

REGULATION ON RESCUE AND RESTRUCTURING FIRMS IN DIFFICULTY

INTRODUCTION

Art. 1. – (1) The exit of inefficient firms is a normal part of the operation of the market. It cannot be the norm that companies which get into difficulties are 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.

(2) 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.

CHAPTER I DEFINITIONS AND SCOPE

Meaning of ‘a firm in difficulty’

Art. 2. – (1) For the purposes of this Regulation, the Competition Council 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.

(2) In particular, a firm is, in principle and irrespective of its size, regarded as being in difficulty for the purposes of this Regulation in the following circumstances:

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

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

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

(3) Even when none of the circumstances set out in paragraph 2) 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, this Regulation applies 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.

(4) For the purposes of this Regulation, 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 this Regulation, and

(b) it does not form part of a larger business group except under the conditions laid down in paragraph 5).

(5) 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 paragraph.

Definition of 'rescue and restructuring aid'

Art. 3. – (1) Rescue aid and restructuring aid are covered by the same Regulation, 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.

(2) 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 analyze 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 National Bank of Romania. 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.

(3) 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 Chapter 2 A for individual aids and in Chapter 3 for schemes. Except where use is made of the simplified procedure set out in Article 9, the grantors will need to demonstrate that such structural measures must be undertaken immediately. Rescue aid cannot normally be granted for financial restructuring.

(4) 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 reorganization and rationalization 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 this Regulation cannot, however, be limited to financial aid designed to make good past losses without tackling the reasons for those losses.

Scope

Art. 4. - This Regulation apply to firms in all sectors, except to those operating in the coal, steel, fisheries, agriculture, aquaculture sector without prejudice to any specific rules relating to firms in difficulty in the sector concerned.

Compatibility with the Law no. 143/1999 on State aid

Art. 5. – (1) Article 2 paragraphs 2) and (3) of the Law no. 143/1999 provide for the possibility that aid falling within the scope of Article 2 paragraph 1) will be regarded as compatible with the normal competitive environment. Apart from cases of aid envisaged by Article 2 paragraph 2) of the Law no. 143/1999, 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 14 of the Law no. 143/1999.

(2) 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, aid to firms in difficulty may contribute to the development of economic activities without adversely affecting trade a normal competitive environment if the conditions set out in this Regulation are met. As far as Romanian regions are assisted areas based on the regional map of Romania the Competition Council will take the regional considerations into account as described in Article 20.

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

Recipients of previous unlawful aid

Art. 6. - Where unlawful aid has previously been granted to the firm in difficulty, in respect of which the Competition Council has adopted a negative decision, and where no such

recovery has taken place in compliance with the provisions of the Law no. 143/1999, 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.

CHAPTER 2

GENERAL CONDITIONS FOR THE AUTHORIZATION OF RESCUE AND/OR RESTRUCTURING AID NOTIFIED INDIVIDUALLY TO THE COMPETITION COUNCIL

Art. 7. - This Chapter deals exclusively with aid measures that are notified individually to the Competition Council. Under certain conditions, the Competition Council may authorize rescue or restructuring aid schemes: those conditions are set out in Chapter 3.

A. Rescue aid

Art. 8. - In order to be approved by the Competition Council, rescue aid as defined in Article 3 must fulfill the following conditions:

(a) consist of liquidity support in the form of loan guarantees or loans; 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 National Bank of Romania; 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 installment to the firm;

(b) be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects normal competitive environment;

(c) be accompanied, on notification, by an undertaking given by the grantors concerned to communicate to the Competition Council not later than six months after the rescue aid measure has been authorized, 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 grantors 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 authorized; such an amount may include aid for urgent structural measures in accordance with Article 3 paragraph 3); 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 Article 24 ("one time, last time").

(2) Where the grantors have 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 Competition Council reaches its decision on the plan, unless the Competition Council decides that such an extension is not justified.

