



EUROPEAN COMMISSION

Brussels, 15.12.2016

C(2016) 8465 final

Subject: State aid SA.44880 (2016/N) – Slovenia
Rescue and restructuring aid scheme for SMEs in difficulties in Slovenia

Dear Sir,

1. PROCEDURE

- (1) On 16 March 2016, Slovenia notified an aid scheme for rescuing and restructuring small and medium sized companies and cooperatives (hereinafter "SMEs") in Slovenia (hereinafter "the scheme"). The Commission requested additional information by letter dated 13 May 2016. The Slovenian authorities provided their reply on 10 June 2016. The Commission requested further information by letters of 8 August 2016 and 14 October 2016, to which Slovenia replied respectively on 9 September 2016 and 21 October 2016. Slovenia also provided additional information on 1st December 2016.
- (2) By letter dated 18 May 2016, the Slovenian authorities accepted that the present decision be adopted and notified in the English language only.

2. DESCRIPTION OF THE SCHEME

2.1. Legal basis and objective

- (3) The scheme is set out in the notified (Draft) Act Governing the Rescue and Restructuring Aid for Companies and Cooperatives in Difficulty, hereinafter "the Draft Act" as ultimately provided on 21 October 2016 by Slovenia. The scheme follows and draws on the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (hereinafter: "the Guidelines").¹ On the one hand, the Draft Act will provide the legal basis for individual aid granted under the scheme, which, if fully in

¹ OJ C 249 of 31.7.2014, p.1.

Republic of Slovenia, Ministry of Economic Development and Technology
Kotnikova 5
SI - 1000 Ljubljana

Commission européenne, B-1049 Bruxelles – Belgique
Europese Commissie, B-1049 Brussel – België
Telefon: 00 32 (0) 2 299.11.11

line with the conditions thereof, will not have to be individually notified to the Commission. On the other hand, the Draft Act also sets out rules governing aid to large undertakings, which will have to be notified to the Commission on an individual basis. The latter rules are not the subject of the present decision.

- (4) The objective of the scheme is the rescuing and restructuring of non-financial companies and cooperatives (hereinafter "undertakings") in difficulty in Slovenia. In particular, the scheme shall facilitate the undertakings in difficulty that have an important systemic role in national, regional or sectorial development to restore their long-term market viability while preserving jobs and the acquired know-how and supporting active and proportional involvement of market shareholders². To this end, three types of aid can be granted: namely rescue aid, restructuring aid and temporary restructuring support.

2.2. Beneficiaries under the scheme

- (5) The scheme applies to all SMEs in difficulty and, as regards temporary restructuring support, it also applies to SMEs in difficulty in which the State directly or indirectly has a 25% or higher share of equity or voting rights³. However, the scheme excludes undertakings operating in the coal or steel sector and those covered by specific rules for financial institutions⁴.
- (6) The scheme defines SMEs by reference to Annex I of Commission Regulation (EU) No 651/2014.⁵ Newly created undertakings that have been operating for less than three years, for instance undertakings established after the liquidation of a previous undertaking, are not eligible for aid⁶.
- (7) Under the scheme, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:
 - (a) In the case of a limited liability company, when its current loss plus accumulated losses from previous years is more than half of its subscribed share capital and the loss may not be covered by debiting any accumulated profit, reserves or surplus from revaluation.
 - (b) In the case of an undertaking where at least some members have unlimited liability (partnership) when its current loss plus accumulated losses from previous years is more than half of the capital shown in the financial statements and the loss may not be covered by debiting any accumulated profit, reserves or surplus from revaluation.

² Article 2 of the Draft Act

³ Article 24(4) of the Draft Act

⁴ Article 7 of the Draft Act

⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1–78 and Article 3 of the Draft Act.

⁶ Article 7 of the Draft Act

- (c) If the undertaking has already become insolvent or meets the conditions for commencing insolvency proceedings in accordance with the domestic law governing financial operations, insolvency proceedings and compulsory dissolution⁷.

2.3. Conditions for granting aid

- (8) The maximum amount of aid that can be awarded under the scheme to any one undertaking is limited to EUR 10 million⁸. Slovenia undertakes to ensure that this amount includes any aid obtained from other sources or under other schemes.
- (9) Aid under the scheme can only be granted if the undertaking has an important systemic role, if the need for State intervention is shown and if undue negative effects on competition and trade between Member States are avoided. Furthermore, the aid measure must be appropriate, transparent, proportionate and have an incentive effect. The way in which these conditions are spelled out in the scheme is described below in sections 2.3.1 to 2.3.9.

