European Commission
Directorate-General for Competition
Ref.: HT.1117 – Revision of the Community Guidelines on State Aid for Rescue and Restructuring Firms in Difficulty
State Aid Registry
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Ref.: HT.1117 – Revision of the Community Guidelines on State Aid for Rescue and Restructuring Firms in Difficulty – Joint Answer by the ETUC and industriAll Europe

ID Numbers in the Transparency Register:
European Trade Union Confederation (ETUC): 06698681039-26
industriAll – European Trade Union: 49225378808-22

Dear Sir/Madam,

Please find detailed below the joint answer of the European Trade Union Confederation (ETUC) and industriAll – European Trade Union to your consultation on the Revision of the Community Guidelines on State Aid for Rescue and Restructuring Firms in Difficulty.

This answer follows four principles.

1. In the design of the "*feasible, coherent and far-reaching restructuring plan*" being requested by the Commission to allow state aid, all four possible measures should be placed on an **equal** footing:

    a. Reduction in activities/capacities, including layoffs
    b. Diversification towards new activities, using the existing skills' base
    c. Modification in the governance architecture
    d. Changes in the top management, including partial/complete dismissal.

2. A preference should be expressed in favour of **pluralism** in the design of the "*feasible, coherent and far-reaching restructuring plans*", in order to provide an **alternative** to the top management's plan. At least one of these plans should be designed in cooperation with/approved by the **employees' representatives**, mobilising (when not already planned for by national legislation) part of the "rescue" aid to pay for the necessary external expertise.

3. The scope of the guidelines should be extended to the **coal** and **steel** sectors, so that they can also be protected by this general rule, now that their specific protective regimes have expired.

4. State aid should be used to rescue and restructure the **firm**, not to remunerate its shareholders. Therefore, no dividends or share payback schemes should be allowed during the rescue or restructuring plan.

Our detailed requests for amendments are detailed below. In addition, you will find attached, as a reference, a previous resolution on this topic by the European Metalworkers' Federation (EMF) in 2008. The EMF is one of the founding federations of the industriAll European Trade Union.

We would be glad to have the opportunity to discuss them further with you at your convenience.

We remain

Yours truly

Judith Kirton-Darling
Confederal Secretary, ETUC

Ulrich Eckelmann
General Secretary, industriAll Europe

<u>Attached reference:</u>
"EMF Position on EU Commission support in the current Automobile crisis" of 24th November 2008

Draft "Guidelines for State Aid for Rescuing and Restructuring Non-financial Undertakings in Difficulty". Proposed amendments by the ETUC and industriAll Europe.

§ 18 (part of 2.1: Sectoral scope)
The scope of the guidelines should be extended to the coal and steel sectors as, since 2002, these two sectors have no longer benefited from the ECSC aid regimes. The steel and coal sectors have been penalised more than any other sector or materials with regard to access to state aid. As the steel industry and its workforce have been severely hit by the economic crisis it seems vital to remove this restriction which was established under very different circumstances.
<u>Proposed amendment:</u>
"*These guidelines apply to aid for all undertakings in difficulty, except to ~~those operating in the coal sector or the steel sector and~~ those covered by specific rules for financial institutions*"

§ 31 (part of 2.4: Aid to cover the social costs of restructuring)
"Restructuring normally entails 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 reduction that may be required as a condition for granting aid. Regardless of the underlying reason, such measures will generally lead to reductions in the beneficiary's work force".

<u>Proposed amendment:</u> To be **suppressed** altogether. It is worded as if it sets a standard for restructuring measures, and that this norm will be that the work force will be reduced. This is clearly not acceptable for organisations whose objective clearly is the preservation of high-quality employment.

§ 47. (part of 3.1.2: Restructuring plan and return to long-term viability.)
"*In the case of restructuring aid, [...], the Commission will require that the Member State concerned submit a feasible, coherent and far-reaching restructuring plan to restore the beneficiary's long-term viability. Restructuring may involve one or more of the following elements: the reorganisation and rationalisation of the beneficiary's activities to a more efficient basis, typically involving the withdrawal form 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*."