(3) The Competition Council will open an investigation if the grantors do not send :

- (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.
- (4) The Competition Council may decide to initiate such investigation, 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.
- (5) 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.

Simplified procedure

Art. 9. - The Competition Council 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 Article 8 and the following cumulative requirements:

- (a) the firm concerned satisfies at least one of the three criteria set out in Article 2 paragraph 2);
- (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 the equivalent in ROL of EUR 10 million.

B. Restructuring aid

I. Basic principle

Art. 10. - 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 grantors. 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 normal competitive environment and the international agreements to which Romania is a part. 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 favor of competitors.

II. Conditions for the authorisation of aid

Art. 11. - The Competition Council will approve aid only under the following cumulative conditions set out in Articles 12-18.

Eligibility of the firm

Art. 12 - The firm must qualify as a firm in difficulty within the meaning of Art. 2 of this Regulation.

Restoration of long-term viability

Art. 13. – (1) The grant of the aid must be conditional on implementation of the restructuring plan which must be endorsed by the Competition Council in all cases of individual aid, except in the case of SMEs, as laid down in article 21.

(2) 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 grantors concerned commits itself. The plan must be submitted in all relevant detail to the Competition Council 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.

(3) 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.

(4) 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.

(5) 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

Art. 14. – (1) 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 normal competitive environment and therefore incompatible with the normal competitive environment. The Competition Council will have regard to the objective of restoring the long-term viability in determining the adequacy of the compensatory measures.

(2) 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 Competition Council 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 grantor is able to prove that such a situation would arise, the compensatory measures should be construed in such a way to avoid this situation.

(3) The measures must be in proportion to the distortive effects of the aid and, in particular, to the size 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 Competition Council 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 Competition Council 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.

(4) 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 a normal competitive environment 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.

(5) When the beneficiary is active in a market suffering from long-term structural overcapacity, as defined in the context of the Multisectoral Regulation on regional aid for large investment projects, the reduction in the company's capacity or market presence may have to be as high as 100 % . In such cases, the Competition Council will only allow aid to alleviate the social costs of the restructuring, in line with article 22 and rules on environmental aid to clean up polluted sites which might otherwise be abandoned.

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

Art. 15. – (1) 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.

(2) The Competition Council will normally consider the following contributions 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 grantors, the Competition Council may accept a lower contribution.

(3) 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

Competition Council 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. 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

Art. 16. - In addition to the compensatory measures described in Article 14, the Competition Council may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition normal competitive environment, in the event that the grantors concerned has not given a commitment that it will adopt such provisions. For example, the Competition Council may require the grantors:

- (a) to take certain measures itself (for example, to open up certain markets directly or indirectly linked to the company's activities to other operators);
- (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

Art. 17. – (1) The beneficiary must fully implement the restructuring plan and must discharge any other obligations laid down in the Competition Council decision authorising the aid. The Competition Council will regard any failure to implement the plan or to fulfill the other obligations as misuse of the aid.

(2) 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 installments and may make payment of each installment subject to:

- (a) confirmation, prior to each payment, of the satisfactory implementation of each stage in the restructuring plan, in accordance with the planned timetable; or
- (b) its approval, prior to each payment, after verification that the plan is being satisfactorily implemented.

Monitoring and annual report

Art. 18. – (1) The Competition Council must be put in a position to make certain that the restructuring plan is being implemented properly, through regular detailed reports communicated by the grantors concerned.

(2) In the case of aid to large firms, the first of these reports will normally have to be submitted to the Competition Council not later than six months after approval of the aid. Reports will subsequently have to be sent to the Competition Council 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 Competition Council 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 Article 23). Where the Competition Council needs prompt confirmation of certain key items of information, for example, on closures or capacity reductions, it may require more frequent reports.

(3) 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.

