

# Public Consultation Questionnaire - Revision of the Rescue and Restructuring Guidelines

Fields marked with \* are mandatory.

## Introduction

---

### *The Rescue and Restructuring Guidelines and the need to revise them*

The currently applicable Rescue and Restructuring Guidelines were adopted in 2014 and are based on the 2004 Rescue and Restructuring Guidelines. However, the basic principles of the Rescue and Restructuring Guidelines were laid down long before, as the European Commission at least since the 1970s allowed State aid to Undertakings in Difficulty and specific guidelines were adopted in 1994, 1997, 1999 and 2004.

Financial distress at the company level plays a signaling role in an economy, indicating that a firm is not making optimal use of its resources. While financial distress and consequent market exit plays a key role in ensuring an efficient allocation of resources, they can have negative economic consequences, which can justify public support. There is general consent that rescue and restructuring aid is distortive and detrimental to productivity and should be allowed only under strict conditions.

The Rescue and Restructuring Guidelines set out the conditions under which the Commission deems State aid granted to rescue or restructure Undertakings in Difficulty to be compatible with the internal market. Besides few exceptions, rescue or restructuring support is the only aid Undertakings in Difficulty can receive.

Since the last revision of the Rescue and Restructuring Guidelines in 2014, the Commission has applied them in a large number of cases covering various sectors of the economy. The Commission practice and the case law of the EU Courts show that the Rescue and Restructuring Guidelines in general work well. Moreover, this view was supported by the results of an evaluation conducted in the context of the Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance published in 2020. The Fitness Check focused in particular on the Undertaking in Difficulty definition and came to the conclusion that the Undertaking in Difficulty criterion largely meets its objective to identify companies in difficulties correctly, but it is not entirely clear and easy to apply for national authorities and guidance and/or clarification might be needed.

Based on its case practice, the evaluation in context of the Fitness Check and ad hoc contributions received since the conclusion of the Fitness Check, the Commission considers that there is considerable evidence

available to allow revising the Rescue and Restructuring Guidelines.

The purpose of this public consultation is to collect feedback on the key revisions on substance envisaged by the Commission to take better into account the challenges faced by companies in the EU. In particular, the Commission is envisaging updating the scope of the guidelines. It is considering lifting the exclusion of the steel sector and to review the parameters defining an Undertaking in Difficulty.

The results of this public consultation will be summarised in a factual report, which will be published on the Have Your Say website. At the end of the survey, you can upload a file with a more detailed contribution.

## About you

---

### \* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak

- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Company/business
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☒ Public authority
- ☐ Trade union
- ☐ Other

\* First name

Head of

\* Surname

STATE AID UNIT -EZK

\* Email (this won't be published)

wjzstaatssteun@minezk.nl

\* Scope

- ☐ International
- ☐ Local
- ☒ National
- ☐ Regional

\* Level of governance

- ☐ Parliament
- ☒ Authority
- ☐ Agency

**\* Organisation name**

*255 character(s) maximum*

Ministry of Economic Affairs

**\* Organisation size**

- ☐ Micro (1 to 9 employees)
- ☐ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☒ Large (250 or more)

**Transparency register number**

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

**\* Country of origin**

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- |                                      |                                          |                                     |                                                        |
|--------------------------------------|------------------------------------------|-------------------------------------|--------------------------------------------------------|
| <input type="radio"/> Afghanistan    | <input type="radio"/> Djibouti           | <input type="radio"/> Libya         | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands  | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania        | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania     | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria        | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg    | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt              | <input type="radio"/> Macau         | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra        | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar    | <input type="radio"/> São Tomé and Príncipe            |

