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<u>Notice No</u>	Contents	Page
	I Information	
	Commission	
2004/C 244/01	Euro exchange rates	1
2004/C 244/02	Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁾	2
2004/C 244/03	Prior notification of a concentration (Case COMP/M.3569 — WENDEL INVESTISSEMENT/BUREAU VERITAS) ⁽¹⁾	18
2004/C 244/04	List of COM documents other than legislative proposals adopted by the Commission from 1 August 2004 to 31 August 2004	19
	II Preparatory Acts	
	Commission	
2004/C 244/05	List of legislative proposals adopted by the Commission from 1 August 2004 to 31 August 2004	20
	III Notices	
	Commission	
2004/C 244/06	Call for Proposals — Joint Harmonised European Union Programme of Business and Consumer Surveys	21

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I

(Information)

COMMISSION

Euro exchange rates ⁽¹⁾**30 September 2004**

(2004/C 244/01)

1 euro =

Currency			Exchange rate			Currency			Exchange rate		
USD	US dollar	1,2409	LVL	Latvian lats	0,6677						
JPY	Japanese yen	137,17	MTL	Maltese lira	0,4289						
DKK	Danish krone	7,4416	PLN	Polish zloty	4,3797						
GBP	Pound sterling	0,6868	ROL	Romanian leu	41 135						
SEK	Swedish krona	9,0588	SIT	Slovenian tolar	239,98						
CHF	Swiss franc	1,5524	SKK	Slovak koruna	40,055						
ISK	Iceland króna	87,85	TRL	Turkish lira	1 863 600						
NOK	Norwegian krone	8,341	AUD	Australian dollar	1,7212						
BGN	Bulgarian lev	1,9559	CAD	Canadian dollar	1,574						
CYP	Cyprus pound	0,5756	HKD	Hong Kong dollar	9,6745						
CZK	Czech koruna	31,66	NZD	New Zealand dollar	1,8414						
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	2,0937						
HUF	Hungarian forint	247,41	KRW	South Korean won	1 429,39						
LTL	Lithuanian litas	3,4528	ZAR	South African rand	7,9792						

⁽¹⁾ Source: reference exchange rate published by the ECB.

COMMUNICATION FROM THE COMMISSION

COMMUNITY GUIDELINES ON STATE AID FOR RESCUING AND RESTRUCTURING FIRMS IN DIFFICULTY

(2004/C 244/02)

(Text with EEA relevance)

1. INTRODUCTION

cases in the past and is among the most distortive types of State aid. Hence, the general principle of the prohibition of State aid as laid down in the Treaty should remain the rule and derogation from that rule should be limited.

1. The Commission adopted its original Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾ in 1994. In 1997, the Commission added specific rules for agriculture⁽²⁾. A new version of the guidelines was adopted in 1999⁽³⁾ and will expire on 9 October 2004.
 2. The Commission wishes through this version of the Guidelines, the text of which builds on previous versions, to make certain changes and clarifications prompted by a number of factors.
 3. First, in the light of conclusions of the meetings of the European Councils of Stockholm on 23 and 24 March 2001 and of Barcelona on 15 and 16 March 2002, which called on Member States to continue to reduce State aid as a percentage of gross domestic product while redirecting it towards more horizontal objectives of common interest including cohesion objectives, closer scrutiny of the distortion created by allowing aid for rescue and restructuring operations seems warranted. This is also consistent with the conclusions of the European Council held in Lisbon on 23 and 24 March 2000 aimed at increasing the competitiveness of the European economy.
 4. The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that a company which gets into difficulties is rescued by the State. Aid for rescue and restructuring operations has given rise to some of the most controversial State aid cases in the past and is among the most distortive types of State aid. Hence, the general principle of the prohibition of State aid as laid down in the Treaty should remain the rule and derogation from that rule should be limited.
 5. The 'one time, last time' principle is further reinforced, to avoid the use of repeated rescue or restructuring aids to keep firms artificially alive.
 6. The 1999 guidelines made a distinction between rescue aid and restructuring aid, whereby rescue aid was defined as temporary assistance to keep an ailing firm afloat for the time needed to work out a restructuring and/or a liquidation plan. In principle, restructuring measures financed through State aid could not be undertaken during this phase. However, such strict distinction between rescue and restructuring has given rise to difficulties. Firms in difficulty may already need to take certain urgent structural measures to halt or reduce a worsening of the financial situation in the rescue phase. These guidelines therefore widen the concept of 'rescue aid' in order to allow the beneficiary to undertake urgent measures, even of a structural nature, such as an immediate closure of a branch or other form of abandonment of loss-making activities. Given the urgent character of such aids, the Member States should be given the opportunity to opt for a simplified procedure to obtain their approval.
 7. As regards restructuring aids, building on the 1994 guidelines, the 1999 guidelines continued to require a substantial contribution from the beneficiary to the restructuring. Within this revision, it is appropriate to reaffirm with greater clarity the principle that this contribution must be real and free of aid. The beneficiary's contribution has a twofold purpose: on the one hand, it will demonstrate that the markets (owners, creditors) believe in the feasibility of the return to viability within a reasonable time period. On the other hand, it will ensure that restructuring aid is limited to the minimum required to restore viability while limiting distortion of competition. In this respect the Commission will also request compensatory measures to minimise the effect on competitors.
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- ⁽¹⁾ OJ C 368, 23.12.1994, p. 12.
⁽²⁾ OJ C 283, 19.9.1997, p. 2. See also the footnote relating to the heading of Chapter 5.
⁽³⁾ OJ C 288, 9.10.1999, p. 2.

8. The provision of rescue or restructuring aid to firms in difficulty may only be regarded as legitimate subject to certain conditions. It may be justified, for instance, by social or regional policy considerations, by the need to take into account the beneficial role played by small and medium-sized enterprises (SMEs) in the economy or, exceptionally, by the desirability of maintaining a competitive market structure when the demise of firms could lead to a monopoly or to a tight oligopolistic situation. On the other hand, it would not be justified to keep a firm artificially alive in a sector with long-term structural overcapacity or when it can only survive as a result of repeated State interventions.

2. DEFINITIONS AND SCOPE OF THE GUIDELINES AND LINKS WITH OTHER TEXTS ON STATE AID

2.1. Meaning of 'a firm in difficulty'

9. There is no Community definition of what constitutes 'a firm in difficulty'. However, for the purposes of these Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

10. In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of these Guidelines in the following circumstances:

(a) in the case of a limited liability company ⁽¹⁾, where more than half of its registered capital has disappeared ⁽²⁾ and more than one quarter of that capital has been lost over the preceding 12 months;

(b) in the case of a company where at least some members have unlimited liability for the debt of the company ⁽³⁾, where more than half of its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months;

(c) whatever the type of company concerned, where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

⁽¹⁾ This refers in particular to the types of company mentioned in the first subparagraph of Article 1(1) of Council Directive 78/660/EEC (OJ L 222, 14.8.1978, p. 11) as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

⁽²⁾ By analogy with the provisions of Article 17 of Council Directive 77/91/EEC (OJ L 26, 30.1.1977, p. 1) as last amended by the 2003 Act of Accession.

⁽³⁾ This refers in particular to the types of company mentioned in the second subparagraph of Article 1(1) of Council Directive 78/660/EEC.

11. Even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulties, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value. In acute cases the firm may already have become insolvent or may be the subject of collective insolvency proceedings brought under domestic law. In the latter case, these Guidelines apply to any aid granted in the context of such proceedings which leads to the firm's continuing in business. In any event, a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources.