2.3.1. Objective of common interest

- (10) In compliance with its general objective, aid under the scheme will be granted to eligible beneficiaries that have an important systemic role. Such a role will be found to exist in cases that involve either innovative undertakings with major growth potential or undertakings with important mutual connections with other local and regional undertakings, and whose bankruptcy or winding-up would cause negative economic and social consequences for the region or sector⁹.

2.3.2. Need for State intervention and incentive effect

- (11) Aid will be granted under the scheme if comparison with an alternative scenario not involving State aid demonstrates that, in the absence of aid, negative economic and social consequences for the region or sector, linked with the bankruptcy or winding-up of a company having an important systemic role, could not be avoided¹⁰.

2.3.3. Appropriateness

2.3.3.1. Rescue aid

- (12) Rescue aid may only be granted in the form of loan guarantees or loans and on the basis of a draft restructuring plan¹¹.
- (13) The remuneration that the beneficiary is required to pay for rescue aid must not be set at a rate lower than the reference rate set out in the Communication from the Commission on

⁷ Article 8 of the Draft Act

⁸ Article 29 of the Draft Act

⁹ Article 9(2) of the Draft Act

¹⁰ Article 15(1) and 9(2) of the Draft Act

¹¹ Article 11 of the Draft Act

the revision of the method for setting the reference and discount rates for weak undertakings offering normal levels of collateralisation¹² (currently 1-year Interbank Offered Rate (hereinafter "IBOR") plus 400 basis points) and must be increased by at least 50 basis points if the authorisation of the rescue aid is extended as a result of the notification of restructuring aid¹³.

- (14) Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after disbursement of the first instalment to the beneficiary¹⁴, unless it is followed by a restructuring aid¹⁵.
- (15) Rescue aid must not be used to finance structural measures, unless these are required during the rescue period for the survival of the beneficiary¹⁶.

2.3.3.2. Restructuring aid

- (16) Restructuring aid is granted to companies by way of loans, subsidies, guarantees and equity investments, and to cooperatives in forms of loans, subsidies or guarantees¹⁷. The Slovenian authorities have committed to assessing in each case whether the beneficiaries' problems relate to liquidity or solvency or both on the basis of detailed analysis of the undertakings' business reports and data from the balance sheets, income statements and cash flow statements, in order to ensure that the instrument chosen is appropriate to the issue that it is intended to address.
- (17) Furthermore, the scheme requires restructuring plan to be submitted, which must contain an analysis of the causes of the difficulties; a presentation of the objectives and the strategies for achieving them; a split by business function; operational projections for a five-year period under a realistic and a pessimistic scenario; an alternative scenario in case aid is not granted; a projection of cash flows; measures limiting distortions of competition to mitigate the harmful effects of the restructuring aid granted on operating conditions and to prevent competition disturbances in the market, and a timetable of activities¹⁸. The Slovenian authorities will further determine the detailed content of the restructuring plan in the national legislation via an implementing regulation (decree).

2.3.3.3. Temporary restructuring support

- (18) The scheme provides for temporary restructuring support in the form of liquidity assistance intended as a support to the restructuring of an undertaking, which is funded mainly by a undertaking's own resources, in order to create conditions permitting the

¹² (OJ C 14, 19.1.2008, p. 6).

¹³ Article 12 of the Draft Act.

¹⁴ Article 12 of the Draft Act

¹⁵ Article 12(4) of the Draft Act

¹⁶ Article 11 of the Draft Act

¹⁷ Article 14 of the Draft Act

¹⁸ Article 15 of the Draft Act

restoration of its market viability. Temporary restructuring support must consist of loan guarantees or loans.¹⁹

- (19) The remuneration of temporary restructuring support shall be set at a rate not less than the reference rate set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points). The rate shall increase by not less than 50 basis points once twelve months have elapsed from the time of disbursement of the first instalment to the beneficiary.²⁰
- (20) Any loan must be reimbursed and any guarantee must come to an end within a period of not more than eighteen months after disbursement of the first instalment to the beneficiary²¹. The Slovenian authorities confirm that temporary restructuring support may not be granted following rescue aid.