- |                                                        |                                                           |                                              |                                                                    |
|--------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------|--------------------------------------------------------------------|
| <input type="radio"/> Angola                           | <input type="radio"/> Equatorial Guinea                   | <input type="radio"/> Malawi                 | <input type="radio"/> Saudi Arabia                                 |
| <input type="radio"/> Anguilla                         | <input type="radio"/> Eritrea                             | <input type="radio"/> Malaysia               | <input type="radio"/> Senegal                                      |
| <input type="radio"/> Antarctica                       | <input type="radio"/> Estonia                             | <input type="radio"/> Maldives               | <input type="radio"/> Serbia                                       |
| <input type="radio"/> Antigua and Barbuda              | <input type="radio"/> Eswatini                            | <input type="radio"/> Mali                   | <input type="radio"/> Seychelles                                   |
| <input type="radio"/> Argentina                        | <input type="radio"/> Ethiopia                            | <input type="radio"/> Malta                  | <input type="radio"/> Sierra Leone                                 |
| <input type="radio"/> Armenia                          | <input type="radio"/> Falkland Islands                    | <input type="radio"/> Marshall Islands       | <input type="radio"/> Singapore                                    |
| <input type="radio"/> Aruba                            | <input type="radio"/> Faroe Islands                       | <input type="radio"/> Martinique             | <input type="radio"/> Sint Maarten                                 |
| <input type="radio"/> Australia                        | <input type="radio"/> Fiji                                | <input type="radio"/> Mauritania             | <input type="radio"/> Slovakia                                     |
| <input type="radio"/> Austria                          | <input type="radio"/> Finland                             | <input type="radio"/> Mauritius              | <input type="radio"/> Slovenia                                     |
| <input type="radio"/> Azerbaijan                       | <input type="radio"/> France                              | <input type="radio"/> Mayotte                | <input type="radio"/> Solomon Islands                              |
| <input type="radio"/> Bahamas                          | <input type="radio"/> French Guiana                       | <input type="radio"/> Mexico                 | <input type="radio"/> Somalia                                      |
| <input type="radio"/> Bahrain                          | <input type="radio"/> French Polynesia                    | <input type="radio"/> Micronesia             | <input type="radio"/> South Africa                                 |
| <input type="radio"/> Bangladesh                       | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova                | <input type="radio"/> South Georgia and the South Sandwich Islands |
| <input type="radio"/> Barbados                         | <input type="radio"/> Gabon                               | <input type="radio"/> Monaco                 | <input type="radio"/> South Korea                                  |
| <input type="radio"/> Belarus                          | <input type="radio"/> Georgia                             | <input type="radio"/> Mongolia               | <input type="radio"/> South Sudan                                  |
| <input type="radio"/> Belgium                          | <input type="radio"/> Germany                             | <input type="radio"/> Montenegro             | <input type="radio"/> Spain                                        |
| <input type="radio"/> Belize                           | <input type="radio"/> Ghana                               | <input type="radio"/> Montserrat             | <input type="radio"/> Sri Lanka                                    |
| <input type="radio"/> Benin                            | <input type="radio"/> Gibraltar                           | <input type="radio"/> Morocco                | <input type="radio"/> Sudan                                        |
| <input type="radio"/> Bermuda                          | <input type="radio"/> Greece                              | <input type="radio"/> Mozambique             | <input type="radio"/> Suriname                                     |
| <input type="radio"/> Bhutan                           | <input type="radio"/> Greenland                           | <input type="radio"/> Myanmar/Burma          | <input type="radio"/> Svalbard and Jan Mayen                       |
| <input type="radio"/> Bolivia                          | <input type="radio"/> Grenada                             | <input type="radio"/> Namibia                | <input type="radio"/> Sweden                                       |
| <input type="radio"/> Bonaire Saint Eustatius and Saba | <input type="radio"/> Guadeloupe                          | <input type="radio"/> Nauru                  | <input type="radio"/> Switzerland                                  |
| <input type="radio"/> Bosnia and Herzegovina           | <input type="radio"/> Guam                                | <input type="radio"/> Nepal                  | <input type="radio"/> Syria                                        |
| <input type="radio"/> Botswana                         | <input type="radio"/> Guatemala                           | <input checked="" type="radio"/> Netherlands | <input type="radio"/> Taiwan                                       |
| <input type="radio"/> Bouvet Island                    | <input type="radio"/> Guernsey                            | <input type="radio"/> New Caledonia          | <input type="radio"/> Tajikistan                                   |