12. For the purposes of these Guidelines, a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets. A firm will in principle be considered as newly created for the first three years following the start of operations in the relevant field of activity. Only after that period will it become eligible for rescue or restructuring aid, provided that:

(a) it qualifies as a firm in difficulty within the meaning of these Guidelines, and

(b) it does not form part of a larger business group ⁽⁴⁾ except under the conditions laid down in point 13.

13. A firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm'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 firm in difficulty creates a subsidiary, the subsidiary, together with the firm in difficulty controlling it, will be regarded as a group and may receive aid under the conditions laid down in this point.

⁽⁴⁾ To determine whether a company is independent or forms part of a group, the criteria laid down in Annex I to Commission Regulation (EC) No 68/2001 (OJ L 10, 13.1.2001, p. 20), as amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20) will be taken into account.

2.2. Definition of 'rescue and restructuring aid'

14. Rescue aid and restructuring aid are covered by the same set of guidelines, because in both cases the public authorities are faced with a firm in difficulty and the rescue and restructuring are often two parts of a single operation, even if they involve different processes.

15. Rescue aid is by nature temporary and reversible assistance. Its primary objective is to make it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan. The general principle is that rescue aid makes it possible temporarily to support a company confronted with an important deterioration of its financial situation reflected by 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. Moreover, the rescue aid must be limited to the minimum necessary. In other words, rescue aid offers a short respite, not exceeding six months, to a firm in difficulty. The aid must consist of reversible liquidity support in the form of loan guarantees or loans, with an interest rate at least comparable to those observed for loans to healthy firms and in particular the reference rates adopted by the Commission. Structural measures which do not require immediate action, such as, the irremediable and automatic participation of the State in the own funds of the firm, cannot be financed through rescue aid.

16. Once a restructuring or liquidation plan for which aid has been requested has been established and is being implemented, all further aid will be considered as restructuring aid. Measures which need to be implemented immediately to stem losses, including structural measures (for example, immediate withdrawal from a loss-making field of activity), can be undertaken with the rescue aid, subject to the conditions mentioned in Section 3.1 for individual aids and section 4.3 for aid schemes. Except where use is made of the simplified procedure set out in section 3.1.2, a Member State will need to demonstrate that such structural measures must be undertaken immediately. Rescue aid cannot normally be granted for financial restructuring.

17. Restructuring, on the other hand, will be based on a feasible, coherent and far-reaching plan to restore a firm's

long-term viability. Restructuring usually involves one or more of the following elements: the reorganisation and rationalisation of the firm's activities on to a more efficient basis, typically involving the withdrawal from loss-making activities, the restructuring of those existing activities that can be made competitive again and, possibly, diversification in the direction of new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations within the scope of these Guidelines cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

2.3. Scope

18. These Guidelines apply to firms in all sectors, except to those operating in the coal ⁽¹⁾ or steel sector ⁽²⁾, without prejudice to any specific rules relating to firms in difficulty in the sector concerned ⁽³⁾. With the exception of point 79 ⁽⁴⁾, they apply to the fisheries and aquaculture sector, subject to compliance with the specific rules laid down in the Guidelines for the examination of State aid to fisheries and aquaculture ⁽⁵⁾. Chapter 5 contains some additional rules for agriculture.

2.4. Compatibility with the common market

19. Article 87(2) and (3) of the Treaty provide for the possibility that aid falling within the scope of Article 87(1) will be regarded as compatible with the common market. Apart from cases of aid envisaged by Article 87(2), in particular aid to make good the damage caused by natural disasters or exceptional occurrences, which are not covered here, the only basis on which aid for firms in difficulty can be deemed compatible is Article 87(3)(c). Under that provision the Commission 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.

⁽¹⁾ Article 3 of Council Regulation (EC) No 1407/2002 (OJ L 205, 2.8.2002, p. 1), as amended by the 2003 Act of Accession.

⁽²⁾ Point 19 of the Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty (OJ C 152, 26.6.2002, p. 5). Point 1 of the communication from the Commission on rescue and restructuring aid and closure aid for the steel sector (OJ C 70, 19.3.2002, p. 21). Appropriate measures adopted in the context of the Multi-sectoral Framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8).

⁽³⁾ Specific rules of this nature exist for the aviation sector (OJ C 350, 10.12.1994, p. 5).

⁽⁴⁾ In other words, awards of aid to SMEs that do not fulfil the conditions set out in this point 0 may nevertheless be exempted from individual notification.

⁽⁵⁾ OJ C 19, 20.1.2001, p. 7.

20. Given that its very existence is in danger, a firm in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Consequently, the Commission considers that aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade to an extent contrary to the Community interest only if the conditions set out in these Guidelines are met. Where the firms which are to receive rescue or restructuring aid are located in assisted areas, the Commission will take the regional considerations referred to in Article 87(3)(a) and (c) of the Treaty into account as described in points 55 and 56.

21. The Commission will pay particular attention to the need to prevent the use of these Guidelines to circumvent the principles laid down in existing frameworks and Guidelines.

22. The assessment of rescue or restructuring aid should not be affected by changes in the ownership of the business aided.

2.5. Recipients of previous unlawful aid

23. Where unlawful aid has previously been granted to the firm in difficulty, in respect of which the Commission has adopted a negative decision with a recovery order, and where no such recovery has taken place in compliance with Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, the assessment of any rescue and restructuring aid to be granted to the same undertaking shall 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 ⁽²⁾.

3. GENERAL CONDITIONS FOR THE AUTHORISATION OF RESCUE AND/OR RESTRUCTURING AID NOTIFIED INDIVIDUALLY TO THE COMMISSION

24. This Chapter deals exclusively with aid measures that are notified individually to the Commission. Under certain conditions, the Commission may authorise rescue or restructuring aid schemes: those conditions are set out in Chapter 4.

3.1. Rescue aid

3.1.1. Conditions

25. In order to be approved by the Commission, rescue aid as defined in point 15 must:

- (a) consist of liquidity support in the form of loan guarantees or loans ⁽³⁾; in both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms, and in particular the reference rates adopted by the Commission; any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm;
- (b) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States;
- (c) be accompanied, on notification, by an undertaking given by the Member State concerned to communicate to the Commission, not later than six months after the rescue aid measure has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; in the case of non-notified aid the Member State must communicate, no later than six months after the first implementation of a rescue aid measure, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and /or that the guarantee has been terminated;
- (d) be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised; such an amount may include aid for urgent structural measures in accordance with point 16; the amount necessary should be based on the liquidity needs of the company stemming from losses; in determining that amount regard will be had to the outcome of the application of the formula set out in the Annex; any rescue aid exceeding the result of that calculation will need to be duly explained;
- (e) respect the condition set out in section 3.3 (one time, last time).

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ Case C-355/95 P, *Textilwerke Deggendorf v Commission and others*, [1997] ECR I-2549.

⁽³⁾ An exception may be made in the case of rescue aid in the banking sector, in order to enable the credit institution in question to continue temporarily carrying on its banking business in accordance with the prudential legislation in force (Directive 2000/12/EC of the European Parliament and of the Council, OJ L 126, 26.5.2000, p. 1). At any rate, aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point (a), should fulfil the general principles of rescue aid and cannot consist in structural financial measures related to the bank's own funds. Any aid granted in a form other than loan guarantees or loans fulfilling the conditions set out in point(a), will be taken into account when any compensatory measures under a restructuring plan are examined in accordance with points 38 to 42.