2.3.4. *Proportionality of the aid/aid limited to the minimum*

2.3.4.1. Rescue aid

- (21) Rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. This amount will be calculated on the basis of the formula set out in Annex I of the Guidelines. Any aid exceeding the result of that calculation must only be authorised if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months²².

2.3.4.2. Restructuring aid

- (22) Any restructuring aid under the scheme shall be limited to the minimum amount required to ensure long-term market viability. In particular, a sufficient level of own contribution to the costs of the restructuring and burden sharing must be ensured²³.
- (23) The scheme clarifies that an adequate level of own contribution is required and that this own contribution must be aid free. Furthermore, the own contribution should be comparable to the aid granted in terms of effects on the undertaking's financial situation, i.e. solvency or liquidity position of the beneficiary. In addition, the own contribution must be real, that is to say actual, excluding future expected cash flows in the form of future profits and amortisation²⁴.

¹⁹ Article 24 of the Draft Act

²⁰ Article 25(3) of the Draft Act

²¹ Articles 24 and 25(1) of the Draft Act

²² Article 6 of the Draft Act, which expressly refers to Annex I of the Guidelines.

²³ Articles 6 and 14 of the Draft Act

²⁴ Article 14 (6) of the Draft Act

- (24) Granting authorities can consider the own contribution to be adequate if it amounts to at least 40% of the restructuring costs in case of medium-sized companies or cooperatives or at least 25% of the restructuring costs in case of small companies or cooperatives²⁵.
- (25) Aid to cover losses should only be granted on terms which involve adequate burden-sharing by existing investors. The scheme provides that this will normally mean that existing shareholders, partners and members and, where necessary, subordinated creditors must absorb losses in full, and specifies how this is to be achieved, as a pre-condition for State intervention²⁶.
- (26) In any case, pursuant to the scheme, the beneficiary shall not distribute cash outflows to holders of equity capital or subordinated debt during the restructuring period, unless this would disproportionately affect new equity investors²⁷.
- (27) The scheme also provides that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for²⁸.

2.3.4.3. Temporary restructuring support

- (28) Temporary restructuring support may only be granted for a period not exceeding eighteen months on the basis of a simplified restructuring programme that particularly includes an analysis of the causes for difficulties concerning the assessment of the economic and social consequences of bankruptcy of the undertaking as well as measures for restoring its long-term viability.
- (29) The scheme provides that in order to determine the amount of temporary restructuring support, regard should be had to the outcome of the formula set out in Annex I of the Guidelines. Any aid exceeding the result of this calculation can only be granted if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming eighteen months²⁹.

2.3.5. *Negative effects*

- (30) The scheme provides that any granting authority must establish whether the undertaking concerned has received any rescue or restructuring aid or any temporary restructuring aid during the last ten years. Exceptions to this rule are permitted in cases where: a) restructuring aid follows the granting of rescue aid as part of a single restructuring operation; b) rescue aid was not followed by restructuring aid, if the granted rescue aid was sufficient for the undertaking's viability, and the aid becomes necessary after at least five years due to unforeseeable circumstances for which the beneficiary is not responsible;

²⁵ Article 14 (5) of the Draft Act

²⁶ Article 21 of the Draft Act

²⁷ Article 23(4) of the Draft Act

²⁸ Article 21(2) of the Draft Act

²⁹ Article 6 of the Draft Act, which refers to Annex I of the Guidelines

c) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible³⁰.

2.3.6. *Nature and form of measures to limit distortions of competition*

- (31) The scheme foresees that medium-sized undertakings must implement measures to limit distortions of competition with a view to preventing the strengthening of their position and market share with regard to their competitors. These will take the form of structural and behavioural measures and will be proportionate to the amount and the form of the restructuring aid granted and the undertaking's market position³¹.
- (32) Under the scheme, the structural measures will take the form of sale of assets or reduction of the scope of operation or the withdrawal of products or services from the market where the undertaking will preserve a significant market share after the end of restructuring. If the undertaking cannot sell the assets intended for sale in two or more failed attempts, it shall identify other types of assets for sale or other measures for limiting the distortion of the market.
- (33) According to the scheme, behavioural measures can also be taken, aiming at ensuring that the aid is used only to finance the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition. Certain behavioural measures must be taken in every case. Firstly, beneficiaries must be required to refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of the beneficiary. Secondly, the beneficiaries shall not distribute cash outflows to holders of equity capital during the restructuring unless it would disproportionately affect new equity investors. Thirdly, beneficiaries must be required to refrain from publicising State support as a competitive advantage when marketing their products and services.
- (34) The scheme does not require small undertakings to implement measures limiting distortions of competition. However, they should normally not increase their scope of operation, and in particular their production capacity, during the restructuring period³².