|                                                      |                                                         |                                                |                                                            |
|------------------------------------------------------|---------------------------------------------------------|------------------------------------------------|------------------------------------------------------------|
| <input type="radio"/> Brazil                         | <input type="radio"/> Guinea                            | <input type="radio"/> New Zealand              | <input type="radio"/> Tanzania                             |
| <input type="radio"/> British Indian Ocean Territory | <input type="radio"/> Guinea-Bissau                     | <input type="radio"/> Nicaragua                | <input type="radio"/> Thailand                             |
| <input type="radio"/> British Virgin Islands         | <input type="radio"/> Guyana                            | <input type="radio"/> Niger                    | <input type="radio"/> The Gambia                           |
| <input type="radio"/> Brunei                         | <input type="radio"/> Haiti                             | <input type="radio"/> Nigeria                  | <input type="radio"/> Timor-Leste                          |
| <input type="radio"/> Bulgaria                       | <input type="radio"/> Heard Island and McDonald Islands | <input type="radio"/> Niue                     | <input type="radio"/> Togo                                 |
| <input type="radio"/> Burkina Faso                   | <input type="radio"/> Honduras                          | <input type="radio"/> Norfolk Island           | <input type="radio"/> Tokelau                              |
| <input type="radio"/> Burundi                        | <input type="radio"/> Hong Kong                         | <input type="radio"/> Northern Mariana Islands | <input type="radio"/> Tonga                                |
| <input type="radio"/> Cambodia                       | <input type="radio"/> Hungary                           | <input type="radio"/> North Korea              | <input type="radio"/> Trinidad and Tobago                  |
| <input type="radio"/> Cameroon                       | <input type="radio"/> Iceland                           | <input type="radio"/> North Macedonia          | <input type="radio"/> Tunisia                              |
| <input type="radio"/> Canada                         | <input type="radio"/> India                             | <input type="radio"/> Norway                   | <input type="radio"/> Türkiye                              |
| <input type="radio"/> Cape Verde                     | <input type="radio"/> Indonesia                         | <input type="radio"/> Oman                     | <input type="radio"/> Turkmenistan                         |
| <input type="radio"/> Cayman Islands                 | <input type="radio"/> Iran                              | <input type="radio"/> Pakistan                 | <input type="radio"/> Turks and Caicos Islands             |
| <input type="radio"/> Central African Republic       | <input type="radio"/> Iraq                              | <input type="radio"/> Palau                    | <input type="radio"/> Tuvalu                               |
| <input type="radio"/> Chad                           | <input type="radio"/> Ireland                           | <input type="radio"/> Palestine                | <input type="radio"/> Uganda                               |
| <input type="radio"/> Chile                          | <input type="radio"/> Isle of Man                       | <input type="radio"/> Panama                   | <input type="radio"/> Ukraine                              |
| <input type="radio"/> China                          | <input type="radio"/> Israel                            | <input type="radio"/> Papua New Guinea         | <input type="radio"/> United Arab Emirates                 |
| <input type="radio"/> Christmas Island               | <input type="radio"/> Italy                             | <input type="radio"/> Paraguay                 | <input type="radio"/> United Kingdom                       |
| <input type="radio"/> Clipperton                     | <input type="radio"/> Jamaica                           | <input type="radio"/> Peru                     | <input type="radio"/> United States                        |
| <input type="radio"/> Cocos (Keeling) Islands        | <input type="radio"/> Japan                             | <input type="radio"/> Philippines              | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia                       | <input type="radio"/> Jersey                            | <input type="radio"/> Pitcairn Islands         | <input type="radio"/> Uruguay                              |
| <input type="radio"/> Comoros                        | <input type="radio"/> Jordan                            | <input type="radio"/> Poland                   | <input type="radio"/> US Virgin Islands                    |
| <input type="radio"/> Congo                          | <input type="radio"/> Kazakhstan                        | <input type="radio"/> Portugal                 | <input type="radio"/> Uzbekistan                           |

- |                                                        |                                  |                                             |                                         |
|--------------------------------------------------------|----------------------------------|---------------------------------------------|-----------------------------------------|
| <input type="radio"/> Cook Islands                     | <input type="radio"/> Kenya      | <input type="radio"/> Puerto Rico           | <input type="radio"/> Vanuatu           |
| <input type="radio"/> Costa Rica                       | <input type="radio"/> Kiribati   | <input type="radio"/> Qatar                 | <input type="radio"/> Vatican City      |
| <input type="radio"/> Côte d'Ivoire                    | <input type="radio"/> Kosovo     | <input type="radio"/> Réunion               | <input type="radio"/> Venezuela         |
| <input type="radio"/> Croatia                          | <input type="radio"/> Kuwait     | <input type="radio"/> Romania               | <input type="radio"/> Vietnam           |
| <input type="radio"/> Cuba                             | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia                | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao                          | <input type="radio"/> Laos       | <input type="radio"/> Rwanda                | <input type="radio"/> Western Sahara    |
| <input type="radio"/> Cyprus                           | <input type="radio"/> Latvia     | <input type="radio"/> Saint Barthélemy      | <input type="radio"/> Yemen             |
| <input type="radio"/> Czechia                          | <input type="radio"/> Lebanon    | <input type="radio"/> Saint Helena          | <input type="radio"/> Zambia            |
|                                                        |                                  | Ascension and Tristan da Cunha              |                                         |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho    | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe          |
| <input type="radio"/> Denmark                          | <input type="radio"/> Liberia    | <input type="radio"/> Saint Lucia           |                                         |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

#### ☐ Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

## **Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☒ I agree with the [personal data protection provisions](#)

## 1. Sectorial Scope of the Rescue and Restructuring Guidelines

---

The questions in this section aim at assessing whether the current state of the EU economy would justify a change in the sectors covered by the Rescue and Restructuring Guidelines.