26. Where the Member State has submitted a restructuring plan within six months of the date of authorisation or, in the case of non-notified aid, of implementation of the measure, the deadline for reimbursing the loan or for putting an end to the guarantee is extended until the Commission reaches its decision on the plan, unless the Commission decides that such an extension is not justified.
27. Without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice, in accordance with the second subparagraph of Article 88 (2) of the Treaty, the Commission will initiate proceedings under Article 88(2) of the Treaty if the Member State fails to communicate:
 - (a) a credible and substantiated restructuring plan or a liquidation plan, or
 - (b) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated before the six-month deadline has expired,
28. In any event, the Commission may decide to initiate such proceedings, without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty, if it considers that the loan or the guarantee has been misused, or that, after the six-month deadline has expired, the failure to reimburse the aid is no longer justified.
29. The approval of rescue aid does not necessarily mean that aid under a restructuring plan will subsequently be approved; such aid will have to be assessed on its own merits.

3.1.2. Simplified procedure

30. The Commission will as far as possible endeavour to take a decision within a period of one month in respect of rescue aids fulfilling all conditions set out in section 3.1.1 and the following cumulative requirements:
 - (a) the firm concerned satisfies at least one of the three criteria set out in point 10;
 - (b) the rescue aid is limited to the amount resulting from the application of the formula set out in the Annex and does not exceed EUR 10 million.

3.2. Restructuring aid

3.2.1. Basic principle

31. Aid for restructuring raises particular competition concerns as it can shift an unfair share of the burden of

structural adjustment and the attendant social and economic problems onto other producers who are managing without aid, and to other Member States. The general principle should therefore be to allow the grant of restructuring aid only in circumstances in which it can be demonstrated that it does not run counter to the Community interest. This will only be possible if strict criteria are met, and if it is certain that any distortions of competition will be offset by the benefits flowing from the firm's survival (for instance, where it is clear that the net effect of redundancies resulting from the firm's going out of business, combined with the effects on its suppliers, would exacerbate employment problems or, exceptionally, where the firm's disappearance would result in a monopoly or tight oligopolistic situation) and that, in principle, there are adequate compensatory measures in favour of competitors.

3.2.2. Conditions for the authorisation of aid

32. Subject to the special provisions for assisted areas, SMEs and the agricultural sector (see points 55, 56, 57, 59 and Chapter 5), the Commission will approve aid only under the following conditions:

Eligibility of the firm

33. The firm must qualify as a firm in difficulty within the meaning of these Guidelines (see points 9 to 13).

Restoration of long-term viability

34. The grant of the aid must be conditional on implementation of the restructuring plan which must be endorsed by the Commission in all cases of individual aid, except in the case of SMEs, as laid down in section 3.2.5.
35. The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the Member State concerned commits itself. The plan must be submitted in all relevant detail to the Commission and include, in particular, a market survey. The improvement in viability must derive mainly from internal measures contained in the restructuring plan; it may be based on external factors such as variations in prices and demand over which the company has no great influence, but only if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring.

36. The restructuring plan must describe the circumstances that led to the company's difficulties, thereby providing a basis for assessing whether the proposed measures are appropriate. It must take account, *inter alia*, of the present state of and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses. It must enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.
37. The plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be enough to enable the restructured firm to compete in the marketplace on its own merits. Where the firm's difficulties stem from flaws in its corporate governance system, appropriate adaptations will have to be introduced.

Avoidance of undue distortions of competition

38. In order to ensure that the adverse effects on trading conditions are minimized as much as possible, so that the positive effects pursued outweigh the adverse ones, compensatory measures must be taken. Otherwise, the aid will be regarded as 'contrary to the common interest' and therefore incompatible with the common market. The Commission will have regard to the objective of restoring the long-term viability in determining the adequacy of the compensatory measures.
39. These measures may comprise divestment of assets, reductions in capacity or market presence and reduction of entry barriers on the markets concerned. When assessing whether the compensatory measures are appropriate the Commission will take account of the market structure and the conditions of competition to ensure that any such measure does not lead to a deterioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation. If a Member State is able to prove that such a situation would arise, the compensatory measures should be construed in such a way to avoid this situation.
40. The measures must be in proportion to the distortive effects of the aid and, in particular, to the size⁽¹⁾ and the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position

after restructuring. The degree of reduction must be established on a case-by-case basis. The Commission will determine the extent of the measures necessary on the basis of the market survey attached to the restructuring plan and, where appropriate on the basis of any other information at the disposal of the Commission including that supplied by interested parties. The reduction must be an integral part of the restructuring as laid down in the restructuring plan. This principle applies irrespective of whether the divestitures take place before or after the granting of the State aid, as long as they are part of the same restructuring. Write-offs and closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence for the purpose of the assessment of the compensatory measures. Such an assessment will take account of any rescue aid granted beforehand.

41. However, this condition will not normally apply to small enterprises, since it can be assumed that ad hoc aid to small enterprises does not normally distort competition to an extent contrary to the common interest, except where otherwise provided by rules on State aid in a particular sector or when the beneficiary is active in a market suffering from long-term overcapacity.

42. When the beneficiary is active in a market suffering from long-term structural overcapacity, as defined in the context of the Multisectoral framework on regional aid for large investments⁽²⁾, the reduction in the company's capacity or market presence may have to be as high as 100 %⁽³⁾.

Aid limited to the minimum: real contribution, free of aid

43. The amount and intensity of the aid must be limited to the strict minimum of the restructuring costs necessary to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Such assessment will take account of any rescue aid granted beforehand. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. Such contribution is a sign that the markets believe in the feasibility of the return to viability. Such contribution must be real, i.e., actual, excluding all future expected profits such as cash flow, and must be as high as possible.

⁽¹⁾ In this respect the Commission may also take into account whether the company in question is a medium-sized enterprise or a large one.

⁽²⁾ OJ C 70, 19.3.2002, p. 8.

⁽³⁾ In such cases, the Commission will only allow aid to alleviate the social costs of the restructuring, in line with section 3.2.6 and environmental aid to clean up polluted sites which might otherwise be abandoned.

44. The Commission will normally consider the following contributions ⁽¹⁾ to the restructuring to be appropriate: at least 25 % in the case of small enterprises, at least 40 %, for medium-sized enterprises and at least 50 % for large firms. In exceptional circumstances and in cases of particular hardship, which must be demonstrated by the Member State, the Commission may accept a lower contribution.
45. To limit the distortive effect, the amount of the aid or the form in which it is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process. The Commission will accordingly examine the level of the firm's liabilities after restructuring, including the situation after any postponement or reduction of its debts, particularly in the context of its continuation in business following collective insolvency proceedings brought against it under national law ⁽²⁾. None of the aid should go to finance new investment that is not essential for restoring the firm's viability.

Specific conditions attached to the authorisation of aid

46. In addition to the compensatory measures described in points 38 to 42, the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest, in the event that the Member State concerned has not given a commitment that it will adopt such provisions. For example, it may require the Member State:
- (a) to take certain measures itself (for example, to open up certain markets directly or indirectly linked to the company's activities to other Community operators with due respect to Community law);
 - (b) to impose certain obligations on the recipient firm;
 - (c) to refrain from granting other types of aid to the recipient firm during the restructuring period.