III. Amendment of the restructuring plan

Art. 19. – (1) Where restructuring aid has been approved, the grantors concerned may, during the restructuring period, ask the Competition Council to agree to changes to the restructuring plan and the amount of the aid. The Competition Council 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 grantors control: if that is not the case, the amount of the aid must be correspondingly reduced.

(2) If the conditions imposed by the Competition Council or the commitments given by the grantors are relaxed, the amount of aid must be correspondingly reduced or other conditions may be imposed.

(3) Should the grantors introduce changes to an approved restructuring plan without duly informing the Competition Council, the Competition Council will initiate investigation proceedings.

IV. Restructuring aid in assisted areas

Art. 20. – (1) The Competition Council must take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an 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.

(2) Thus, the criteria listed in Articles 12-19 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 authorizing 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, corresponding to the Romanian regional map.

V. Aid for restructuring SMEs

Art. 21. – (1) Aid to small enterprises as defined in the Regulation on state aid for small and medium-sized enterprises, 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 Articles 12-19 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 Article 14 paragraph 4), 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 Article 18).

(2) However, the ‘one time, last time’ principle (mentioned in Article 24) applies in full to SMEs.

(3) For SMEs the restructuring plan does not need to be endorsed by the Competition Council. However, the plan must meet the requirements laid down in Article 13 paragraphs 2)-5) and be approved by the grantors concerned and communicated to the Competition Council. 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 grantors.

VI. Aid to cover the social costs of restructuring

Art. 22. – (1) 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 beneficiary company's workforce.

(2) 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.

(3) There is 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.

(4) Besides meeting the cost of redundancy payments and early retirement, aid is commonly provided in connection with a particular restructuring scheme for training, counseling and practical help with finding alternative employment, assistance with relocation, and professional training and assistance for employees wishing to start new businesses. The

Competition Council consistently takes a favourable view of such aid when it is granted to firms in difficulty.

(5) The type of aid described in paragraphs 2)-4) 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 Article 14.

(6) The Competition Council will ensure in the context of the restructuring plan that social effects of the restructuring other than the one granting aid are kept to the minimum necessary. Compensatory payments and early retirements payments are among these effects.

VII. Need to inform the Competition Council of any aid granted to the recipient firm during the restructuring period

Art. 23. – (1) Where restructuring aid received by a large or medium sized enterprise is examined under this Regulation, the grant of any other aid during the restructuring period, even in accordance with a scheme that has already been authorized, is liable to influence the Competition Council assessment of the extent of the compensatory measures required.

(2) 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. The Competition Council shall take such aid into account when assessing the restructuring aid.

(3) 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 Competition Council to the extent that the latter was not informed thereof at the time of its decision on the restructuring aid.

(4) The Competition Council shall ensure that the grant of aid under approved schemes is not liable to circumvent the requirements of this Regulation.

C. ‘One time, last time’

Art. 24. – (1) 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 grantors . 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 normal competitive environment. Such repeated State interventions should not be permitted.

(2) When planned rescue or restructuring aid is notified to the Competition Council, the grantors 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 this Regulation and any non-notified aid. With regard to non-notified aid, the Competition

Council will take account in its appraisal of the possibility that the aid could have been declared compatible with the normal competitive environment other than as rescue or restructuring aid. 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 Competition Council 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 Article 8, 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 for which the company is not responsible; 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.

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

(3) In the cases set out in article (b) and (c), the simplified procedure mentioned in Article 9 cannot be used.

(4) 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.

(5) Where a business group has received rescue or restructuring aid, the Competition Council 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 this Regulation), with the exception of the earlier beneficiary of the aid. The grantor must ensure that no aid will be passed on from the group or other group entities to the earlier beneficiary of the aid.

(6) 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 paragraph 4) 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 Competition Council 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.

(7) 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 this Regulation.

CHAPTER 3

AID SCHEMES FOR SME'S

I. General principles

Art. 25. - The Competition Council 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 definition of SMEs in the Annex of the SME Regulation. Subject to the following specific provisions, the compatibility of such schemes will be assessed in the light of the conditions set out in Articles 2-24, with the exception of Article 9, 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 Competition Council.