### **Background**

Currently all sectors can benefit from aid under the Rescue and Restructuring Guidelines except the coal and steel sectors and the financial sector. Concerning the steel sector, its exclusion from the scope of the Rescue and Restructuring Guidelines had been historically motivated by the existence of significant overcapacities globally and in the EU market. The current exclusion of the steel sector means that if a steel company is under financial distress (considered an Undertaking in Difficulty) it cannot receive any State aid, including State aid under the Rescue and Restructuring Guidelines, unlike undertakings active in other metal sectors, such as aluminium.

Global overcapacity still affects European producers and their employees. Moreover, the pressure on the EU steel industry from imports is taking place against the background of decarbonisation and new challenges to the global trade system. Due to the challenges faced, the Commission adopted an Action Plan for Steel and Metals, which outlines the importance of the steel sector which is among the most vulnerable sectors in transition.

Within the EU market overcapacities have decreased and EU production can cover most of the EU's domestic demand in steel (90%). Between 2014 and 2023, EU steel industry production capacity has decreased significantly (crude steel production has decreased by around 20%). In the same vein, employment in the sector decreased by around 10%. At the same time, in 2024, global overcapacity was estimated to be more than four and a half times the EU's yearly consumption. The EU steel industry went from a substantial trade surplus to a significant deficit.

## Question 1

In your experience, has the exclusion of the steel sector from the Rescue and Restructuring Guidelines had a positive impact on:

|                                          | Yes                   | No                    | I do not know / no opinion       |
|------------------------------------------|-----------------------|-----------------------|----------------------------------|
| Competition within the EU steel sector   | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Competitiveness of the EU steel sector   | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Both                                     | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| There has been no positive impact at all | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please justify your answer:

2000 character(s) maximum

The EU steel market is fairly integrated, but competition is asymmetric between small group of large companies, depending on national conditions, energy mix in countries and delay in the green transition.

The global steel sector is viewed as having structural overcapacity in its production. However, the EU steel sector's production capacity is diminishing. Overcapacity is driven by international competition from third countries that offer steel against prices that not in conformity with market prices in EU. This overcapacity can be attributed by distorting subsidies in third countries. This has a negative impact on competitiveness in the EU steel sector, but is not necessarily solved with rescue and restructuring aid, as it is more a trade related issue. Excluding the sector has not had a negative nor positive effect on the sector so far.

## Question 2

In your experience, has the situation of the steel sector changed compared to 2014?

|               | has improved          | has worsened                     | is unchanged          | I do not know / no opinion |
|---------------|-----------------------|----------------------------------|-----------------------|----------------------------|
| The situation | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>      |

Please justify your answer:

2000 character(s) maximum

The current EU steel market is fairly integrated, but competition is asymmetric between small group of large companies, depending on national conditions, energy mix in countries and delay in the green transition. However, the EU steel sector's production capacity is diminishing while the global steel sector is having structural overcapacity in its production. This overcapacity is created by third countries that offer steel against low prices. This leads to diminishing competitiveness of the EU steel sector, which is considered strategic. In addition, the green transition creates a need for investments but puts pressure on the business case of steel sector undertakings, and COVID-19 had an impact (temporary drop in demand, but also price increases). Therefore, at this moment the steel sector knows more international competition, higher operation costs and a stricter regulatory framework necessary for the green transition compared to 2014. See: <https://www.oecd.org>

These market changes have an impact on the viability of undertakings in this sector, which is at odds with the aim of an autonomous EU steel sector. The general focus on improving EU resilience and meeting NATO budget accords supports the importance of an autonomous EU steel sector.

### Question 3

Based on your reply to the question above, do you consider the exclusion of the steel sector from the scope of the Rescue and Restructuring Guidelines still justified?

- ☐ Yes
- ☐ No
- ☒ I do not know / no opinion

Please justify your answer:

2000 character(s) maximum

The guidelines explicitly exclude the steel sector because at the time, the EU and international market were characterized by substantial overcapacity.