<u>Proposed amendments:</u>
1. The definition of "restructuring" places a hierarchy among measures, where the reduction of activities is "typical", while diversification into new activities is only "possible". In addition, the wording is logically incoherent and recursive: restructuring involves the restructuring of existing activities, which in turn involves the restructuring, etc.
"*Restructuring may involve one or more of the following elements:~~ the reorganisation and rationalisation of the beneficiary's activities to a more efficient basis, typically involving ~~the withdrawal from loss-making activities, the ~~restructuring~~ <u>reorganisation and rationalisation</u> of those existing activities that can be made competitive again ~~and, possibly,~~ diversification in the direction of new and viable activities, <u>and changes in the top management and in the corporate governance system</u>*"
2. Since public money is used to rescue the firm, and because the failure of the firm is also often the sign of deficient top management, the state may require specific guarantees to avoid moral hazard and the repetition of past mistakes. One of them, which serves trade unions' interests in participating in strategic decisions, could be that **several** different restructuring plans be submitted, and from different sources, to ensure their independence from one another and from the (often

failing) existing top management. This requirement for several alternative plans to be submitted is actually written in Annex 2 "Indicative model restructuring plan", § 144: "Description of possible plan**s** to remedy the beneficiary's problems and comparison of those plans...".

"*the Member State concerned submits ~~a~~ at least two feasible, coherent and far-reaching restructuring plans to restore the beneficiary's long-term viability. At least one of these plans should have been devised in cooperation with employees' representatives or be approved by them, using, when not already provided by Member State legislation, part of the rescue aid funds to pay for the necessary external expertise.*"

§ 51. (part of 3.1.2: Restructuring plan and return to long-term viability.)

Proposed addition:

This addition intends to provide input into the decisions to be taken regarding the existing top management and the justification of a diversification plan.

"*The restructuring plan should provide information on [...] the beneficiary's organisational structure, funding, corporate governance, top management, available competencies and skills (both at individual and collective scales), and all other relevant aspects*"

§ 52. (part of 3.1.2: Restructuring plan and return to long-term viability.)

Proposed addition:

The intention of this addition is to insist on the fact that the restructuring plan may include entering new markets.

"*Where the beneficiary is a large undertaking, it should also provide a market survey of its existing markets and of the new markets it intends to enter within the framework of its diversification plan*".

§ 53. (part of 3.1.2: Restructuring plan and return to long-term viability.)

"*The beneficiary's return to viability should mainly derive from internal measures, entailing in particular, withdrawal from activities which would remain structurally loss-making in the medium term. The return to viability cannot be dependent on optimistic assumptions about external factors [...], nor can it be linked to the beneficiary outperforming the market and its competitors or entering and expanding into new activities where it has no experience and track record (unless duly justified and required for reasons of diversification and viability)*."

Proposed amendment:

The restructuring plan should not place the entire blame on the employees, but should also draw on the consequences of errors made by the top management and of the flaws in the corporate governance system. In addition, diversification plans should be part of normal restructuring, and not be considered as an exception.

"*The beneficiary's return to viability should mainly derive from internal measures, entailing in particular changes in the top management and in the corporate governance system, withdrawal from activities which would remain structurally loss-making in the medium term or the set-up of new activities (markets or applications) with strong profit-making perspectives in the medium term. The return to viability cannot be dependent on optimistic assumptions about external factors [...], nor can it be linked to the beneficiary outperforming the market and its competitors ~~or entering and expanding into new activities where it has no experience and track record (unless duly justified and required for reasons of diversification and viability).~~ It may depend upon the entry into a new market or application, provided the restructuring plan can convincingly demonstrate that the necessary competencies and skills are available within the undertaking or can be acquired during the time frame of the plan.*"

§63 (part of 3.5. "Proportionality of the aid /aid limited to the minimum")
State aid should be used to rescue and restructure the **firm**, not to remunerate its shareholders.

Proposed addition:
"*The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken in the light of the existing financial resources of the beneficiary, its shareholders, or the business group to which it belongs. In particular, a sufficient level of burden-sharing must be ensured, as set out in more detail in this section (3.5.2), and no dividends or share payback schemes should be allowed during the restructuring plan.*"

§ 144 (part of Annex 2 "Indicative model restructuring plan")
"*Description of possible plan**s** to remedy the beneficiary's problems and comparison of those plans in terms of the amount of state aid required and the anticipated results of these plans*".

Proposed addition:
The criteria by which a restructuring plan is evaluated should not be limited to the amount of state aid being received: the consequences for employment, skills, long-term perspectives and resolution of past problems also deserve to be included in the evaluation. This paragraph is also the opportunity to insist on our requirement for the independent design of restructuring plans, including specifically, the input from trade unions.
"*Description of possible plan**s** to remedy the beneficiary's problems and comparison of those plans in terms of the amount of state aid required and the anticipated results of these plans (specifically: employment and skills, the robustness of long-term viability attained after the plan, the solving of the root causes of the undertaking's current difficulties). At least one of these plans should have been devised in cooperation with employees' representatives or be approved by them, using, when not already provided by Member State legislation, part of the rescue aid funds to pay for the necessary external expertise*".