Full implementation of restructuring plan and observance of conditions

47. The company must fully implement the restructuring plan and must discharge any other obligations laid down in the Commission decision authorising the aid. The Commission will regard any failure to implement the plan or to fulfil the other obligations as misuse of the aid, without prejudice to Article 23 of Regulation (EC)

No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty.

48. Where restructuring operations cover several years and involve substantial amounts of aid, the Commission may require payment of the restructuring aid to be split into instalments and may make payment of each instalment subject to:
- (i) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
 - (ii) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

Monitoring and annual report

49. The Commission must be put in a position to make certain that the restructuring plan is being implemented properly, through regular detailed reports communicated by the Member State concerned.
50. In the case of aid to large firms, the first of these reports will normally have to be submitted to the Commission not later than six months after approval of the aid. Reports will subsequently have to be sent to the Commission at least once a year, at a fixed date, until the objectives of the restructuring plan can be deemed to have been achieved. They must contain all the information the Commission needs in order to be able to monitor the implementation of the restructuring programme, the timetable for payments to the company and its financial position and the observance of any conditions or obligations laid down in the decision approving the aid. They must in particular include all relevant information on any aid for any purpose which the company has received, either on an individual basis or under a general scheme, during the restructuring period (see points 68 to 71). Where the Commission needs prompt confirmation of certain key items of information, for example, on closures or capacity reductions, it may require more frequent reports.
51. In the case of aid to SMEs, transmission each year of a copy of the recipient firm's balance sheet and profit-and-loss account will normally be sufficient, except where stricter conditions have been laid down in the decision approving the aid.

⁽¹⁾ See point 7. This minimum 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.

⁽²⁾ See point 10(c).

3.2.3. Amendment of the restructuring plan

52. Where restructuring aid has been approved, the Member State concerned may, during the restructuring period, ask the Commission to agree to changes to the restructuring plan and the amount of the aid. The Commission 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 amount of the aid is increased, any requisite compensatory measures must be more extensive than those initially imposed;
- (c) if the proposed compensatory measures are smaller than those initially planned, the amount of the aid must be correspondingly reduced;
- (d) the new timetable for implementation of the compensatory measures may be delayed with respect to the timetable initially adopted only for reasons outside the company's or the Member State's control: if that is not the case, the amount of the aid must be correspondingly reduced.

53. If the conditions imposed by the Commission or the commitments given by the Member State are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.

54. Should the Member State introduce changes to an approved restructuring plan without duly informing the Commission, the Commission will initiate proceedings under Article 88(2) of the Treaty, as provided for by Article 16 of Regulation (EC) No 659/1999 (misuse of aid), without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty.

3.2.4. Restructuring aid in assisted areas

55. Economic and social cohesion being a priority objective of the Community under Article 158 of the Treaty and other policies being required to contribute to this objective under Article 159⁽¹⁾, the Commission must take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an

⁽¹⁾ Article 159 of the EC Treaty provides, *inter alia*, that 'the formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement'.

ailing firm 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 regions own best interest to apply its resources to develop as soon as possible activities that are viable and sustainable. Finally, distortions of competition must be minimised even in the case of aid to firms in assisted areas. In this context, regard must also be had to possible harmful spill-over effects which could take place in the area concerned and other assisted areas.

56. Thus, the criteria listed in points 32 to 54 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 conditions for authorising aid may be less stringent as regards the implementation of compensatory measures and the size of the beneficiary's contribution. If needs of regional development justify it, in cases in which a reduction of capacity or market presence appear to be the most appropriate measure to avoid undue distortions of competition, the required reduction will be smaller in assisted areas than in non-assisted areas. In those cases, which need to be demonstrated by the Member State concerned, a distinction will be drawn between areas eligible for regional aid under Article 87(3)(a) of the Treaty and those eligible under Article 87(3)(c) so as to take account of the greater severity of the regional problems in the former areas.

3.2.5. Aid for restructuring SMEs

57. Aid to small enterprises⁽²⁾ tends to affect trading conditions less than that granted to medium-sized and large firms. This also applies to aid to help restructuring, so that the conditions laid down in points 32 to 54 are applied less strictly in the following respects:

- (a) the grant of restructuring aid to small enterprises will not usually be linked to compensatory measures (see point 41), unless this is otherwise stipulated in rules on State aid in a particular sector.
- (b) the requirements regarding the content of reports will be less stringent for SMEs (see points 49, 50 and 51).

⁽²⁾ As defined in the Commission Recommendation 2003/361/EC (OJ L 124, 20.5.2003, p. 36). Until 31 December 2004, the relevant definition is to be found in the Commission Recommendation 96/280/EC (OJ L 107, 30.4.1996, p. 4).

58. However, the 'one time, last time' principle (section 3.3) applies in full to SMEs.

59. For SMEs the restructuring plan does not need to be endorsed by the Commission. However, the plan must meet the requirements laid down in points 35, 36 and 37 and be approved by the Member State concerned and communicated to the Commission. The grant of aid must be conditional on full implementation of the restructuring plan. The obligation to verify that these conditions are fulfilled lies with the Member State.

3.2.6. Aid to cover the social costs of restructuring

60. Restructuring plans normally entail 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. Whatever the reason for them, such measures will generally lead to reductions in the company's workforce.

61. Member States' labour legislation may comprise general social security schemes under which redundancy benefits and early retirement pensions are paid direct to redundant employees. Such schemes are not to be regarded as State aid falling within the scope of Article 87(1) of the Treaty.

62. Besides direct redundancy benefit and early retirement provision for employees, general social support schemes frequently provide for the government to cover the cost of benefits which the company 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 87(1) for firms undertaking 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⁽¹⁾.

63. The obligations a company itself bears under employment legislation or collective agreements with trade unions, to provide redundancy benefits and/or early

retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. That being so, any contribution by the State to these costs must be counted as aid. This is true regardless of whether the payments are made direct to the firm or are administered through a government agency to the employees.

64. The Commission has no a priori objection to such aid when it is granted to firms in difficulty, for it brings economic benefits above and beyond the interests of the firm concerned, facilitating structural change and reducing hardship.

65. Besides meeting the cost of redundancy payments and early retirement, 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. The Commission consistently takes a favourable view of such aid when it is granted to firms in difficulty.

66. The type of aid described in points 62 to 65 must be clearly identified in the restructuring plan, since aid for social measures exclusively for the benefit of redundant employees is disregarded for the purposes of determining the extent of the compensatory measures referred to in points 38 to 42.

67. In the common interest, the Commission will ensure in the context of the restructuring plan that social effects of the restructuring in Member States other than the one granting aid are kept to the minimum.

3.2.7. Need to inform the Commission of any aid granted to the recipient firm during the restructuring period

68. Where restructuring aid received by a large or medium-sized enterprise 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 Commission's assessment of the extent of the compensatory measures required.

⁽¹⁾ In its judgment in Case C-241/94, (*France v Commission* [1996] ECR I-4551), (*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 firms in a more favourable situation than others and thus to qualify as aid within the meaning of Article 87(1) of the Treaty. (The Court's judgment did not call into question the Commission's conclusion that the aid was compatible with the common market).

69. Notifications of aid for restructuring a large or medium-sized enterprise must indicate all other aid of any kind which is planned to be granted to the recipient firm during the restructuring period, unless it is covered by the de minimis rule or by exemption regulations. The Commission shall take such aid into account when assessing the restructuring aid.
70. Any aid actually granted to a large or medium-sized enterprise during the restructuring period, including aid granted in accordance with an approved scheme, must be notified individually to the Commission to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.
71. The Commission shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of these Guidelines.

