SGEI provider is not able to comply with the conditions of these guidelines, the aid in question cannot be found compatible. In such cases, however, the Authority may authorise the payment of such aid as is necessary to ensure continuity of the SGEI until a new provider is entrusted with the service. The Authority will only authorise aid where the Contracting Party concerned demonstrates on objective grounds that the aid is strictly limited to the amount and duration indispensable to entrust a new provider with the service.

## 6. Aid schemes for smaller aid amounts and beneficiaries

### 6.1. General conditions

- (104) Should Contracting Parties wish to provide aid pursuant to these guidelines to SMEs or smaller State-owned undertakings, such aid should normally be granted under schemes. The use of schemes helps to limit distortions of competition linked to moral hazard, by allowing a Contracting Party to make a clear statement *ex ante* concerning the terms on which it may decide to grant aid to undertakings in difficulty.

<sup>(1)</sup> Framework for State aid in the form of public service compensation ("SGEI Framework"), Decision No 12/12/COL (OJ L 161, 13.6.2013, p. 12, and EEA Supplement No 34, 13.6.2013, p. 1).

<sup>(2)</sup> Application of the State aid rules to compensation granted for the provision of services of general economic interest ("SGEI Decision"), Decision No 12/12/COL.

<sup>(3)</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1), incorporated into point 4(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 85/2008 (OJ L 280, 23.10.2008, p. 20, and EEA Supplement No 64, 23.10.2008, p. 13).

<sup>(4)</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3), Articles 16, 17 and 18, incorporated into point 64(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 90/2011 (OJ L 262, 6.10.2011, p. 62, and EEA Supplement No 54, 6.10.2011, p. 78).

<sup>(5)</sup> Guidelines on State aid to airports and airlines, Decision 216/14/COL.

<sup>(6)</sup> Council Regulation (EEC) No 3577/92 of 7 December applying the principles of freedom to provide services to maritime transport within Member States (OJ L 364, 12.12.1992, p. 7), incorporated into point 53(a) of Annex XIII to the EEA Agreement by Joint Committee Decision No 70/1997 (OJ L 30, 5.2.1998, p. 42, and EEA Supplement No 5, 5.2.1998, p. 175).

<sup>(7)</sup> Guidelines on State aid to maritime transport, Decision No 62/04/COL (OJ L 240, 13.9.2007, p. 9, and EEA Supplement No 43, 13.9.2007, p. 1).

- (105) Schemes must specify the maximum amount of aid that can be awarded to any one undertaking as part of an operation to provide rescue aid, restructuring aid or temporary restructuring support, including where the plan is modified. The maximum total amount of aid granted to any one undertaking may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.
- (106) Whilst the compatibility of such schemes will in general be assessed in the light of the conditions set out in Chapters 3, 4 and 5, it is appropriate to provide for simplified conditions in certain respects, to enable Contracting Parties to apply those conditions without further reference to the Authority and to reduce the burden on SMEs and smaller State-owned undertakings of providing the information required. In view of the small size of the aid amounts and the beneficiaries at stake, the Authority considers that the potential for significant distortions of competition is more limited in such cases. Therefore, the provisions of Chapters 3, 4 and 5 apply to such schemes *mutatis mutandis*, except as provided otherwise in sections 6.2, 6.3, 6.4 and 6.5. This Chapter also includes provisions on temporary restructuring support and on the duration and evaluation of schemes.

#### 6.2. Objective of common interest

- (107) Whilst the failure of an individual SME <sup>(1)</sup> is unlikely to involve the degree of social hardship or market failure required for the purposes of point 44, there is a greater concern in relation to SMEs that value may be destroyed when SMEs that have the potential to restructure so as to restore their long-term viability are denied the chance to do so by liquidity problems. As regards the grant of aid under schemes, therefore, it is sufficient for a Contracting Party to determine that the failure of the beneficiary would likely involve social hardship or a market failure, in particular that:
- (a) the exit of an innovative SME or an SME with high growth potential would have potential negative consequences;
  - (b) the exit of an undertaking with extensive links to other local or regional undertakings, particularly other SMEs, would have potential negative consequences;
  - (c) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy; or
  - (d) similar situations of hardship duly substantiated by the beneficiary would arise.
- (108) By way of derogation from point 50, beneficiaries under schemes will not be required to submit a market survey.

#### 6.3. Appropriateness

- (109) The requirement set out in point 55(d) will be deemed to have been satisfied provided that rescue aid is granted for no longer than 6 months, during which time an analysis must be made of the beneficiary's position. Before the end of that period:
- (a) the Contracting Party must approve a restructuring plan or liquidation plan, or
  - (b) the beneficiary must submit a simplified restructuring plan, pursuant to point 115, or
  - (c) the loan must be reimbursed or the guarantee terminated.
- (110) By way of derogation from point 57, Contracting Parties will not be required to assess whether the remuneration as determined in accordance with point 56 represents an appropriate benchmark.

