

Order no. 501/2004 by the Competition Council to implement the Regulation regarding state aid for the recovery and restructuring of companies in difficulty (the “Regulation”) was published in Official Gazette no. 1215/17.12.2004

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State aid for recovery and restructuring of enterprises in difficulty

General aspects

The Regulation came into effect on 17 December 2004 (date of publication in the Official Gazette), repealing the previous provisions under Order 92/2002 by the Competition Council.

The aid extended for the recovery and restructuring of enterprises in difficulty represented one of the most controversial state interventions in economy, the effect of which was the distortion of the competitive climate.

For this reason, the Regulation was meant to ensure harmonization of the national legislation with the *acquis communautaire* in the field, laying down the terms and conditions to be met by companies in difficulty in order to benefit from state aid, as well as the criteria to be considered by the Competition Council in granting such aid.

The number of domains excepted from the application of the Regulation has been broadened. Thus, the Regulation will cover all the economy sectors, except for the coal industry, the iron and steel industry, agriculture, fishing, aquaculture or other sectors governed by specific sector rules.

The requirements to be met by a company to qualify as an entity in difficulty are as follows:

- If the entity is a limited liability company, when it has registered a loss in excess of half of the share capital and in excess of a quarter of the capital over the last 12 months;
- If the entity is a company where at least part of the shareholders are held fully liable for the company's debts, when more than half of the company's equity has been lost and when more than a quarter of such equity has been lost over the last 12 months;
- for any type of enterprise, when the conditions to be subject to judicial reorganization and bankruptcy have been met.

The main amendments brought about by the Regulation are as follows:

Newly established enterprises are not eligible for state aid, in particular those entities resulting from the liquidation of a pre-existing enterprise or from the takeover of an entity's assets. Usually an enterprise is considered to be newly established during the first 3 years after business start-up. After the elapse of this period, the enterprise will become eligible, provided it cumulatively meets two criteria: it qualifies as an enterprise in difficulty under the terms of the Regulation and it does not belong to a group of companies (an entity belonging to a group under the terms of the Regulation or is taken over by a group does not normally qualify for state aid).

The two types of state aid, i.e. for recovery and for restructuring have been amended as follows:

The recovery aid represents a temporary and reversible aid, the purpose of which is to maintain the company in difficulty in the economic circuit for the period required to develop a restructuring or liquidation plan.

Significant amendments have been brought to the conditions specific to this type of aid. Thus, the recovery aid can be granted for a term not longer than 6 months (previously 1 year) and it can be provided just once according to the principle "the first and last time" (newly introduced).

Also newly introduced is the possibility for the Competition Council to open an investigation on recovery aid in the following instances:

- where the aid providers do not present a reliable and justified restructuring plan or a liquidation plan, or evidence that the loan has been fully reimbursed and/or that the security interest has expired prior to the 6-month due date;
- where the Competition Council considers that the loan or the security interest has been improperly used or that after the expiry of the 6-month term, non-fulfilment by the entity of the reimbursement obligation can no longer be justified.

Also newly introduced by the Regulation is a section devoted to a simplified procedure under which the Competition Council can authorize the recovery aid.

Thus, where the requirements for the authorization of the recovery aid are met and at least one of the conditions for an entity to qualify as an organization in difficulty (listed above) is met, the Competition Council is recommended to issue a decision in this respect within one month. Furthermore, the aid must be capped at the ROL equivalent of Euro 10 million.

The restructuring aid is meant to be used for restoring the long-term viability of an entity. Significant amendments have also been brought to the conditions to be met by an entity in order to benefit from a restructuring aid, as follows:

- the recipients must bring a contribution to the restructuring plan from their own resources as follows: at least 25% for small enterprises, at least 40% for medium enterprises and at least 50% for large enterprises. In exceptional cases, the Competition Council can accept a lower contribution;
- the restructuring plan of small and medium enterprises need not be authorized by the Competition Council, instead it must only be approved by the aid providers who will also check full implementation of such plan;
- In order to prevent a recipient company from being excessively favored by the state aid by gaining a significant position on the relevant markets after restructuring, the Regulation has introduced the possibility

for compensatory measures to be adopted (among which, assignment of assets, diminution of the production capacity, a reduced market presence and a relaxation of barriers to entry on such markets).

The Competition Council can open an investigation when aid providers bring amendments to an already approved restructuring plan without notifying the Council in this respect in a timely manner.

Other amendments

A newly introduced provision makes reference to illegal aid. Illegal aid is understood to be a previous aid in respect of which the Competition Council has issued a negative decision and which has not been recovered. Thus, in assessing any other application for recovery or restructuring aid coming from an enterprise that has benefited from illegal aid, the Competition Council will first give consideration to the cumulated effect of the previous and the new aid, and secondly to non-reimbursement of previous aid.

Following the enactment of the Regulation, the Competition Council will propose the aid providers to adopt, within a 6-month term, the necessary measures for harmonizing the existing aid schemes with the new provisions.

In conclusion, this Regulation sets out more rigorous conditions for the provision of state aid and extended monitoring possibilities for the Competition Council in light of the newly introduced investigation procedure.

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