3.3. 'One time, last time'

72. Rescue aid is a one-off operation primarily designed to keep a company in business for a limited period, during which its future can be assessed. It should not be possible to allow repeated granting of rescue aids that would merely maintain the status quo, postpone the inevitable and in the meantime shift economic and social problems on to other, more efficient producers or other Member States. Hence, rescue aid should be granted only once (one time, last time condition). In accordance with the same principle, in order to prevent firms from being unfairly assisted when they can only survive thanks to repeated State support, restructuring aid should be granted once only. Finally, if rescue aid is granted to a firm that has already received restructuring aid, it can be considered that the beneficiary's difficulties are of a recurrent nature and that repeated State interventions give rise to distortions of competition that are contrary to the common interest. Such repeated State interventions should not be permitted.
73. When planned rescue or restructuring aid is notified to the Commission, the Member State must specify whether the firm concerned has already received rescue or restructuring aid in the past, including any such aid granted before the date of application of these Guidelines and any unnotified aid⁽¹⁾. If so, and where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the

restructuring plan has been halted (whichever is the latest), the Commission will not allow further rescue or restructuring aid. 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 has been granted in accordance with the conditions in section 0, and this aid was not followed by a State supported restructuring, if:
 - (i) the firm could reasonably be believed to be viable in the long-term following the granting of rescue aid, and
 - (ii) new rescue or restructuring aid becomes necessary after at least five years due to unforeseeable circumstances⁽²⁾ for which the company is not responsible;
- (c) in exceptional and unforeseeable circumstances for which the company is not responsible.

In the cases set out in points (b) and (c), the simplified procedure mentioned in section 3.1.2 cannot be used.

74. The application of this rule will in no way be affected by any changes in ownership of the recipient firm 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 firm that is continuing in business.
75. Where a business group has received rescue or restructuring aid, the Commission 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 rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted, whichever is the latest. Where an entity belonging to a business group has received rescue or restructuring aid, 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. Member States must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

⁽¹⁾ With regard to unnotified aid, the Commission will take account in its appraisal of the possibility that the aid could have been declared compatible with the common market other than as rescue or restructuring aid.

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

76. Where a firm takes over assets of another firm, and in particular one that has been the subject of one of the procedures referred to in point 74 or of collective insolvency proceedings brought under national law and has already received rescue or restructuring aid, the purchaser is not subject to the 'one time, last time' requirement, provided that the following cumulative conditions are met:

- (a) the purchaser is clearly separate from the old firm;
- (b) the purchaser has acquired the old firm's assets at market prices;
- (c) the winding-up or court-supervised administration and purchase of the old company are not merely devices aimed at evading application of the 'one time, last time' principle: the Commission may determine that this was the case if, for example, the difficulties encountered by the purchaser were clearly foreseeable when it took over the assets of the old company.

77. It should, however, be stressed here that, since it constitutes aid for initial investment, aid for the purchase of the assets cannot be authorised under these Guidelines.

4. AID SCHEMES FOR SMES

4.1. General principles

78. The Commission will authorise schemes for providing rescue and/or restructuring aid to small or medium-sized enterprises in difficulty only where the firms concerned correspond to the Community definition of SMEs. Subject to the following specific provisions, the compatibility of such schemes will be assessed in the light of the conditions set out in Chapters 2 and 3, with the exception of Section 3.1.2 which does not apply to aid schemes. Any aid which is granted under a scheme but does not meet any of those conditions must be notified individually and approved in advance by the Commission.

4.2. Eligibility

79. Unless otherwise stipulated in rules on State aid in a particular sector, awards of aid under schemes authorised from the date of application of these Guidelines, to small or medium-sized enterprises will be exempted from individual notification only where the enterprise concerned meets at least one of the three criteria set out in point 10. Aid to enterprises that do not meet any of those three criteria must be notified individually to the Commission

so that it can assess whether they qualify as firms in difficulty. Aid to enterprises active in a market suffering from long-term structural overcapacity, irrespective of the size of the beneficiary, must also be notified individually to the Commission so that it can assess the application of point 42.

4.3. Conditions for the authorisation of rescue aid schemes

80. In order to be approved by the Commission, rescue aid schemes must satisfy the conditions set out in points (a), (b), (d) and (e) of point 25. Furthermore, rescue aid may not be granted for more than six months, during which time an analysis must be made of the firm's position. Before the end of that period the Member State must either approve a restructuring plan or a liquidation plan, or demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary.

81. Any rescue aid granted for longer than six months or not reimbursed after six months must be individually notified to the Commission.

4.4. Conditions for the authorisation of restructuring aid schemes

82. The Commission will authorise restructuring aid schemes only if the grant of aid is conditional on full implementation by the recipient of a restructuring plan that has been approved by the Member State concerned and meets the following conditions:

- (a) restoration of viability: the criteria set out in points 34 to 37 apply;
- (b) avoidance of undue distortions of competition: since aid to small enterprises tends to distort competition less, the principle set out in points 38 to 42 does not apply unless it is otherwise stipulated in rules on State aid in a particular sector; schemes should nevertheless provide that recipient firms must not increase their capacity during the restructuring; for medium-sized enterprises points 38 to 42 apply;
- (c) aid limited to the minimum necessary: the principles set out in points 43, 44 and 45 apply;
- (d) amendment of the restructuring plan: any changes to the plan must comply with the rules set out in points 52, 53 and 54.

4.5. Common conditions for the authorisation of rescue and/or restructuring aid schemes

83. Schemes must specify the maximum amount of aid that can be awarded to any one firm as part of an operation to provide rescue and/or restructuring aid, including where the plan is modified. Any aid exceeding that amount must be notified individually to the Commission. The maximum amount of aid granted for the combined rescue and restructuring aid of any one firm may not be more than EUR 10 million, including any aid obtained from other sources or under other schemes.

84. In addition, the 'one time, last time' principle must be respected. The rule laid down in section 3.3 applies.

85. Member States must also notify measures individually to the Commission where one firm takes over assets of another firm which has itself already received rescue or restructuring aid.

4.6. Monitoring and annual reports

86. Points 49, 50 and 51 do not apply to aid schemes. However, it will be a condition of approval that reports are presented on the scheme's operation, normally on an annual basis, containing the information specified in the Commission's instructions on standardised reports ⁽¹⁾. The reports must also include a list of all beneficiary companies, indicating for each of them:

- (a) company name;
- (b) the company's sectoral code, using the NACE ⁽²⁾ three-digit sectoral classification codes;
- (c) number of employees;
- (d) annual turnover and balance sheet value;
- (e) amount of aid granted;
- (f) amount and form of the beneficiary's contribution;

⁽¹⁾ See Annex III. A and B (standardised reporting format for existing State aid) to Commission Regulation (EC) No 794/2004 of 21 April 2004 adopting provisions for the implementation of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽²⁾ Statistical classification of economic activities in the European Community, published by the Statistical Office of the European Communities.

(g) where appropriate, the form and the degree of the compensatory measures;

(h) where appropriate, any restructuring aid, or other support treated as such, which it has received in the past;

(i) whether or not the beneficiary company has been wound up or subject to collective insolvency proceedings before the end of the restructuring period.