2.3.7. *Recipients of previous unlawful aid*

- (35) No individual aid shall be granted and paid under the scheme to undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market³³. To that end, Slovenia also commits to include this condition in the contracts between the granting authority and the beneficiaries.

³⁰ Article 10 of the Draft Act

³¹ Articles 22 and 23 of the Draft Act

³² Article 22 of the Draft Act

³³ Article 7 of the Draft Act

2.3.8. *Reporting and transparency*

- (36) Slovenia commits to submit reports on the operation of the scheme to the Commission on a yearly basis.
- (37) Slovenia will maintain for at least ten years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of twenty working days or such longer period as may be fixed in the request.
- (38) Slovenia commits to respecting the transparency conditions of point 96 of the Guidelines and making available all requested information on the following two websites: www.mf.gov.si and www.mgrt.gov.si.

2.4. Budget and duration of the scheme

- (39) The Act Governing the Rescue and Restructuring Aid for Companies and Cooperatives in Difficulty shall enter into force on the fifteenth day after its publication in the Official Gazette of the Republic of Slovenia and expire on 31 December 2020. Slovenia confirms it will respect the standstill obligation under Article 108(3) TFEU, until the decision approving the scheme is adopted by the Commission.
- (40) The planned total budget is around EUR 160 million while the annual budget is around EUR 32 million.

3. ASSESSMENT

3.1. Existence of State aid

- (41) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (42) Slovenia does not question the qualification of measures taken on the basis of the scheme as State aid.
- (43) The public support granted under the scheme is provided by public authorities and will be financed from public sources and can therefore be considered as being given through State resources. In addition, the decisions to grant such support are taken by public authorities and, as such, are imputable to the State.
- (44) The public support granted on the basis of the scheme is provided on terms that the beneficiaries, which are undertakings in difficulty active in most sectors of the Slovenian economy, could not obtain on the market. As such, it gives a selective advantage to these beneficiaries. The public support granted in this manner, furthermore, strengthens the position of the beneficiaries, which may operate on markets open to competition

compared to that of their competitors in Slovenia and in other Member States and must therefore be regarded as distorting competition and affecting trade between Member States.

- (45) The scheme therefore involves the grant of State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility of the aid with the internal market

- (46) The scheme provides for rescuing and restructuring aid as well as temporary restructuring support granted to non-financial undertakings in difficulty. In view of this, the Commission has examined the scheme in light of Article 107(3) (c) TFEU and, in particular, on the basis of the Guidelines, which foresee, in their point 37, the possibility of schemes for SMEs and smaller State owned undertakings.

3.2.1. Beneficiaries

- (47) Under the scheme and as noted in recitals (5) and (6) aid can only be granted to SMEs as defined in accordance on substance with the definition of SMEs and to smaller State-owned undertakings included in point 13 of the Guidelines.
- (48) As foreseen in point 18 of the Guidelines and explained in recital (5), the scheme excludes from its sectorial scope undertakings operating in the coal and steel sector as well as those covered by specific rules for financial institutions.
- (49) In accordance with point 19 of the Guidelines and as noted in recital (7), aid can only be granted to undertakings in difficulties, as defined in point 20 of the Guidelines, excluding newly created undertakings (see recital (6)), in line with point 21 of the Guidelines.

3.2.2. Aid instruments

- (50) As explained in recital (4) and in line with points 25 to 28 of the Guidelines the scheme foresees the granting of three types of aid, namely rescue aid, restructuring aid and temporary restructuring support.

3.2.3. Conditions for granting of aid

- (51) In line with point 105 of the Guidelines, and as described in recital (8), the scheme limits the maximum amount of aid that can be awarded to any one undertaking to EUR 10 million.
- (52) As foreseen in point 38 of the Guidelines, aid can only be granted if it contributes to a well-defined objective of common interest, if the need for a State intervention is shown, if the aid measure is appropriate, if the aid has an incentive effect, if the aid is proportionate, if any undue negative effects on competition and trade between Member States are avoided and if the aid is transparent.