The Dutch authorities are of the opinion that the EU should strive to autonomously produce steel. (See: <https://www.rijksoverheid.nl/documenten/publicaties/2025/04/25/bnc-fiche-mededeling-staal-en-metaal-actieplan>). This is in line with the European Steel and Metals Action Plan. The steel sector plays a pivotal role in strategic sectors such as the defense industry, the construction sector, automotive and the energy transition. In the current market, these objectives of common interest could very well arise in the light of autonomy of the steel sector. The global steel sector is viewed as having structural overcapacity in its production. However, the EU steel sector's production capacity is diminishing, as can be seen in OECD steel outlook 2025. The global steel market is currently in a precarious state. Excess capacity is growing from unsustainably high levels, fueled by market-distorting subsidies and other non-market practices, mainly in countries outside the OECD. This trend has the potential risk of dumping into the EU market, because of a competition disadvantage. While it is important this issue is addressed and the EU should support the competitiveness of the steel sector in the EU, we have reasonable doubt whether state aid rules are the right instrument. Most of the problems stem from trade related problems and should be addressed by other instruments in the EU toolbox

### Question 4

In your view, would an inclusion of the steel sector in the Rescue and Restructuring Guidelines have:

|                                                             | Yes                   | No                               | I do not know / no opinion       |
|-------------------------------------------------------------|-----------------------|----------------------------------|----------------------------------|
| A positive impact on competition within the EU steel sector | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            |
| A positive impact on competitiveness of the EU steel sector | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> |
| A positive impact on both                                   | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            |
|                                                             |                       |                                  |                                  |

|                                                  |                       |                       |                                  |
|--------------------------------------------------|-----------------------|-----------------------|----------------------------------|
| no positive impact                               | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Negative impact on competition within the sector | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Negative impact on competitiveness of the sector | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Negative impact on both                          | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please justify your answer:

2000 character(s) maximum

State aid support should be fit for purpose and should go hand in hand with sustainability measures and EU coordinated measures to strengthen the sector. This should lead to a competitive steel sector ecosystem that is able to compete with third countries, but maintains its competitiveness in the internal market. Therefore, trade related instruments might be more suitable to solve the problems in the steel market, instead of rescue and restructuring aid.

### Question 5

In your view, would an inclusion of the steel sector in the Rescue and Restructuring Guidelines have an impact on other industries relying on steel products as input?

|                | a positive impact     | a negative impact     | no impact             | I do not know / no opinion       |
|----------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| There would be | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please justify your answer:

2000 character(s) maximum

See answer under 4. It is important to protect competitiveness and resilience of the European steel sector and reduce dependencies on import. If European undertakings are pushed out from the market through unfair competition, dependency on imports rises and uncertainties increase in other industries that are dependent on steel (energy transition, defense industry). It is important to create certainty for European producers and security of supply for downstream buyers.

## 2. Material Scope of the Rescue and Restructuring Guidelines

The questions in this section aim at assessing whether the current definition of Undertaking in Difficulty would need to be amended to address certain deficiencies raised previously by stakeholders.

### Background

For undertakings that meet the criteria to be defined as Undertakings in Difficulty, rescue and restructuring aid is in principle the only route available to grant State aid. This is because rescue and restructuring aid is among the most distortive types of State aid, as it interrupts the normal competitive process leading inefficient undertakings to exit the market. The Undertaking in Difficulty concept is thus of a horizontal relevance as it is

applied not only as an inclusion criterion in the Rescue and Restructuring Guidelines, but also as an exclusion criterion preventing companies from receiving aid under other guidelines.

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. Whether an undertaking fulfils this definition is assessed based on four quantitative criteria in the Rescue and Restructuring Guidelines ((i) the loss of more than half of the subscribed capital in case of limited liability companies, (ii) the loss of more than half of the book capital for companies with at least some members with unlimited liability, (iii) undertakings under collective insolvency proceedings or fulfilling the criteria for being placed in collective insolvency proceedings at the request of its creditors, (iv) undertakings that are not SMEs with a book debt to equity ratio above 7.5 and an EBITDA interest coverage ratio below 1.0 for the past 2 years).

### **Start-ups and scale-ups**

The Rescue and Restructuring Guidelines provide that an SME that has been in existence for less than three years will not be considered to be in difficulty unless it is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

However, in recent years it has come to the Commission's attention that the quantitative criteria of the Undertaking in Difficulty definition may have the effect of qualifying certain start-ups or scale-ups that have a specific capital-intensive growth model and that have not yet had the time to achieve Balance Sheet growth as Undertaking in Difficulty. Although those undertakings would not be condemned to going out of business in the short or medium term, and thus barring them from receiving other forms of State aid.

The Commission reminds that the following questions concern the Undertaking in Difficulty definition of the Rescue and Restructuring Guidelines and of all other State aid rules using that term. The General Block Exemption Regulation (EU) 651/2014 ("GBER") includes also a definition for Undertakings in Difficulty in Article 2(18) of the GBER. Aid to undertakings that fulfil the definition set out in Article 2(18) of the GBER can, in principle, not be block exempted (Article 1(4)(c)) GBER). The Undertaking in Difficulty definition of the Rescue and Restructuring Guidelines does not concern the GBER, hence no potential change to the definition in the Rescue and Restructuring Guidelines will impact the possibility of undertakings concerned to receive aid that has been block exempted.

