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17 July 2019

On behalf of the Public Affairs Executive (PAE) of the EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY

Response to the European Commission consultation
"2012 State aid modernisation package, railways guidelines and short-term export credit insurance - fitness check"

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General Remarks

Invest Europe appreciates the opportunity to respond to the European Commission's consultation *"2012 State aid modernisation package, railways guidelines and short-term export credit insurance - fitness check"*. For many years, Invest Europe has been an engaged interlocutor on this important issue with the European Commission.

In 2018, 86% of the over €80bn total amount invested in European companies by private equity and venture capital was received by SMEs. Therefore, we care deeply about creating the right environment for European companies to flourish. Creating a competitive and investment friendly eco-system, including through a robust State aid framework is an important cornerstone in this regard.

We previously responded to European Commission consultations dealing with State aid matters: (a) in June 2013 and February 2014, when the European Commission requested stakeholder views on the General Block Exemption Regulation (hereafter, "the GBER"); and (ii) in September 2013 as well as October 2014, when the European Commission consulted on the revision of the guidelines on State aid to support SME access to risk capital.

In responding to this consultation, we reiterate our support for the flexibility reflected overall in the two State aid frameworks relevant to our industry, namely the GBER and the Risk Finance Guidelines. We restate the view that the revision of both frameworks has addressed some of the key issues hindering investment in SMEs and innovative enterprises more broadly. In the context of the GBER, the increased notification thresholds and aid intensities as well as the extension of the eligibility timeframe have been helpful. Equally, the enlarged scope of the revised Risk Finance Guidelines has been a constructive change.

However, while these revisions have been helpful in reducing some of the administrative burdens on our members, we believe there is still further to go to make these rules truly effective. We have identified and highlighted in this consultation several specific issues as well as more general points which were brought to our attention by our members. We feel strongly that any revision of the GBER and Risk Finance Guidelines should address those remaining obstacles to further enhance and strengthen both frameworks, ensuring improved access to financing and support of innovation across the EU, not least in the context of increasing competition with third country jurisdictions.

In particular, we would like to draw attention to the following key issues:

- **Eligible SMEs**

  We reiterate our support for the additional flexibility introduced in the definition of eligible SMEs in Article 21(5) of the GBER. In particular, we believe that the increase from five years to seven years in the time period determined in subparagraph (b) was a step towards a time scale which reflects more adequately the realities of the early lifecycle of many businesses. However, we do believe that even with this welcome increase, the timeframe identified remains more suitable for some sectors while it presents an important eligibility hurdle for others.

Importantly, venture capital funds do not invest solely to start a new company: the needs of SMEs for investment are diverse and long-term and go far beyond simply obtaining seed or start-up investment. It is thus important, also to allow medium-sized enterprises to be able to access finance to continue to grow and develop. All SMEs (not just start-up companies) need to be able to attract investors directly. Access to the sort of financial investment and business support provided by venture capital funds is needed throughout the life of a growing company, not just in the early years, if that business is to achieve sustainable growth over the long-term.

Growth takes time and is a continuous process, not an end point. An SME is as likely to encounter a transformational growth opportunity or an acceleration of its business activity which requires significant financing after seven years following their first commercial sale, as it is in its start-up phase. Managing the growth of a business is one of the hardest challenges a management team faces. The seven-year-old company may face the same constraints - in terms of market failure, funding issue, lack of collateral - as an SME which has just entered a market and made its first sale.

We believe that if a general extension beyond seven years is seen as difficult, a different period, e.g. conceivably an extension to 10-12 years, could be provided for in relation to certain sectors where a longer investment timeframe is justified. This could be based on a set of principles for assessing whether a sector/business activity was eligible for the longer period, possibly in combination with a "white list" of sectors/business activities which were generally considered to meet those criteria (to provide additional certainty).

- **Follow-on investments**

The inclusion of follow-on investments in the scope of the GBER was a welcome development. However, we continue to have concerns with one of the conditions suggested for a follow-on investment to qualify, more specifically the condition that the follow-on investments should be “foreseen in the original business plan”. We consider the reference to the business plan to be inappropriate in this context. Although the business plan at the time of the initial investment made by a venture fund will provide important information about the anticipated development of an undertaking, business plans are constantly revised and refined as the business and the markets in which it operates evolve. While with venture investing there is almost always an intention, and indeed an expectation that, to achieve the stage of development for which the investment has initially been made, a further injection of capital (of an amount and for a purpose which is broadly identified) will be required, the exact timing, amount and specific purpose of this further investment can and will evolve over time as the business grapples with the reality of the market it faces.

We would also like to highlight the fact that the existing condition is unsatisfactory because it tends to reward businesses which produce rather vague, broadly drafted business plans, whilst unfairly penalising firms which have (often for good business reasons) attempted to be more specific in their planning. The former will generally find it easier to take advantage of the follow-on investment provisions, whereas the latter may be unable to do so, purely because of the way their original business plan was drafted.

