

## **REGULATION**

### **ON ESTABLISHING CONDITIONS AND PROCEDURE FOR GRANTING AID FOR RESCUE AND RESTRUCTURING OF FIRMS IN DIFFICULTY**

**(Consolidated text; "Official Gazette of the RM" No. 81/03 and 83/07)**

#### **Article 1**

This regulation defines conditions and procedure with regard to granting aid for rescue and restructuring of firms in difficulty.

#### **Article 2**

(1) Aid to a firm in difficulty shall be granted if: a firm is unable to meet its obligations through its own resources with the funds it is able to obtain from of its owner/shareholders or creditors to stem losses which, without outside intervention by the public authorities will almost certainly condemn it to go out of business in the short and medium term. Typical characteristics of firms being in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil asset value, where more than half of its registered 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, as in any other cases where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(2) Aid shall not be granted to a newly established firm in difficulty in case where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's asset, even in case when its financial position is insecure.

(3) Aid shall not be granted to companies belonging to a larger business groups, are not fulfilling conditions for granting rescue or restructuring aid except when it can be demonstrated that the company's difficulties are its own and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too difficult to be dealt with by the group.

### **Article 3**

(1) Rescue aid is a temporary measure, warranted on the grounds of serious regional and/or social difficulties and admissible, as a rule, for not more than six months. Its purpose is to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan and for the length of time that Commission for protection of competition needs to reach a decision on that plan. It is limited to loans or loan guarantees.

### **Article 4**

(1) Restructuring aid for a firm in difficulty is aid based on a feasible, coherent and far-reaching plan to restore the firm's viability. It usually involves one or more of the following elements: the reorganization and rationalization of the firm's activities, the restructuring of those existing activities that can be made competitive again and, possibly, a diversification to new and viable activities. Financial restructuring (capital injections, debt reduction) usually has to accompany the physical restructuring. Restructuring operations cannot be limited to financial aid designed to make good past losses without tackling the reasons for those losses. Restructuring aid can take different forms such as capital injections, debt write-offs, relief from taxes or social security contributions, loans or loan guarantees.

### **Article 5**

(1) The source of the aid can be assets from any state aid provider according to article 3 paragraph 2 from the Law on state aid. In cases when funding is provided or guaranteed by a State to a company in difficulty, it must be deemed likely to involve state aid.

(2) In cases where a rational private investor operating in a market economy would make this finance available, the provision or guarantee of a funding to a company is not regarded as involving state aid.

(3) Change in the ownership of a rescued or restructured enterprise shall not affect the assessment of such aid.

## **Article 6**

(1) Notifications of rescue and restructuring aid shall be submitted to the Commission for protection of competition in the form of annexes I and II from this Regulation.

## **Article 7**

(1) The Commission for protection of competition will approve rescue aid to firms in difficulty fulfilling the conditions under Article 2 of this Regulation, only if:

-the aid consists of liquidity help in the form of loan guarantees or loans with interest rate at least comparable with loans given to healthy companies

-in case of loan, the loan shall be repaid over a period of not more than 6 months following the last instalment paid to the firm

-the provider of the aid undertakes to inform the Commission for protection of competition of a restructuring or liquidation plan of the firm not later than 6 months after the rescue measure has been authorized or proof that the loan has been reimbursed in full, and/or the guarantee has been terminated

-it is restricted to the amount needed to keep the firm in business for at the period during which the aid is authorized (covering, e.g., wage and salary costs and routine supplies).

## **Article 8**

(1) Restructuring aid will, as a rule, only be admissible in circumstances, in which it can be demonstrated that it does not run counter to the interest of the Republic of Macedonia and the EU and that any distortions of competition will be offset by the benefits flowing from the firm's survival and, where appropriate there are adequate compensatory measures in favour of competitors.

(2) The Commission for protection of competition will approve restructuring aid only if:

-the firm qualifies as a firm in difficulty within the meaning of Article 2 of this Regulation and

-the grant of the aid is conditional on implementation of a restructuring plan which has to be developed by the enterprise, approved by the Commission for protection of

competition in all cases of individual aid measures. In a case of a restructuring aid scheme, the aid provider has to ensure, that all criteria established in such a programme are fulfilled.