5. PROVISIONS APPLICABLE TO AID FOR RESTRUCTURING IN THE AGRICULTURAL SECTOR ⁽³⁾

5.1. Compensatory measures

87. Points 38 to 42, and 57 and 82(b) provide that the requirement for compensatory measures is not normally applied in the case of small enterprises, unless otherwise stipulated in sector-specific State aid rules. In the agricultural sector, the Commission will normally require compensatory measures, in accordance with the principles set out in points 38 to 42, to be carried out by all recipients of restructuring aid, whatever their size.

5.2. Definition of excess capacity

88. For the purposes of these Guidelines, structural excess capacity in the agricultural sector will be defined by the Commission on a case-by-case basis taking account in particular of the extent and trend for the relevant product category over the past three years, of market stabilisation measures, especially export refunds and withdrawals from the market, of development of world market prices, and of the presence of sectoral limits in Community legislation.

5.3. Eligibility for rescue and restructuring aid schemes

89. By way of derogation from point 79, the Commission may also exempt aid to SMEs from individual notification if the SME concerned does not meet at least one of the three criteria set out in point 10.

⁽³⁾ This covers, for the purpose of these Guidelines, all operators involved in the primary production of agricultural products of Annex I to the Treaty (farming). Aid measures in favour of enterprises processing and marketing agricultural products are not covered by this Chapter. Aid to processing and marketing companies is to be assessed in line with the general rules of these Guidelines. Fisheries and aquaculture are not covered by this chapter.

5.4. Capacity reductions

90. Where there is a structural excess of production capacity, the requirement of irreversibly reducing or closing capacity set out in points 38 to 42 applies. Open farmland may be re-used after 15 years following effective capacity closure. Until then, it has to be maintained in good agricultural and environmental condition for land no longer used for production purposes, in accordance with Article 5 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽¹⁾, and with the relevant implementation rules.

91. Where the aid measure is targeted on particular products or operators, the production capacity reduction must attain at least 10 % of that for which the restructuring aid is effectively granted. For measures not so targeted, the production capacity reduction must attain at least 5 %. For restructuring aid granted in less favoured areas ⁽²⁾, the capacity reduction requirement will be reduced by two percentage points. The Commission will waive these capacity reduction requirements where the decisions to grant restructuring aid taken in favour of beneficiaries in a given sector over any consecutive 12-month period do not together involve more than 1 % of the production capacity of that sector in the Member State concerned. This rule may be applied at regional level in the case of an aid regime limited to a given region.

92. The requirement of irreversibly reducing capacity may be achieved at the relevant market level (not necessarily involving reductions by the beneficiaries of the restructuring aid). Subject to compliance with common agricultural policy provisions, Member States may choose whatever capacity reduction system they wish.

93. The Member State must demonstrate that the capacity reduction would be supplementary to any reduction which would be applied in the absence of the restructuring aid.

94. Where the capacity reduction is not sought at the level of the beneficiary of the aid, measures to achieve the reduc-

tion must be implemented no later than one year after the aid has been granted.

95. In order to ensure the effectiveness of the closure of capacity undertaken at the relevant market level, the Member State must give a commitment not to grant State aid for capacity increases in the sector concerned. This commitment shall remain in force for a period of five years from the date where the required capacity reduction actually has been achieved.

96. In determining eligibility for and amounts of restructuring aid, no account shall be taken of the burdens of compliance with Community quota and related provisions at the level of individual operators.

5.5. 'One time, last time' condition

97. The principle that rescue or restructuring aid should be granted once only also applies to the agricultural sector. However, instead of the period of 10 years set out in section 3.3 a five-year period will apply.

5.6. Monitoring and annual report

98. The rules set out in Chapters 3 and 4 apply to monitoring and annual reports in the agricultural sector, except for the obligation to supply a list of all aid beneficiaries and certain items of information on each of them (see point 86) Where recourse has been had to the provisions of points 90 to 96, the report must also include data showing the production capacity which has effectively benefited from restructuring aid and the capacity reduction achieved.

6. APPROPRIATE MEASURES AS REFERRED TO IN ARTICLE 88(1)

99. The Commission will propose, by separate letter, pursuant to Article 88(1) of the Treaty, that the Member States adopt appropriate measures as set out in points 100 and 101, with regard to their existing aid schemes. The Commission will make authorisation of any future scheme conditional on compliance with those provisions.

⁽¹⁾ OJ L 270, 21.10. 2003, p. 1. Regulation as last amended by Regulation (EC) No 864/2004 (OJ L 161, 30.4.2004, p. 48).

⁽²⁾ As defined in Articles 13 and following of Council Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999, p. 80), as last amended by Regulation (EC) No 583/2004 (OJ L 91, 30.3.2004, p. 1).

100. Member States which have accepted the Commission's proposal must adapt their existing aid schemes which are to remain in operation after 9 October 2004 within six months in order to bring them into line with these Guidelines.
101. Member States must indicate their acceptance of these appropriate measures within one month following receipt of said letter proposing appropriate measures.

7. DATE OF APPLICATION AND DURATION

102. The Commission will apply these Guidelines with effect from 10 October 2004 until 9 October 2009.

103. Notifications registered by the Commission prior to 10 October 2004 will be examined in the light of the criteria in force at the time of notification.

104. The Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the Treaty on the basis of these Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union*.

In all other cases it will conduct the examination on the basis of the Guidelines which apply at the time the aid is granted.

ANNEX

Formula ⁽¹⁾ to calculate maximum amount of rescue aid to qualify for the simplified procedure:

$$\frac{\text{EBIT}_t + \text{depreciation}_t + (\text{working capital}_t - \text{working capital}_{t-1})}{2}$$

The formula is based on the operating results of the company (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. Then changes in working capital must be added to the total. The change in working capital is calculated as the difference between the current assets and current liabilities ⁽²⁾ for the latest closed accounting periods. Similarly, if there would be provisions at the level of the operating result, this 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 company in the year preceding the application for the aid (or before the award of the aid in case of non-notified aids). Half of this amount should keep the company in business for a six-month period. Thus the result of the formula has to be divided by 2.

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

In case the formula leads to a positive result, a detailed explanation will need to be submitted demonstrating that the firm is in difficulty as defined in points 10 and 11.

Example:

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

⁽¹⁾ EBIT (earnings before interest and taxes as set out in the annual accounts of the year before the application, indicated as t) must be increased with depreciation in the same period plus the changes in working capital over a two-year period (year before the application and preceding year), divided by two to determine an amount over six months, i.e. normal period for permitting rescue aid.

⁽²⁾ 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.

Maximum amount of rescue aid = $[-12 + 2 + (-30)] / 2 = -\text{EUR } 20 \text{ million}$.

As the outcome of the formula is higher than EUR 10 million, the simplified procedure described in point 30 cannot be used. If this limit is exceeded, the Member State should provide an explanation of how the future cash-flow needs of the company and the amount of rescue aid have been determined.

Prior notification of a concentration**(Case COMP/M.3569 — WENDEL INVESTISSEMENT/BUREAU VERITAS)**

(2004/C 244/03)

(Text with EEA relevance)

1. On 23 September 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Wendel Investissement ('Wendel', France) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Bureau Veritas S.A. ('Bureau Veritas', France), currently jointly controlled by Wendel and Poincaré Investissements, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for undertaking Wendel: investment holding that controls in particular Legrand, Wheelabrator Allevard, Oranje-Nassau, and Stallergènes,
- for undertaking Bureau Veritas: certification, classification and quality control.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (fax No (32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.3569 — WENDEL INVESTISSEMENT/BUREAU VERITAS, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

**LIST OF COM DOCUMENTS OTHER THAN LEGISLATIVE PROPOSALS ADOPTED BY THE
COMMISSION FROM 1 AUGUST 2004 TO 31 AUGUST 2004 ⁽¹⁾**

(2004/C 244/04)

Document	Part	Date of adoption	Title
COM(2004) 548		9.8.2004	Recommendation for a Council Decision on the opening of the negotiations on an agreement concerning monetary relations with the Principality of Andorra

These texts are available on EUR-Lex: <http://europa.eu.int/eur-lex>.