#### 6.4. Proportionality of the aid/aid limited to the minimum

- (111) By way of derogation from point 64, Contracting Parties may consider an own contribution to be adequate if it amounts 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.

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<sup>(1)</sup> For the purposes of Chapter 6, "SME" includes smaller State-owned undertakings.

#### 6.5. *Negative effects*

- (112) A Contracting Party that intends to grant rescue aid, restructuring aid or temporary restructuring support must verify whether the “one time, last time” principle set out in section 3.6.1 is complied with. For that purpose, the Contracting Party must determine whether the undertaking concerned has already received rescue aid, restructuring aid or temporary restructuring support in the past, including any such aid granted before the entry into force of these guidelines and any non-notified aid. If so, and 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 must not be granted, except:
- (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 5 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.
- (113) Measures limiting distortions of competition are likely to have a disproportionate impact on small enterprises, particularly given the burden of carrying out such measures. By way of derogation from point 76, therefore, Contracting Parties 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.

#### 6.6. *Temporary restructuring support*

- (114) In certain cases, it may be possible for an undertaking to complete restructuring without the need for restructuring aid, provided that it is able to obtain liquidity support of a longer duration than is available under the terms of rescue aid. Contracting Parties may put in place schemes that allow liquidity aid for a longer period than 6 months (referred to as “temporary restructuring support”), on the conditions set out below.
- (115) Temporary restructuring support must fulfil the following conditions:
- (a) The support must consist of aid in the form of loan guarantees or loans.
  - (b) 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, must comply with point 116.
  - (c) Temporary restructuring support must comply with the provisions of Chapter 3 of these guidelines, as modified by this chapter.
  - (d) Temporary restructuring support may be granted for a period not exceeding 18 months, less any immediately preceding period of rescue aid. Before the end of that period:
    - i. the Contracting Party must approve a restructuring plan as foreseen in point 55(d)(ii) above, or liquidation plan, or

- ii. the loan must be reimbursed or the guarantee terminated,
  - (e) Not later than 6 months after disbursement of the first instalment to the beneficiary, less any immediately preceding period of rescue aid, the Contracting Party must approve a simplified restructuring plan. That plan need not contain all the elements set out in points 47 to 52, but must, as a minimum, identify the actions that the beneficiary must take to restore its long-term viability without State support.
- (116) Remuneration for temporary restructuring support should be set at a rate not less than the reference rate set out in the Reference Rate Guidelines for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points) <sup>(1)</sup>. To provide incentives for exit, the rate should increase by not less than 50 basis points once 12 months have elapsed from the time of disbursement of the first instalment to the beneficiary (less any immediately preceding period of rescue aid).
- (117) Temporary restructuring support must be restricted to the amount needed to keep the beneficiary in business for 18 months; in determining that amount regard should be had to the outcome of the formula set out in Annex I; any aid exceeding the result of that calculation can only be granted if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming 18 months.

#### 6.7. Duration and evaluation

- (118) The Authority may require Contracting Parties to limit the duration of certain schemes (normally to 4 years or less) and to conduct an evaluation of those schemes.
- (119) Evaluations will be required for schemes where the potential distortions are particularly high, that is to say schemes where there is a risk of significant restrictions of competition if their implementation is not reviewed in due time.
- (120) Given the objectives and in order not to impose disproportionate burdens on Contracting Parties in respect of smaller aid projects, this only applies to aid schemes with large budgets or containing novel characteristics, or when significant market, technology or regulatory changes are anticipated. The evaluation must be carried out by an expert independent from the State aid granting authority, on the basis of a common methodology <sup>(2)</sup>, and must be made public. The evaluation must be submitted to the Authority in due time to allow for the assessment of possible extension of the aid scheme and in any case upon expiry of the scheme. The precise scope of the evaluation and how it is to be carried out will be defined in the decision approving the aid measure. Any subsequent aid measure with a similar objective must take into account the results of the evaluation.

### 7. Procedures

#### 7.1. Accelerated procedure for rescue aid

- (121) The Authority will as far as possible endeavour to take a decision within a period of 1 month in respect of rescue aid that complies with all of the conditions set out in Chapter 3 and with the following cumulative requirements:
- (a) the rescue aid is limited to the amount resulting from the formula set out in Annex I and does not exceed EUR 10 million;
  - (b) the aid is not granted in the situations mentioned in point 72(b) or (c).