### *Question 6*

In your experience, is the current exemption for SMEs that have been in existence for less than three years sufficient to allow start-ups to benefit from other forms of aid?

- ☐ Yes
- ☒ No
- ☐ I do not know / no opinion

## Please justify your answer:

2000 character(s) maximum

The current exemption for SMEs is not sufficient to allow start-ups to benefit from other forms of aid. However, it is important that young SMEs, such as start-up or scale-up companies, especially in (deeptech) innovation, founded in the past 10 years (Young Innovative Companies: YIC), can benefit from aid because of the fundamental role of these undertakings in the transition to a green industry and open strategic autonomy in Europe. Investing in YICs is essential for innovation in these areas.

Currently, the exemption limits aid in the following way. YICs in general face a start-up investment period of R&D of 3 to 7 years, followed by a scale-up investment period of 5-7 years. It generally takes 8 to 10 years before the scale up of production is in line with market demand. This results in substantial negative operational cashflows. To sustain itself, the undertaking attracts funding by investors during this period through multiple funding rounds (SEED, A, B, etc.). Most of these loans are hybrid: the loan has the characteristic that it can be converted into shareholders capital in time.

R&D investments often result in accumulated negative reserves that reach higher than 50% of the shareholders capital plus the share premium reserves. This results in an UiD-qualification under the current criteria, which prevents the start- and scale-up receiving state funding. At the moment, it excludes 40 to 80% of the YICs applying for state funding in the Netherlands from receiving it. The Dutch authorities emphasize that state funding is an essential factor for successful innovation development. Absence thereof leads to innovation drain of these undertakings to more investment-ready economies.

## Question 7

If your answer to Question 6 was “no”, which of the following options would be sufficient to address the shortcomings:

|                                                                                                       | Yes                              | No                               | I do not know /<br>no opinion |
|-------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|-------------------------------|
| Extend the exemption period to five years                                                             | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>         |
| Exempt all undertakings that fulfil the definition of start-up laid down in Article 22(2) of the GBER | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>         |
| Extend the exemption period to ten years                                                              | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>         |

If the proposed extension period is not relevant, please provide a proposition and specify your industrial sector:

2000 character(s) maximum

The extension should not be limited to five years because YICs starts to decrease its accumulated negative reserves by expected positive results only after ten years or more. At this point, YIC generally are not making profit. A longer period of exemption is therefore needed

Others (please specify)

2000 character(s) maximum

Exempting all start-ups defined in the GBER would include a too broad category of companies, opening up the possibility to fund undertakings that do not have potential and are almost certainly condemned to go out of business in the short or medium term, because they are not secured by investments and not backed by investors. This amendment would therefore not be fit for purpose.

Please justify your answer:

2000 character(s) maximum

The current exemption should be extended to 10 years for SMEs that qualify as an YIC.

This amendment is fit for purpose because it aligns with the common interest to stimulate innovation while keeping harmful uses of state aid restricted by providing a strict definition of the category of undertakings that will be able to make use of this exception to YICs.

The definition of YIC should include:

SMEs founded in the past 10 years, investing in (expensive complex technological) innovations, with a horizon of introduction on the public market.

It is important to realize that in some sectors, such as Deeptech and Life Science & Health, extending the exemption to ten years could still be problematic, because of its long-term development window (>10 years) and an capital intensive nature resulting in above average high negative results in start- and scale up phase.

### Question 8

Under the current rules, scale-ups fall under the definition of an Undertaking in Difficulty which prevents them from receiving aid under other State aid rules. In your view, is this specific scale-ups situation justified?

- ☐ Yes
- ☒ No
- ☐ I do not know / no opinion

Please justify your answer:

2000 character(s) maximum

During the scale up period, undertakings test scaling up their business model before engaging in full market introduction. This period takes (average) 5 to 7 years and requires a considerable amount of investment. Only after this, the level of production has reached market demand and the scale-up starts to make positive returns. Before that, the undertaking already knows severe cash out financed by investors (could be issued shares and /or convertible loans). These forms of invested external capital, can be characterized as commitment by investors as well as investors acknowledgement of the perceived market potential of the product in development during the start up fase. The capability of the start- scale up to attract funding, still determines its continuity perspective regardless of the form in which the funding is raised (see Question 7). First, allowing specific types of external funding to be classified as 'own funds'. This classification should at least include 'near-equity' capital (such as subordinated or convertible loans) as own funds (see Question 12). Secondly, an

exception should be introduced for SME's, permitting them to exceed the current threshold by allowing situations where more than 70% of its subscribed share capital may be lost as a result of accumulated losses. The existing 50% threshold does not correspond with the financial realities commonly faced by start- and scale-ups. The threshold ensures a low but acceptable solvency ratio appropriate for SMEs. This exception maintains the requirement to have a positive balance sheet position for the total equity amount. The threshold of 70% creates the opportunity to better align conversion periods on convertible bonds. This means that the SME, in collaboration with the investor, has the opportunity to anticipate to the subsidy requirements in the loan agreement (see similar EC approach in the financial capacity assessment of tenders (see the Financial capacity self-check in the EU Funding Portal)).

