



7 January 2014

### **BUSINESSEUROPE VIEWS ON THE DRAFT GUIDELINES ON STATE AID FOR RESCUE AND RESTRUCTURING**

BUSINESSEUROPE welcomes the opportunity to provide comments to the draft guidelines on State aid for rescuing and restructuring undertakings in difficulty.

State aid for rescue and restructuring is the most distortive form of aid and the State aid guidelines have an important role in regulating its use.

BUSINESSEUROPE strongly supports the strict control of rescue and restructuring aid in order to protect and strengthen the single market in the EU and prevent wasteful subsidy races between Member States.

Overall, BUSINESSEUROPE considers that the current draft is an improvement compared to the existing rules. Our detailed comments are set out below.

- **Meaning of “undertaking in difficulty”**

In section 2.2 the draft Guidelines specify that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. They also provide a list of criteria to determine more clearly when an enterprise is to be considered in difficulty.

However, we believe these criteria might not be suitable for determining whether an undertaking is in difficulty. Whether or not an undertaking is in difficulty cannot be determined by a single indicator, but needs several. Yet each of the alternative criteria proposed by the Commission could potentially be a deciding factor on whether an undertaking is in difficulty.

Additionally, in para 21, a new point 21 (e) is introduced: i.e. that “the undertaking’s book debt to equity ratio is greater than [7,5] **or** the undertaking’s [EBIT]/[EBITDA] interest coverage ratio has been below [1,0] for the past [two] years” [emphasis added]. However, the equity ratio can differ hugely from one business to another, depending on the various kinds of business, risk-involvement and sector or market competition. A high debt to equity ratio does not necessarily of itself mean that an undertaking is in difficulty. Equally a difficulty in servicing debt for a period of two years may not necessarily of itself be an indication that rescue or restructuring aid is needed. We therefore suggest that it could be appropriate to change “or” to “and”, thereby ensuring that a high debt to equity ratio combined with an inability to service that debt are together a clear indication of an undertaking in difficulty.

Alternatively, if “or” is retained, then this would reinforce our point that assessments must be done on a case-by-case basis, taking into account several criteria, to be effective and targeted.



- **Compatibility criteria**

We welcome the fact that the compatibility criteria are now more detailed, as this will add to legal certainty.

In particular, we strongly support the behavioural measures, aimed at ensuring that aid is used only to finance the restoration of long-term viability and to avoiding the prolongation of market structure distortions or shield beneficiaries from healthy competition.

In order to help improve enforcement of state aid rules and ensure that unlawful aid previously granted has been paid back, we concur with the specific reference to the Deggendorf principle in point 99. However, we recommend that the draft makes it clear that the guidelines would not apply to a given company in difficulty if recovery of previous unlawful aid has not taken place, thereby reducing the possibilities that the beneficiary in question receives the aid.

- **Temporary restructuring support for SMEs**

The draft introduces in point 72 a new concept of temporary restructuring support available to SME allowing rescue aid for 12 or 18 months.

We do not believe there is a need to double or treble the current 6 month period for rescue aid, which seems long enough for consolidation. However, to accommodate the needs of SMEs in difficulty the period could be raised to e.g. 9 months.

- **Aid to SGEI providers in difficulty**

BUSINESSEUROPE strongly supports the section on restructuring aid for SGEI providers, which strikes a sensible balance between two conflicting requirements.

On the one hand, with the increasing number of public services being outsourced, there is a clear duty to ensure that continuity in the provision of those services is not jeopardised by inappropriate application of the R&R rules.

On the other hand however, there is insufficient competition in the provision of certain SGEIs. This is detrimental to possible private providers of these services, as well as to companies and citizens who as users would benefit from increased competition. R&R aid must not be used as a means of protecting SGEI providers from the rigours of competition.

Transparency, more open competition and better enforcement of state aid rules can contribute to avoiding protectionist trends, reinvigorating the Single Market and providing better public services to European citizens.

- **Additional comments**

We suggest that the transparency requirements in section 3.7 are moved to section 8.

We also encourage the Commission to engage in carrying out an impact assessment of these guidelines three years after their entry into force.

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