⁽¹⁾ This list is limited to COM documents that fulfil the conditions for publication.

II

(Preparatory Acts)

COMMISSION

**LIST OF LEGISLATIVE PROPOSALS ADOPTED BY THE COMMISSION FROM 1 AUGUST 2004
TO 31 AUGUST 2004 ⁽¹⁾**

(2004/C 244/05)

Document	Part	Date of adoption	Title
COM(2004) 545		9.8.2004	Proposal for a Council Regulation amending Regulation (EC) No 2287/2003 as concerns fishing opportunities in Greenland waters
COM(2004) 559	1	16.8.2004	Proposal for a Council Decision concerning the signature of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests
COM(2004) 559	2	16.8.2004	Proposal for a Council Decision on the conclusion of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests
COM(2004) 563		18.8.2004	Proposal for a Council Directive amending Directive 87/328/EEC as regards the storage of semen of bovine animals intended for intra-Community trade
COM(2004) 571		26.8.2004	Proposal for a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain graphite electrode systems originating in India

These texts are available on EUR-Lex: <http://europa.eu.int/eur-lex>.

⁽¹⁾ This list is limited to COM documents that fulfil the conditions for publication.

III

(Notices)

COMMISSION

CALL FOR PROPOSALS

Joint Harmonised European Union Programme of Business and Consumer Surveys

(2004/C 244/06)

1. CONTEXT

The European Commission is launching a call for proposals with the purpose of ensuring a long term cooperation in conducting surveys as part of the Joint Harmonised Programme of Business and Consumer Surveys (approved by the Commission on 29 November 2000) in the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia (hereafter new EU Member States), in Luxemburg and in Bulgaria, Croatia and Romania. This cooperation shall take the form of a framework partnership agreement between the Commission and the specialised bodies in the new EU Member States, in Luxemburg and in Bulgaria, Croatia and Romania over a period of three years.

The programme is designed to gather information on the state of the economies in the EU Member States so as to be able to compare their business cycles for EMU (Economic and Monetary Union) management purposes. It has become an indispensable tool in the EMU economic surveillance process, as well as for general economic policy purposes.

2. PURPOSE AND TECHNICAL SPECIFICATIONS

2.1. Objectives

The joint harmonised programme involves specialised bodies/institutes carrying out opinion surveys on a joint financing basis. The Commission is looking to conclude agreements with bodies and institutes suitably qualified to carry out one or more of the following surveys in the next three years:

- investment, construction, retail trade and services surveys in the new EU Member States, Bulgaria, Croatia and Romania,
- retail trade and services surveys in Luxemburg,
- industry and consumer surveys in Croatia.
- The Commission also organises ad hoc surveys on topical economic issues. These ad hoc surveys are by definition more occasional and are carried out in addition to the monthly surveys, using the same established samples as the monthly surveys, to obtain information on specific economic policy issues.

The surveys target managers in the industry, investment, construction, retail trade and services sector as well as consumers.

2.2. Technical specifications

2.2.1. Survey timing and reporting of results

The following table gives an overview of the surveys requested under this call for proposals:

Survey name	Number of sectors covered/ size classes	Number of questions asked monthly	Number of questions asked quarterly
Industry survey	56/-	7	9
Investment survey	8/6	2 questions in March/April 4 questions in October/November	
Construction survey	5/-	5	1
Retail trade survey	9/-	6	-
Services survey	19 / -	6	1
Consumer survey	25 / -	12	3

- The monthly surveys must be carried out in the first two weeks of each month and the results must be e-mailed to the Commission at least 4 working days before the end of the month and in accordance with the calendar that will be included in the grant agreement.
- The quarterly surveys must be carried out in the first two weeks of the first month of each quarter (January, April, July and October) and the results must be e-mailed to the Commission at least 4 working days before the end of January, April, July and October respectively and in accordance with the calendar that will be included in the grant agreement.
- The six-monthly surveys of investment must be carried out in March/April and October/November and the results must be e-mailed to the Commission at least four working days before the end of May and December, respectively, and in accordance with the calendar that will be included in the grant agreement.
- In the case of ad hoc surveys, the beneficiary must undertake to adhere to the specific timetables laid down for them.

2.2.2. Methodology of the Joint Harmonised EU Programme of Business and Consumer Surveys

Details on the methodology can be found in the user's guide on:

http://europa.eu.int/comm/economy_finance/indicators/business_consumer_surveys/userguide_en.pdf.

3. ADMINISTRATIVE PROVISIONS AND DURATION

3.1. Administrative provisions

The body or institute is to be selected for a maximum period of three years. The Commission wishes to establish a long term cooperation with the successful applicants. For this purpose a three year framework partnership agreement will be concluded between the parties. Under this framework partnership agreement, which will specify the common objectives and the nature of the actions planned, three specific annual grant agreements may be concluded between the parties. The first of these specific grant agreements will concern the period from May 2005 to April 2006.

3.2. Duration

The surveys run from 1 May until 30 April. The duration of the action may not exceed 12 months (13 months for the investment survey).

4. FINANCIAL FRAMEWORK

4.1. Sources of Community funding

The operations selected will be financed from budget heading 01.02.02 — Coordination and surveillance of economic and monetary union.

4.2. Estimated total Community budget for this call

- The total annual budget available for these surveys is in the region of EUR 650 000.
- The number of beneficiaries is likely to be somewhere between 12 and 24 depending on the proposals received.

4.3. Percentage of Community co-financing

The Commission's share in the joint financing may not exceed 50 % of the eligible costs incurred by the beneficiary on each survey.

4.4. Funding of the action by the beneficiary and eligible costs incurred

Eligible costs can be incurred only after signature of the annual specific grant agreement by all the parties, save in exceptional cases and, under no circumstances, before submission of the application for a grant. Contributions in kind are not regarded as eligible costs.

Under the framework partnership agreement the beneficiary will be requested to submit each year a detailed budget containing an estimate of the costs and funding of the action, expressed in euro. The budget will be incorporated as an annex to the annual specific grant agreement. The Commission may subsequently use these figures for auditing purposes.

5. ELIGIBILITY CRITERIA

5.1. Legal status of applicants

The call for proposals is open to bodies and institutes (legal entities) with legal status in one of the EU Member States, Bulgaria, Croatia or Romania. Applicants must show that they exist as a legal person and provide the required documentation by means of the standard legal entity form.

5.2. Grounds for exclusion

Applications will not be considered for a grant if the applicants are in any of the following situations ⁽¹⁾:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

⁽¹⁾ In compliance with Articles 93 and 94 of the Financial Regulation applicable to the general budget of the European Communities.

- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they are faced with a conflict of interest;
- (h) they have been guilty of misrepresentation in supplying the information required or have failed to supply this information.

Applicants must certify that they are not in one of the situations listed under points 5.2(a) to (f) by means of the standard declaration form on eligibility.

5.3. Administrative and financial penalties

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor. That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations shall also receive financial penalties representing 2 % to 10 % of the total value of the contract being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations shall receive financial penalties representing 2 % to 10 % of the total value of the contract in question. That rate may be increased to 4 % to 20 % in the event of a repeat offence within five years of the first infringement.