### Question 9

In your view, what would be the impact of an exemption of start-ups and/or scale-ups from the definition of Undertaking in Difficulty on the administrative burden and costs for authorities?

|                                                                       | Yes                              | No                    | I do not know / no opinion       |
|-----------------------------------------------------------------------|----------------------------------|-----------------------|----------------------------------|
| It would decrease the administrative burden with respect to start-ups | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| It would decrease the administrative burden with respect to scale-ups | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| It would not decrease the administrative burden                       | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |

Please justify your answer:

2000 character(s) maximum

In case of total exemption of start- and scale-ups from the definition of UiD, the administrative burden would decrease substantially. However, the Dutch Authorities are not in favor of this proposal because it is not targeted and not fit for purpose for the reasons given under Question 7 b.

### Question 10

In your view, what would be the impact of exempting start-ups and/or scale-ups from the definition of Undertaking in Difficulty on competition between undertakings within the internal market and the competitiveness of the EU economy in a global context?

|                                    | Yes                              | No                    | I do not know / no opinion |
|------------------------------------|----------------------------------|-----------------------|----------------------------|
| Increase competition within the EU | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>      |
| Increase Competitiveness of the EU | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>      |
| Increase both                      | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>      |

|                                    |                       |                                  |                       |
|------------------------------------|-----------------------|----------------------------------|-----------------------|
| Decrease competition within the EU | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Decrease Competitiveness of the EU | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Decrease both                      | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please justify your answer:

2000 character(s) maximum

The start- and scale-ups targeted in this questionnaire are not companies that are in real financial difficulty. Current investment practices have evolved and the legislation is not up to date. Successfully attracting external funding is often a strong indicator of the economic potential of a start-up or scale-up. Furthermore, investors use specific risk analysis methods which are more thorough than the UiD criteria test. Research shows investor support is a strong determining factor in the continuity perspective in the start- and scale-up. Therefore, aiding these companies does not create market disruptions because they keep non-competitive undertakings afloat. To the contrary, it increases competition because state aid can provide an extra impulse for companies to settle in the EU and be innovative. Supporting start-ups and scale-ups is also crucial in order to enhance the EU economy in a global context and secure fair competition in the future. Innovative companies are the basis for the autonomy of the EU and EU global competition.

### The definition of “own funds”

The term “own funds” (which represents a literal translation of the French term “fonds propres” into English) is used in the definition of Undertaking in Difficulty and serves as a benchmark against which accumulated losses of a limited liability company must be evaluated, in order to establish whether such a company is in difficulty. That term is not defined in the Rescue and Restructuring Guidelines, which may create in some language versions of the Guidelines confusion as to which parts of a company’s equity and which financial instruments are covered by the term “own funds”.

### Question 11

In your opinion, does the term “own funds” need to be further clarified?

- ☒ Yes
- ☐ No
- ☐ I do not know / no opinion

Please justify your answer:

2000 character(s) maximum

The term ‘own funds’ instead of ‘equity’ causes confusion and therefore needs to be clarified. Furthermore, various forms of external funding are, according to Dutch jurisprudence on the GBER definition, not classified as ‘own funds’ (‘eigen vermogen’ in Dutch, which translates to equity) (Paragraph 20, subsection a, of the guidelines and see judgment of April 2024 the Court of Appeal for trade and industry (College van Beroep voor het Bedrijfsleven, which is the highest administrative Court of Appeal in The Netherlands for administrative law

concerning economic instruments), ruled that 'eigen vermogen' in the GBER definition should be interpreted uniformly and independently and therefore according to Directive 2013/34/EU. Please see point 8.2 and 8.3 of the judgement: ECLI:NL:CBB:2024:289, College van Beroep voor het bedrijfsleven, 22/2178)) and, therefore, negatively impact the UiD assessment. This is illogical, as successfully attracting external funding in most cases is a strong indicator of the economic potential of a start-up or scale-up. According to the Dutch Authorities, the term "own funds" is preferred over "equity" as "equity" has a specific meaning in the Dutch financial administration practice, while "own funds" is a more general term, that the EC should define in the guidelines.