For those reasons, we question whether the discussed condition is practical and realistic. If the condition cannot be removed from the GBER in its entirety, we would encourage its replacement with a more flexible concept which nevertheless requires there to be some link between the new investment and the original investment.

- **Private sector participation**

We do appreciate the nuanced approach to minimum private sector participation in the GBER. The requirements vary from one stage to another (from 10% up to 60% depending on the characteristics of the SME which receives the financing). We do, however, question whether a lower threshold for follow-on investments could be beneficial (50% might be an appropriate level), also recognising the points made above regarding the different nature and funding needs of some sectors which are often highly innovative, but also have higher risk profiles.

- **Notification thresholds**

Some of our members have suggested that by broadening the scope of the GBER, e.g. by raising the notification threshold, the EU could extent the positive effect on financing provided by the simplification and legal certainty embedded in the GBER regime. Broadening the scope of the GBER could equally help to further enhance the European Commission's ability to concentrate its scrutiny on those aid measures, which are most likely to distort competition and improve the ex-post monitoring of measures exempted from notification under the GBER regime.

At the same time, lowering the minimum thresholds for private participation in risk finance measures (Article 21, paragraph 10 of the GBER) from 60% to 50% could be another adjustment that could be favourable in terms of SMEs' access to finance.

- **Definition – 'First loss piece'**

We have concerns about the differing terminology used in the GBER and Risk Finance Guidelines for the most junior risk tranche that carries the highest risk of loss. We suggest that the definition and terminology of 'first loss piece' (Article 2.3 (52), xii), included in the Risk Finance Guidelines, should also be applied in the GBER to ensure consistency and facilitate understanding. Please see also our comment in response to Question 1.1.

- **Replacement Capital**

We would also like to highlight issues relating to replacement capital as set out in the Risk Finance Guidelines (and therefore the GBER) with respect to risk finance aid to SMEs, which are at odds with its broader policy objectives of overcoming market failures in SME finance, and encouraging SME job creation. A company is constantly evolving; many grow, some shrink, but as they change, so do their finance needs develop and alter, and different forms of finance help them to reach new stages of development. Restrictions on replacement capital can not only distort the natural activities of a company, but go even further, by potentially removing part of the financing chain.

Finally, we would like to emphasise the importance of ensuring that any review of the current rules protects the achievements from the previous revision and thereby the viability of companies, mainly SMEs, to obtain public assistance through State aid mechanisms alongside financing from venture capital.

We stand ready to provide further input as required and look forward to the opportunity to play a constructive role in the further development of an effective State aid framework in the EU.

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Consultation response

Effectiveness

Have the objectives been met?

Question 1

Based on your experience, has the State aid modernization package led to clearer rules?

Invest Europe response

	Yes	Partially	I do not know	These rules are not relevant for me
General Block Exemption Regulation		X		
Risk Finance Guidelines	X			

Question 1.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

Definition - First loss piece

While we do believe that both the revised GBER and Risk Finance Guidelines have broadly met their objectives in delivering clearer rules, we would like to highlight a specific terminology issue in the context of the GBER that we think would merit further clarification.

Article 21 (13) of the GBER states that

'in the case of asymmetric loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at 25% of the total investment'.

As the term 'first loss' is somewhat unknown in our industry and is thus often (mis-)understood as any loss encountered for the first time, e.g. on the first exited investment.

The term is more commonly used in the insurance sector and refers to a subordinate tranche that takes the loss first. The Risk Finance Guidelines provide greater clarity, using the term 'first loss piece' using the following definition (Article 2.3 (52), item xii):

'first loss piece' means the most junior risk tranche that carries the highest risk of losses, comprising the expected losses of the target portfolio.

To enhance clarity and consistency, we suggest that both frameworks should apply the term 'first loss piece' and that the current definition included in the Risk Finance Guidelines should be added to the Definitions of the GBER and used in Article 21 (13).

Definition - quasi equity investment

'Quasi-equity investment' is defined under the GBER as "*a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default*".

Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity; if an investment is provided as mezzanine debt as per regulation in force it should be unsecured. From the point of investors, they would prefer that the debt would be secured by assets of the portfolio company. The recommendation would be to change the condition from an imperative requirement to provide unsecured mezzanine debt to permission for fund managers to take security when appropriate.

We believe that such a condition would allow venture capital funds providing mezzanine loans to raise funds more easily.

Question 1.2

Which specific areas still remain unclear / could be clarified to improve the implementation?

Invest Europe response

While the rules of both respective frameworks are largely seen as clear by our members (except for our comment under point 1.1), if and where ambiguity arises the cause is seen in the national interpretation of EU rules. It may therefore be worth considering further efforts to support/train Member State officials with a view to promoting consistent application of the GBER.