2. In the cases referred to in points 5.2(a), (c) and (d) the candidates or tenderers shall be excluded from all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in points 5.2(b) and (e), the candidates or tenderers shall be excluded from all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. The cases referred to in point 5.2(e) shall be the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
- (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;
- (c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.

6. SELECTION CRITERIA

Applicants must have stable and sufficient sources of funding to maintain their activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. They must have the professional competences and qualifications required to complete the proposed action or work programme.

6.1. Financial capacity of applicants

Applicants must have the financial capacity to complete the proposed operation and must provide their balance sheets and profit and loss accounts for the last two financial years for which the accounts have been closed. This provision does not apply to public bodies and international organisations.

6.2. Operational capability of applicants

Applicants must have the operational capability to complete the proposed operation and should provide the appropriate supporting documentation.

The following criteria will be used to assess the applicant's ability:

- At least three years proven experience in preparing and carrying out qualitative business and consumer surveys.
- Proven experience in at least two of the following areas:
 - 1) evaluating business and consumer survey results, methodological questions (samples, questionnaires and scheduling) and analysis;
 - 2) construction of indicators based on business and consumer survey results;
 - 3) use of business and consumer survey results for cyclical and macro-economic analysis and research, using statistical and econometric methods, including analysis by sector;
 - 4) econometric models and other forecasting tools.
- Ability to apply the methodology of the Joint Harmonised EU Programme of Business and Consumer Surveys and to comply with the Commission's instructions: meet the monthly reporting deadlines, implement improvements and changes to the survey programme as requested by Commission services, in line with agreements reached at coordination meetings with representatives of collaborating bodies/institutes.

7. AWARD CRITERIA

The following criteria will be used to award the agreement to successful candidates:

- the candidate's degree of expertise and experience in the areas mentioned under point 6.2,
- the proposed survey methodology including sample design, sample size, coverage rate, response rate,
- the candidate's level of competence and knowledge of the special survey features of the sector and country where they intend to carry out the survey(s),
- the efficiency of the candidate's work organisation, in terms of flexibility, infrastructure, qualified staff and facilities for carrying out the work, reporting the results, participating in preparing the surveys under the joint harmonised programme and liaising with the Commission,
- value for money.

8. PRACTICAL PROCEDURES

8.1. Drawing-up and submission of proposals

Proposals must contain the completed and signed standard proposal form and all supporting documents referred to in the proposal form.

For each application, one signed original and two copies must be supplied by the applicant.

The following can be obtained from the Commission:

- the standard proposal form,
- a model of the framework partnership agreement,
- a model of the specific grant agreement together with the annex setting out a detailed description of the action,
- a standard budget statement for providing estimates of the survey costs and financing plan,
- a standard financial identification form,
- a standard legal entity form,
- a standard declaration form on eligibility;

(a) by downloading them from the following Internet address:

http://europa.eu.int/comm/economy_finance/tenders/call0406_en.htm;

(b) In case the previous option is not possible, by writing to the Commission at:

European Commission
Directorate-General ECFIN
Unit ECFIN-A-3 (Business surveys)
BU-1 3/146
B-1049 Brussels
Fax No: (32-2) 296 36 50.

Please mention 'Call for proposals – ECFIN/2004/A3-01'.

The Commission reserves the right to amend these standard documents in line with the needs of the joint harmonised programme and/or budget management constraints.

Proposals must be submitted in one of the official languages of the European Community together with a translation in English, French or German, where appropriate.

Whether delivered by hand or posted, proposals must be in a sealed cover contained in another sealed envelope.

The outside envelope should bear the address given in point 8.3 and should be marked 'Call for proposals — ECFIN/2004/A3-01'.

The sealed inner envelope containing the proposal must be marked 'Call for proposals — ECFIN/2004/A3-01, not to be opened by the internal mail department'.

The Commission will notify candidates that their proposal has been received by returning the acknowledgement of receipt slip submitted with the proposal.

8.2. Contents of proposals

8.2.1. Administrative proposal

The administrative proposal must include:

- a duly completed and signed standard legal entity form and the requested supporting documentation proving the legal status of the body or institute,
- a duly completed and signed standard financial identification form,

- a duly signed standard declaration form of the applicant's eligibility,
- the organisation chart of the body or institute, showing the names and positions of the management and of the operational service responsible for conducting the surveys,
- a statement of the body or institute that it is willing to sign the standard framework partnership agreement and specific grant agreement, if selected,
- proof of sound financial situation: balance sheets and profit and loss accounts from the previous two financial years for which the accounts have been closed, should be attached.

8.2.2. *Technical proposal*

The technical proposal must include:

- a description of the activities of the body or institute, enabling the assessment of its qualifications and the scope and duration of its experience in the requested areas under point 6.2. This should mean any studies, service contracts, consultancy work, surveys, publications or other work previously carried out, indicating the name of the client and stating which, if any, were done for the European Commission. The most relevant studies and/or results should be attached,
- a detailed description of the operational organization for carrying out the surveys. Relevant documentation should be attached regarding the infrastructure, facilities, resources and qualified staff (concise cv's) at the applicant's disposal,
- a detailed description of the survey methodology: sampling methods, sampling errors and confidence intervals, sample size and estimated response rate,
- a detailed description of the tasks to be subcontracted.

8.2.2. *Financial proposal*

The financial proposal must include:

- a duly completed and detailed standard budget statement (in euro), covering a period of 12 months, for each survey, containing a financing plan for the action and a detailed breakdown of the total and unit eligible costs for conducting the survey, including subcontracting costs,
- a document certifying the financial contribution from other organisations, where appropriate.

8.3. Address for submitting proposals

European Commission
Directorate-General ECFIN
'Call for proposals — ECFIN/2004/A3-01'
Unit ECFIN R-2
BU-1 3/13
B-1049 Brussels.

8.4. Closing date for submission of applications for a grant

Applicants interested in these grants are invited to submit their applications to the European Commission.

Applications may be submitted:

- (a) either by registered letter postmarked no later than 16 November 2004

- (b) or by delivery to the central mail service of the European Commission (personal delivery or delivery by any authorised representative of the applicant, including private delivery services) at the following address:

European Commission
Courrier Central
Rue de Genève 1
B-1140 Brussels

by 16.00 (Brussels time) on 16 November 2004 at the latest. In this case, proof of submission will be by means of a dated and signed receipt issued by the receiving official in the above mentioned department.

Applications received by the Commission after the closing date will not be taken into consideration.

9. WHAT HAPPENS TO THE APPLICATIONS RECEIVED?

All applications will be checked to assess whether they meet the formal criteria of eligibility.

Proposals considered eligible will be evaluated and given marks according to the award criteria specified above.

The process of selecting the proposals will take place in the course of the second half of 2004. A selection committee is to be set up for this purpose under the authority of the Director-General for Economic and Financial Affairs. It will be made up of at least three persons representing at least two different specialised units with no hierarchical link between them and will have its own secretariat responsible for handling communication with the successful candidate following the selection procedure. Unsuccessful candidates will also be notified individually.

10. IMPORTANT

This call for proposals does not constitute any sort of contractual obligation on the part of the Commission towards any body/institute submitting a proposal on the basis of it. All communication regarding this call for proposals must be in writing.

Applicants should take note of the contractual provisions which will be obligatory in the event of award.