## Question 12

If your answer to Question 11 was "yes", what would, in your opinion, be the necessary clarification of the term "own funds"?

*2000 character(s) maximum*

The Dutch government proposes the following three types of external funding to be included as 'own funds' in the definition of UiD: 1) subordinated loans  
2) convertible loans  
3) loans provided by national and European (semi-)governmental institutions, such as InvestNL and the European Investment Bank.

The Dutch government also proposes two conditions to these types of external funding.

Firstly, the (remaining) duration of the loan must be at least equal to the duration of the period over which aid is given.

Secondly, the loan may not be withdrawn during the project period. In this way, the loan will take on the character of (semi) permanent capital (commitment), thereby ensuring the realization of the project for which aid is granted.

If a loan is withdrawn during the project period, it should be reassessed whether the undertaking would qualify as an UiD. In case an undertaking would classify as an UiD, it should be treated as such, meaning that the provided state aid must be recovered

Please justify your answer:

*2000 character(s) maximum*

The reasoning behind our proposal to add these three forms of external funding, lies primarily in the characteristic of the loans as 'near-equity' due to the absence of solid collateral for the loan (commitment) and in the thorough risk assessment on the SME's continuity perspectives, conducted by investors prior to their investment. These continuity assessments are performed on a professional level, given the risk of default and low collateral coverage on the loan.

A positive outcome of the continuity assessment is decisive for the provision of risk financing, similar to what the UiD test aims to determine in the public domain. Following these market practices and including these forms in the definition of "own funds" is a necessary and fit for purpose solution to the problem of false qualification of innovative undertakings as UiD's.

## Question 13

In your opinion, using “equity” instead of “own funds” would contribute to simplifying the assessment of this criterion, given that a company’s equity is readily available from its balance sheet?

- ☒ Yes
- ☐ No
- ☐ I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

This would exclude different interpretations, but would be too limited as a definition (see question 11). The Dutch authorities prefer a specific definition of ‘own funds’.

### **Other comments on the definition of Undertaking in Difficulty**

#### *Question 14*

Do you have any other comments concerning the definition of Undertaking in Difficulty for the purposes of the Rescue and Restructuring Guidelines or other State aid rules.

- ☒ Yes
- ☐ No

If yes, please elaborate:

*2000 character(s) maximum*

The Dutch authorities would welcome a clarification in the definition in GBER and other guidelines than these guidelines that UiD should only be assessed at the level of the group an aid applicant belongs to (if any). In a judgement of December 2024, the Court of Appeal for trade and industry (College van Beroep voor het Bedrijfsleven, which is the highest administrative Court of Appeal in The Netherlands for administrative law concerning economic instruments), ruled that the requirement of UiD only applies on the level of the (international) group to which the aid applicant belongs and not both at the level of the group and the aid applicant. Please see point 6 and further of the judgment: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:CBB:2024:923&showbutton=true&keyword=tvI&idx=2>.

The Dutch authorities are aware that this is not in line with the point of view of the EC (as follows from state aid wiki entries and bilateral contacts with the EC, which were shared with the Court with consent of the Commission services). However, the Dutch authorities consider that, as the Court concluded, the point of view of the Commission is not supported by the text of the GBER itself and is not in line with the notion of ‘one single undertaking’. The Netherlands would welcome if the EC clarified this in GBER. It is important to note that the situation is not entirely similar when the definition is used for the purposes of the guidelines of rescue and restructuring aid as in that case aid for large undertakings is the exception and arbitrary allocation of costs within the group should be avoided. In case of application in GBER the situation is opposite because if the undertaking

### 3. Additional information

---

#### Question 15

Do you want to raise any other points which may be relevant for the revision of the Rescue and Restructuring Guidelines?

- ☒ Yes  
☐ No

If yes, please elaborate:

*2000 character(s) maximum*

The Dutch authorities believe this revision should be adopted and take effect as soon as possible, preferably at the start of 2026. Implementation in GBER is also very urgent. Delaying the new rules would deny innovative companies a fair assessment and erode start-up confidence in the member states' business climate. Implementing the changes early 2026 provides a clear, harmonised basis for aid.

#### **Additional documents**

If you want to share any document (e.g. data, research paper, position paper, etc.) that may be relevant for the revision of the Rescue and Restructuring Guidelines, please upload it here. Please make sure not to include any personal data in the file you upload if you wish to remain anonymous.

**Please upload your file(s)**

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

**Please upload your file(s)**

Only files of the type xls,xlsx,ods are allowed

#### **Contact**

COMP-R-R-GUIDELINES@ec.europa.eu