Question 2

Based on your experience, did the factors below facilitate the compliance with the State aid rules by Member States?

Invest Europe response

	Yes	Partially	I do not know	These rules are not relevant for me
Clear definition of the scope of the rules by excluding sectors or types of aid and clear definitions of those sectors and types of aid that are excluded	X			
Clear definition of the scope of the rules by explaining the overlaps between the different rules		X		
Common principles to assess the compatibility of the State aid measures	X			
Clear rules to identify the need for State intervention	X			
Clear rules to identify the incentive effect of the aid measure	X			
Clear rules to ensure that the aid is limited to the minimum necessary	X			
Clear rules to identify the distortive effects of the aid measure	X			

Publication of aid awards above EUR 500,000 on a public webpage	X			
Evaluation of novel or large schemes with budgets above EUR 150 million				X
Clear and simplified definition of a company in difficulty				X
Simplified rules for projects that are financed with EU funds (including structural funds)		X		
Simplified rules for SMEs				X

Question 2.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

Clear and concise State aid rules are essential for ensuring smooth implementation and compliance. This includes thoroughly defined eligibility criteria for companies and investments, so that SMEs can confidently and cost-efficiently manage the process and take further advice as required.

In the experience of our members, scope and the interplay between State aid rules and EU funds / structural funds rules have given rise to concerns and difficulties, thereby restricting the reach and scope of the projects envisaged.

For instance, under Article 70 (1) of the Common Provisions Regulation, the general rule is that operations supported by the European structural and investment (ESI) funds should be located in the programme area.

The European Commission guidance moreover recommends that to ensure the effectiveness of the support delivered under a programme, the investment by the final recipient for which the support was provided should be located in the relevant Member State and in the geographical area of the ESI fund programme. This kind of geographic restriction, as lowest denominator, will affect projects which combine ESI funds and State aid.

Risk finance rules do not include conditions related to the place of economic activity of a company supported once an investment is made. Certainly, the objectives of structural funds rules should not penalise successful companies which may consider cross-border relocation of activities and attempt to grow and expand beyond their domestic market (for instance, in a smaller Member State, this interplay has proven problematic).

It would therefore be helpful to clarify in relevant EU guidance and/or legislation that for the purpose of risk finance, conditions related to the location and place of economic activity of portfolio company should be assessed only at the moment of the investment.

More generally, cumulation aspects still raise a few questions for our members. For instance, Risk Finance rules typically allow the combination of different types of instruments to support a given company (for example, a mix of equity and guarantee). However, other rules (e.g. structural funds rules) do not allow two types of supporting measures for the same activity, which can prove a source of constraint when structuring financing.

Question 2.2

Please mention any other factors that led EU Member States to being more compliant with the State aid rules.

Invest Europe response

N/A

Question 3

Based on your experience, since 2014 has the Commission focused its scrutiny on cases having a significant impact on the internal market?

3.1. For the State aid modernisation as a whole

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Invest Europe response

Question 3.1. For the State aid modernisation as a whole	
Yes	
Partially	
No	
I do not know	X

Question 3.1.1

Please explain.

Invest Europe response

While we do not know whether the State aid modernisation as a whole has enabled the European Commission to focus its scrutiny on cases having significant impact on the internal market, we are equally not aware of any cases where it was felt that SME aid had received unjustified scrutiny.

Question 3.2

Have the scope and notification thresholds for the following types of aids allowed the Commission to focus its scrutiny on cases with a significant impact on the internal market?

Invest Europe response

	Yes	Partially	No	I do not know	These rules are not relevant for me
Scope and notification thresholds under the General Block Exemption Regulation (in general)				X	

Scope and notification thresholds for aid for SME access to finance				X	

Question 3.2.1.

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

As an industry association, we think that we are not best placed to comment on whether this allowed the European Commission to focus its scrutiny on cases with a significant impact on the internal market. However, as also pointed out in our response to question 3.1.1, we are equally unaware of any issues concerning unjustified scrutiny.

Question 4

Based on your experience, have the State aid rules reduced the risk of subsidy races in the EU? For example, by setting maximum ceilings for public support, by laying down the conditions at EU level to grant public support, or by increasing the transparency of public support.

Invest Europe response

	Yes	Partially	No	I do not know	These rules are not relevant for me
Rules for the categories of aid covered by the General Block Exemption Regulation				X	
Rules for aid for access to finance for SMEs				X	

Question 4.1
Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

N/A

Question 5
Based on your experience, to what extent have the State aid rules achieved the objectives listed below while maintaining a competitive internal market?

