22 September 2026

Joint Statement on the Definition of Undertakings in Difficulty: Access to State Aid for Innovative Undertakings

Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, Latvia, Poland, Slovakia and the Netherlands are of the opinion that the newly proposed definition of undertakings in difficulty (UID) in the General Block Exemption Regulation (GBER) and Rescue and Restructuring Guidelines (RRG) is not to a solution to the current problem regarding UIDs. It is therefore essential that the European Commission (Commission) amends the UID definition and extends its scope to include quasi-equity instruments.

Suggestion

We propose not to refer to the definition of "equity" and to maintain the broader concept of "own funds". We strongly propose the following approach: *A company's own funds consist of its equity and quasi-equity funds that are economically equivalent to equity*.

In their contributions to the consultations of the GBER and RRG, the member states have submitted proposals on how this definition could be specified further. This approach will reduce the barrier to access to finance for innovative undertakings, thereby increasing the entry of companies in the internal market, improving competition in the EU and thus the competitiveness of the EU.

Issues regarding the proposed definition

Modern financial markets increasingly incorporate debt instruments into investment strategies, yet the proposed definition does not align with this evolution, as only forms of equity are recognized in the UID test. The Commission has acknowledged, both in the public consultation questionnaire and the call for evidence for the revision of the RRG, that the technical quantitative criteria of the UID definition may unintentionally capture certain undertakings with capital-intensive growth models that are not in fact condemned to go out of business in the short or medium term, thereby unjustifiably excluding inherently viable undertakings from other forms of state aid.[1] The proposed definition in the draft RRG and GBER, however, does not reflect this problem analysis.

The main objective of the UID definition is to prevent the distortion of competition in the internal market. However, the proposed definition prevents innovative, viable undertakings from accessing aid, limiting their ability to compete effectively within the internal market and globally. The ability to attract substantial debt capital, often structured as quasi-equity, is an indicator of economic potential and stability rather than financial difficulty. However, the proposed addition of elements of equity in various applicable accounting standards is limited. The proposed definition thereby does not approximate the financial reality of the capital markets and businesses.

Furthermore, the UID exemptions in the GBER and RRG do not adequately cover the full range of innovative undertakings affected by the UID problem and therefore fall short of providing a fit-for-purpose solution.

Call upon the Commission

The Commission's EU Startup and Scaleup Strategy reflects an important, shared objective: the EU has to become a startup powerhouse, which is essential for driving future growth and prosperity[2]. Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, Latvia, Poland, Slovakia and the Netherlands believe that the UID definition represents an opportunity to translate that vision into legislation. In its current form, however, the proposed definition excludes many of the innovative undertakings the Startup and Scaleup Strategy seeks to support. In the current environment, this is also a geopolitical imperative to support and scale Europe's most promising companies. We therefore call on the Commission to revisit the UID definition with this strategic objective in mind.

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[1] Revision of the Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C249/01), s. *Problem the initiative aims to tackle*; Public Consultation Questionnaire - Revision of the Rescue and Restructuring Guidelines, November 2025, pp. 11-12.

[2] The EU Startup and Scaleup Strategy Choose Europe to start and scale, European Commission, 28 May 2025, p. 18