- (53) In this regard, in order to prove that the aid contributes to a well-defined objective of common interest point 44 of the Guidelines requires Member States to demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure. Point 107 of the Guidelines provides guidance as to what will constitute such an objective of common interest in the case of schemes for SMEs or smaller State owned undertakings. As described in recital (10), and in line with sub (a) and (b) of point 107 of the Guidelines, an important systemic role will be found to exist in cases that involve either innovative undertakings with major growth potential or undertakings with important mutual connections with other local and regional undertakings, and whose bankruptcy or winding-up would cause negative economic and social consequences for the region or sector. In addition, restructuring aid is conditional on the implementation of a restructuring plan, which must fulfil the conditions laid down in points 45-49 of the Guidelines and which includes the elements explained in recital (17).
- (54) In line with points 53 and 59 of the Guidelines, granting authorities must demonstrate the need for State intervention and that the aid has an incentive effect. In this regard, as described in recital (11), Slovenia requires that an alternative scenario is included in the restructuring plan on the basis of which aid under the scheme will be granted, in order to demonstrate the serious social hardship or severe market failure that would occur in case of bankruptcy or winding-up of an undertaking.
- (55) The appropriateness of any rescue aid must be demonstrated in accordance with the requirements laid down in points 55 (a)-(c) and (e), 56 as well as 109 of the Guidelines. As regards restructuring aid, granting authorities must establish its appropriateness in line with point 58 of the Guidelines. The compliance of the scheme with these requirements is demonstrated in recitals (12) to (17).
- (56) The proportionality of rescue aid must be established in line with point 60 of the Guidelines and, in particular, the formula set out in Annex I to the Guidelines. Any aid exceeding the result of that calculation must only be authorised if it is duly justified by the provision of a liquidity plan, as described in recital (21), setting out the beneficiary's liquidity needs for the coming six months.
- (57) Restructuring aid is regarded to be proportionate only if, in line with point 61 of the Guidelines, its amount and intensity is limited to the minimum necessary to enable restructuring to be undertaken and, furthermore, only if the conditions of a significant own contribution of points 62-63 and 111 of the Guidelines as well as of a burden sharing in the meaning of points 65-69 of the Guidelines are fulfilled. As described in recitals (22) to (27), the scheme fulfils the proportionality requirements.
- (58) As regards temporary restructuring support and as described in recitals (18) to (20) and (28) to (29), the scheme implements the appropriateness and proportionality requirements set out in points 115-117 of the Guidelines.
- (59) As explained in recital (30), the scheme requires respect of the "one time, last time" principle as defined in point 112. In addition, it stipulates, as described in recitals (31) to (34), that measures to limit distortions of competition in the case of restructuring aid must

be taken. The Commission understands that where, as described in recital (32), an undertaking has identified other types of assets for sale or other measures for limiting the distortion of competition, those new measures are subject to the same approval process as was the case for the measures originally proposed³⁴. The Commission concludes on this basis that the requirements laid down in the scheme concerning measures to limit distortions of competition are in line with points 77-93 as well as point 113 of the Guidelines.

- (60) Furthermore, as noted in recital (35) and in accordance with point 94 of the Guidelines, the scheme expressly excludes the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (61) As noted in recital (38), the scheme fulfils the conditions provided for in point 96 of the Guidelines concerning transparency. The Slovenian authorities have committed to publish online the full text of the approved aid scheme; the identity of the granting authority/(ies); the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, etc. As described in recital (36), Slovenia commits to submit annual reports on its operation to the Commission. In addition, the scheme is foreseen as explained in recital (39), to enter into force on the fifteenth day after its publication in the Official gazette of the Republic of Slovenia following its approval by the Commission and it will, in line with the duration of the Guidelines (see its point 135), expire on 31 December 2020.

Conclusion

- (62) In view of the above, the Commission concludes that the scheme fulfils all compatibility criteria laid down in the Guidelines and is therefore compatible with the internal market.

4. CONCLUSION

- (63) The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

³⁴ For the purposes of Article 22 and 23 of the Draft Act

(64)

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request within that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B - 1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