II. Eligibility

Art. 26.- (1) Unless otherwise stipulated in rules on State aid in a particular sector, awards of aid under schemes authorized from the date of application of this Regulation, 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 Article 2 paragraph 2).

(2) Aid to enterprises that do not meet any of those three criteria must be notified individually to the Competition Council so that it can assess whether they qualify as firms in difficulty.

(3) 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 Competition Council so that it can assess the application of Article 14 paragraph 5).

III. Conditions for the authorisation of rescue aid schemes

Art. 27. – (1) In order to be approved by the Competition Council, rescue aid schemes must satisfy the conditions set out in points (a), (b), (d) and (e) of Article 8 paragraph 1). 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.

(2) Before the end of that period the grantors must either approve a restructuring plan or a liquidation plan, or the Competition Council request the Court of Appeal to demand reimbursement of the loan and the aid corresponding to the risk premium from the beneficiary.

(3) Any rescue aid granted for longer than six months or not reimbursed after six months must be individually notified to the Competition Council.

IV. Conditions for the authorisation of restructuring aid schemes

Art. 28. - The Competition Council 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 grantors concerned and meets the following conditions:

- (a) restoration of viability: the criteria set out in Article 13 apply;
- (b) avoidance of undue distortions of competition: since aid to small enterprises tends to distort competition less, the principle set out in Article 14 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 articles 38 to 42 apply;
- (c) aid limited to the minimum necessary: the principles set out in Article 15 apply;
- (d) amendment of the restructuring plan: any changes to the plan must comply with the rules set out in Article 19.

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

Art. 29.- (1) 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 Competition Council. The maximum amount of aid granted for the combined rescue and restructuring aid of any one firm may not be more than equivalent in ROL of EUR 10 million, including any aid obtained from other sources or under other schemes.

(2) In addition, the 'one time, last time' principle must be respected. The rule laid down in Article 24 applies.

(3) Grantors must also notify measures individually to the Competition Council where one firm takes over assets of another firm which has itself already received rescue or restructuring aid.

VI. Monitoring and annual reports

Art. 30.- Article 18 does 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 Regulation regarding the form, content and other details regarding the state aid notification. 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 CAEN 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;
- (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.

CHAPTER 4

APPROPRIATE MEASURES

Art. 31. – (1) The Competition Council will propose, pursuant to Article 13 of Law 143/1999 on State aid that the grantor adopts appropriate measures as set out in the following article. appropriate measures as set out in paragraphs 2 and 3 with regard to their existing aid schemes. The Competition Council will make authorisation of any future scheme conditional on compliance with those provisions.

(2) The grantors which have accepted the Competition Council proposal must adapt their existing aid schemes which are to remain in operation within six months after the coming into force of this Regulation in order to bring them into line.

(3) Grantors must indicate their acceptance of these appropriate measures within one month following receipt of said letter proposing appropriate measures.

CHAPTER 5

FINAL PROVISIONS

Art. 32.- (1) This Regulation comes into force on the day it is published in the official Gazette of Romania.

(2) Annex no. 1 is part of this Regulation.

(3) The provisions of this Regulation shall be enforced according to the Regulation on the form, content and other details of a State aid notification and according to the Regulation on the de minimis threshold of aid falling outside the scope of the notification obligation, enforced by Order of the President of the Competition Council.

(4) This Regulation is applicable to State aids notified after its entry into force, as well as to State aids notified before its entry into force, but the decision of the Competition Council is subsequent to this date or the Competition Council has not yet issued a decision.

(5) On the date of entry into force of this Regulation, the Regulation on state aid for rescue and restructuring firms in difficulty enforced by Order of the President of the Competition Council no. 92 of 10.05.2002, published in the Official Gazette of Romania, Part I, no. 470/02.07.2002, with subsequent amendments and completions, shall be abolished.