<sup>(1)</sup> For the avoidance of doubt, the note regarding remuneration of rescue aid to the table of loan margins contained in that communication will not apply to aid assessed under these guidelines.

<sup>(2)</sup> Such a common methodology may be provided by the Authority.

## 7.2. Procedures related to restructuring plans

### 7.2.1. Implementation of the restructuring plan

- (122) The beneficiary must fully implement the restructuring plan and must discharge any other obligations laid down in the Authority decision authorising the aid. The Authority will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid, without prejudice to Article 23 in Part II of Protocol 3 or to the possibility of an action before the EFTA Court pursuant to Article 1(2) in Part I of Protocol 3.
- (123) Where restructuring operations cover several years and involve substantial amounts of aid, the Authority may require payment of the restructuring aid to be split into instalments and may make payment of each instalment subject to:
- (a) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
  - (b) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

### 7.2.2. Amendment of the restructuring plan

- (124) Where restructuring aid has been approved, the Contracting Party concerned may, during the restructuring period, ask the Authority to agree to changes to the restructuring plan and the amount of the aid. The Authority may allow such changes where they meet the following conditions:
- (a) the revised plan must still show a return to viability within a reasonable time scale;
  - (b) if the restructuring costs are increased, the own contribution must increase correspondingly;
  - (c) if the amount of the aid is increased, measures to limit distortions of competition must be more extensive than those initially imposed;
  - (d) if the proposed measures to limit distortions of competition are more limited than those initially imposed, the amount of the aid must be correspondingly reduced;
  - (e) the new timetable for implementation of the measures to limit distortions of competition may be delayed with respect to the timetable initially adopted only for reasons outside the beneficiary's or the Contracting Party's control: if that is not the case, the amount of the aid must be correspondingly reduced.
- (125) If the conditions imposed by the Authority or the commitments given by the Contracting Party are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.
- (126) Should the Contracting Party concerned introduce changes to an approved restructuring plan without duly informing the Authority, or should the beneficiary depart from the approved restructuring plan, the Authority will initiate proceedings under Article 4(4) in Part II of Protocol 3, as provided for by Article 16 in Part II of Protocol 3 (misuse of aid), without prejudice to Article 23 in Part II of Protocol 3 and to the possibility of an action before the EFTA Court pursuant to Article 1(2) in Part I of Protocol 3.

### 7.2.3. Need to notify to the Authority any aid granted to the beneficiary during the restructuring period

- (127) Where restructuring aid is examined under these guidelines, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorised, is liable to influence the Authority's assessment concerning the necessary extent of the measures to limit distortions of competition.

- (128) Therefore, notifications of restructuring aid must indicate all other aid of any kind which is planned to be granted to the beneficiary during the restructuring period, unless it is covered by the *de minimis* rule or by exemption regulations. The Authority shall take such aid into account when assessing the restructuring aid.
- (129) Any aid actually granted during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Authority to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.
- (130) The Authority shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of these guidelines.

#### **8. Reporting and monitoring**

- (131) In accordance with Protocol 3, Contracting Parties must submit annual reports to the Authority. Those annual reports will be published on the Authority's website.
- (132) When adopting a decision under these guidelines the Authority may impose additional reporting obligations regarding the aid granted in order to be able to check whether the decision approving the aid measure has been respected. In certain cases, the Authority may require the appointment of a monitoring trustee, a divestment trustee or both, to ensure compliance with any conditions and obligations linked to the approval of the aid.

#### **9. Appropriate measures as referred to in Article 1(1) in Part I of Protocol 3**

- (133) Pursuant to Article 62(1) of the EEA Agreement and Article 1(1) in Part I of Protocol 3, the Authority proposes that Contracting Parties amend, where necessary, their existing aid schemes in order to bring them into line with these guidelines no later than 1 February 2015. The Authority will make authorisation of any future scheme conditional on compliance with those provisions.
- (134) Contracting Parties are invited to give their explicit unconditional agreement to the appropriate measures proposed in point 133 within 2 months from the date of publication of these guidelines on the Authority's website. In the absence of a reply from any of the Contracting Parties, the Authority will assume that the Contracting Party in question does not agree with the proposed measures.

#### **10. Date of application and duration**

- (135) The Authority will apply these guidelines with effect from the date of adoption until 31 December 2020.
- (136) Notifications registered by the Authority prior to the date of adoption will be examined in the light of the criteria in force at the time of notification.
- (137) The Authority will examine the compatibility with the functioning of the EEA Agreement of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 1(3) in Part I of Protocol 3 on the basis of these guidelines if some or all of the aid is granted after their publication on the Authority's website.
- (138) In all other cases it will conduct the examination on the basis of the guidelines which applied at the time the aid was granted.

