EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2014)

Opinion

Title **DG COMP - Impact Assessment on the review of the Guidelines on State aid for rescuing and restructuring firms in difficulty**

(draft version of 27 February 2014)*

(A) Context

Article 107 of the Treaty on the Functioning of the European Union prohibits state aid, subject to certain exceptions. Notably, the Treaty allows the Commission to approve state aid "to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest." Since 1994, the Commission has addressed this issue through guidelines that set out the conditions for approval of rescue and restructuring aid. The current guidelines, dating from 2004, have been extended twice and are now under revision.

This revision is in line with the reform programme set out in the Commission Communication of 8 May 2012 on EU State aid modernisation. The overall purpose is to support sustainable growth and contribute to the quality of public spending by discouraging aid that does not bring real added value and distorts competition.

(B) Overall opinion: POSITIVE

The Board has decided to issue a positive opinion on the condition that the sections relative to burden sharing and the definition of 'firm in difficulty' are significantly improved.

In particular, the problem description should be streamlined and discuss more extensively the most relevant issues (e.g. the uncertainty regarding the 'firm in difficulty' definition) providing a clearer picture of the relative importance of the different problems. Second, the review's objectives should be better linked to the main objectives of the State aid modernisation programme. Third, the content of the options needs to be clarified. In particular, it should be better explained how the proposed burden sharing will work in practice. In addition, the options for better defining 'firm in difficulty' need to be revisited to better explain what 'hard' criteria are being considered and how they would be applied. Fourth, the analysis of the impacts should discuss in more depth the likely impacts and effectiveness of the retained measures, in particular, with regard to burden sharing and the 'firm in difficulty' definition.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Streamline and prioritise the problem description. The report should better explain the logic behind the choice and the grouping of the issues addressed by the review. In this context, it should explain why some of the issues on which stakeholders were consulted (as described in Annex 1) have not been retained in the problem analysis. The report should also give a clearer idea of the relative significance and scale of the retained problems and discuss more extensively the most relevant ones (for instance, the issues relating to the definition of 'firm in difficulty') and support them with actual examples.

(2) Better link the review's objectives with the main objectives of the State aid modernisation Communication. On the basis of a revised problem definition, the objectives of the guidelines' review need to be clarified. The focus of the current set of identified objectives is too narrow and needs to be enlarged to take better account of the main objectives of the State aid reform programme (economic growth, efficiency and simplification).

(3) Better describe the content of the options. The description of the options needs to be enhanced by better explaining what they imply. In particular, the report should better describe how the 'full burden sharing by investors' option would work in practice (e.g. would Member States be able to determine the size of own contributions, or would investors have to match the public contribution?). The report should also better explain why it is considered appropriate to extend the burden sharing logic applied to the banking sector to other sectors. Regarding the definition of 'firm in difficulty', the identified option set needs to be reviewed to allow for a more in-depth analysis of their impacts later in the text. In particular, the report should clearly explain what 'hard' criteria are being considered and how they would be applied (e.g. mutually exclusive or cumulative criteria).

(4) Strengthen the assessment of impacts. The report should provide a more in-depth assessment of the impacts, in particular, with regard to burden sharing and the 'firm in difficulty' definition. Regarding burden sharing, the report should provide greater detail on the expected consequences (e.g. the impact on the cost of capital) and the degree of Member State support for the preferred option. In addition, the discussion on the impact on implicit guarantees needs to be put into context by describing the likelihood of non-banking sector firms being rescued and clarifying whether the implicit guarantee may be higher for certain categories of firms (e.g. State owned enterprises). With regard to the options related to the 'firm in difficulty' options, the choice and possible combinations of (hard) criteria need to be assessed in detail, given potentially important implications for other policies (e.g. eligibility for other state aid, structural funds). The discussion on the impacts in terms of the range of firms that would be covered (Annex 5) needs to be moved into the main report and developed. The sources of the data, the methodology used and the robustness of the results also need to be clarified in light of diverging estimates from other sources. In addition, the reasons put forward to discard extending the guidelines to the steel sector need to be strengthened, given that the overcapacity argument is probably also valid for other sectors. Finally, the effectiveness of the retained options in attaining the revised objectives needs to be openly discussed. In particular, the assessment of the effectiveness of the burden sharing option needs to be strengthened. Currently, the report focuses on the investors' willingness to share the burden but their ability to do so is not given enough attention.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation.

In order to better describe the level of support for each option, the views of stakeholders, incl. Member States, could be summarised in tabular form when comparing the options. The readability of the report should also be improved, notably by systematically explaining the graphs in the text. In addition, footnotes should be checked. Moreover, the length of the executive summary should be brought in line with the established page limit.

(E) IAB scrutiny process	
Reference number	2013/COMP/010
External expertise used	No
Date of IAB meeting	26/03/2014