## **Article 9**

(1)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 its future operating conditions

-should include, in particular, a market survey containing information as listed in form I of this Regulation. The improvement in viability must mainly derive from internal measures contained in the restructuring plan, and may be based on external factors such as variations in prices and demand over which the company has no great influence if the market assumptions made are generally acknowledged. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring

-should describe the circumstances that led to the company's difficulties , and take account , amongst others, of the present state of and future prospects for supply and demand on the relevant market and the firm's specific strengths and weaknesses. The plan should enable the firm to progress towards a new structure that will give the firm long-term viability under standard market conditions.

## **Article 10**

(1)Compensatory measures should be taken as a rule to mitigate any adverse effects of the aid on competitors. These measures usually consists in restrictions on the presence of the firm on its market(s) during and after the period of restructuring, and:

-shall be implemented through the restructuring plan and conditions attached to it

-must make a contribution (in proportion to the amount of aid received and its impact on that market) to the improvement of market conditions

-measures under paragraph 1 of this Article, usually, shall not be requested for small and medium-sized enterprises, except in case otherwise stipulated by the state aid rules for certain sector.

## **Article 11**

(1)The amount and intensity of the restructuring aid must be limited to the strict minimum necessary for the restructuring in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs.

(2)Restructuring aid should normally only be used to restore the firm's viability but not enable the firm to extend its production capacity during the implementation of the restructuring plan, except in cases when such extension is essential for restoring viability an undue distortion to competition.

## **Article 12**

(1)The Commission for protection of competition shall request that the aid beneficiary makes a significant contribution to the restructuring plan from it's own resources, including selling a property which is not essential for the surviving of the company, or by financing from other sources under market conditions. This contribution must be realistic and to exclude expected profit as a cash flow and it should be higher as possible. It is considered that following contribution rates are appropriate: at least 25% in the case of small companies, at least 40% in the case of medium-sized companies and at least 50% in the case of large companies.

(2)In extraordinarily and especially difficult cases, which has to be proved from the state aid grantor, Commission for protection of competition may accept lower contribution rate.

(3)Commission for protection of competition may impose any conditions and obligations necessary to ensure that the aid does not distort competition to an extent contrary to the interests of the Republic of Macedonia or the EU.

(4) Commission for protection of competition shall regard any failure to implement the restructuring plan or to fulfill any of the other obligations of the firm as misuse of aid and shall proceed according to provisions of Article 12 of the State Aid Law.

## **Article13**

(1)Rescue aid and restructuring aid should be awarded only once(one time last time), for a period not longer than 10 years.

(2)This rule shall not be affected by any change in the ownership of the firm-aid recipient.

#### **Article 14**

(1) Aid schemes for rescuing and/or restructuring of small and medium-sized enterprises in difficulty may be authorized by the Commission for protection of competition if:

-the conditions under Article 2 of this Regulations are met

-the firms concerned correspond to the definition of small and medium sized enterprises contained in article 3 paragraph 5 and paragraph 6 of the State aid law

-the conditions for rescue aid and in particular the time limit of six months and/or the conditions of aid for restructuring of firms in difficulty and in particular the criteria regarding the restructuring plan, as provided in Article 4 of this Regulation are met, and

-the maximum amount of aid may not be more than 1 Million € including aid from the other sources or from other schemes.

#### **Article 15**

(1) The Commission for protection of competition shall receive through the aid provider regular annual reports on the progress in the restructuring plan. In case of aid to small and medium-sized enterprises, annual transmission of the firm's balance sheet and profit and loss account will normally be sufficient.

(2) In case of aid to larger companies, the Commission for protection of competition may require more frequent and more detailed reports for the firm's balance and profit and loss account.

#### **Article 16**

(1) This Regulation shall enter into force on the eighth day after its publication in the "Official Gazette of the Republic of Macedonia".