- (139) Notwithstanding the provisions of points 136, 137 and 138, the Authority will apply the provisions of Chapter 5 from the date of adoption when examining aid to SGEI providers in difficulty, regardless of when that aid was notified or granted.
- (140) Where, by virtue of paragraph 9 of the SGEI Framework, the Authority examines under these guidelines any aid granted before 31 January 2012 to an SGEI provider in difficulty, it will deem such aid to be compatible with the functioning of the EEA Agreement if it complies with the provisions of the SGEI Framework, with the exception of paragraphs 9, 14, 19, 20, 24, 39 and 60.

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ANNEX I

**FORMULA <sup>(1)</sup> FOR CALCULATION OF THE MAXIMUM AMOUNT OF RESCUE AID OR TEMPORARY RESTRUCTURING SUPPORT PER 6-MONTH PERIOD**

$$\frac{EBIT_t + depreciation_t - (working\ capital_t - working\ capital_{t-1})}{2}$$

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). To this amount depreciation has been added back. Then changes in working capital must be subtracted from the total. The change in working capital is calculated as the change in the difference between the current assets and current liabilities <sup>(2)</sup> 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 6-month period. Thus the result of the formula has to be divided by 2 for the purposes of point 60. For the purposes of point 117, the result of the formula has to be multiplied by 1,5.

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 point 20.

Example:

Earnings before interest and taxes (EUR million)	(12)	
Depreciation (EUR million)	2	
Balance sheet (EUR million)	31 December, t	31 December, t – 1
<i>Current assets</i>		
Cash or equivalents	10	5
Accounts receivable	30	20
Inventories	50	45
Prepaid expenses	20	10

<sup>(1)</sup> To EBIT must be added back depreciation in the same period plus the changes in working capital over a 2-year period (year before the application and preceding year), divided by two to determine an amount over 6 months.

<sup>(2)</sup> Current assets: liquid funds, receivables (client and debtor accounts), other current assets and prepaid expenses, inventories. Current liabilities: financial debt, trade accounts payable (supplier and creditor accounts) and other current liabilities, deferred income, other accrued liabilities, tax liabilities.

Other current assets	20	20
Total current assets	130	100
<i>Current liabilities</i>		
Accounts payable	20	25
Accrued expenses	15	10
Deferred income	5	5
Total current liabilities	40	40
Working capital	90	60
Change in working capital		30

$[- 12 + 2 - 30]/2 = - \text{EUR } 20 \text{ million.}$

As the outcome of the formula is higher than EUR 10 million, the accelerated procedure described in point 121 cannot be used. In addition, in this example, if the amount of rescue aid exceeds EUR 20 million or the amount of temporary restructuring support exceeds EUR 60 million, the amount of aid must be duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs.

## ANNEX II

### Indicative model restructuring plan

This Annex sets out an indicative table of contents for a restructuring plan, to assist Contracting Parties and the Authority in preparing and reviewing restructuring plans as efficiently as possible.

The information set out below is without prejudice to the more detailed requirements set out in the guidelines concerning the content of a restructuring plan and the other matters to be demonstrated by the Contracting Party concerned.

1. Description of the beneficiary
2. Description of the market or markets where the beneficiary operates
3. Demonstration of the social hardship that the aid aims to prevent or the market failure that it aims to address, comparison with a credible alternative scenario not involving State aid, demonstrating how such objective or objectives would not be attained, or would be attained to a lesser degree, in the case of the alternative scenario
4. Description of the sources of the beneficiary's difficulties (including an assessment of the role of any flaws in the beneficiary's business model or corporate governance system in causing those difficulties and the extent to which the difficulties could have been avoided through appropriate and timely management action) and SWOT analysis

5. Description of possible plans to remedy the beneficiary's problems and comparison of those plans in terms of the amount of State aid required and the anticipated results of those plans
  6. Description of the State intervention, full details of each State measure (including the form, amount and remuneration of each measure) and demonstration that the State aid instruments chosen are appropriate to the issues that they are intended to address
  7. Outline of the process for implementing the preferred plan with a view to restoring the beneficiary's long-term viability within a reasonable timescale (in principle, not to exceed 3 years), including a timetable of actions and a calculation of the costs of each action
  8. Business plan setting out financial projections for the next 5 years and demonstrating the return to long-term viability
  9. Demonstration of the return to viability under both a baseline and a pessimistic scenario, presentation and justification on the basis of a market survey of the assumptions used and sensitivity analysis
  10. Proposed own contribution and burden-sharing measures
  11. Proposed measures to limit distortions of competition'
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