Invest Europe response

5. 1 Rules for lower amounts of aid under GBER				
Objectives	**To a large extent**	**To some extent**	**Not at all**	**I do not know**
Simplification of rules	X			
Maintaining a competitive internal market	X			

5.6 Access to finance for SMEs				
Objectives	**To a large extent**	**To some extent**	**Not at all**	**I do not know**
Facilitate the access to finance for SMEs		X		
Maintaining a competitive internal market	X			

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Question 5.1.2 / 5.6.2 What are the obstacles to achieving the objectives?

Invest Europe response

We believe that the objectives have been mostly achieved. That said, access to finance for SMEs is still to some degree hindered today due to the SME definition and concept of "linked enterprises" as defined under Article 3 of the Annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

The current provisions in Article 3.3 ultimately lead to situations where all companies in which a venture capital fund will have invested are treated as "linked enterprises", and all will as a result fail to qualify as SMEs. In other cases, due to the uncertainty caused by the current definitions, companies backed by private equity which could claim the SME status are not able to do so.

Our industry thus calls for additional flexibility in how these definitions are implemented. Further flexibility should be recognized in the application of the 25% threshold when the SME invested in is backed by a venture capital fund. You can find further information on this in our response to the European Commission Inception Impact Assessment on the revision of the EU SME definition.

Question 6 Based on your experience, have the State aid modernisation or the State aid rules under evaluation had any positive or negative impacts that were not expected or not intended? Please explain and reference the rules in question.

Invest Europe response

We are not aware of any unintended consequences of either the GBER or Risk Finance Guidelines.

Question 7 Since mid-2016, the details of all individual State aid awards above €500,000 are published on a public website. (7.1) Did the publication of individual awards above €500,000 contribute to reaching the following objectives?

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Invest Europe response

Objectives	To a large extent	To some extent	Not at all	I do not know
To promote accountability and enable citizens to be better informed about public policies and spending				X
To enable companies to check whether legal aid was granted to competitors		X		
To reduce the administrative burden of Member States as regards reporting to the Commission State aid expenditure				X

Question 7.1.1

Please explain.

Invest Europe response

While we believe that the publication of awards above €500.000 has contributed to ensuring greater transparency, the ability to monitor and track such information depends to a certain degree on the size of entities.

It is unlikely that an SME has the same organizational resources to check whether aid was granted to competitors, as compared to a larger organization, which may have a dedicated department or function to do so.

Question 7.2

Is the €500,000 threshold appropriate to achieve the desired objectives listed above?

Invest Europe response

Yes	
No, it is too high	
No, it is too low	
I do not know / no opinion	X

Question 7.2.1

Please explain.

Invest Europe response

While we appreciate that the threshold needs to strike a balance between keeping administrative burdens minimal and capturing significant State aid expenditure in the interest of transparency and accountability, some of our members have pointed out that the threshold may be more suitable for larger Member States, whereas in smaller jurisdictions individual State aid awards may often be below the reporting threshold.

Question 8

Since mid-2014, the largest (annual average budget above €150 million) State aid schemes are subject to ex-post evaluation studies to assess their effectiveness. Do you think that this threshold is appropriate?

Invest Europe response

Yes	
No, it is too high	
No, it is too low	
I do not know / no opinion	X

Question 8.1 Please explain.

Invest Europe response

N/A

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Efficiency

Were the costs involved proportionate to the benefits?

Question 9

Based on your experience, to what extent have the following State aid rules ensured efficient State expenditure?

Invest Europe response

	To a large extent	To some extent only	Not at all	I do not know	These rules are not relevant for me
General Block Exemption Regulation		X			
Risk Finance Guidelines				X	

Question 9.1

Please explain especially where you answered not at all or to some extent and reference the respective rules.

Invest Europe response

Some of our members have shared concerns regarding the speed of implementation of State aid rules, resulting in significant delays between the initiating of reforms and the actual implementation. For instance, in France, a specific tax incentive regime, provided for corporate venture under Article 217 octies of the *Code général des impôts*, initially foreseen in 2013, was only implemented in 2016 with significant delays. Incidentally, this has negatively impacted the amount of aid and of investment mobilised in the meantime.

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Question 10

Based on your experience, have the State aid rules subject to the current Fitness check reduced the administrative burden compared to the State aid rules in force before the State aid modernisation?

Invest Europe response

	Yes	Partially	No	I do not know	These rules are not relevant for me
For the public authorities				X	
For the beneficiaries	X				

Question 10.1

Please explain especially where you answered not at all or to some extent and reference the respective rules.

Invest Europe response

While we do not feel that we can comment on the impact on public authorities, feedback received from our members indicates that the modernization of both the GBER and Risk Finance Guidelines have reduced some of the administrative burdens for beneficiaries who did not have adequate access to financing.

By way of example, State aid in Denmark received by Danish SMEs has increased significantly since the revision of both frameworks. According to the European Commission's State aid Scoreboard 2018, total State aid spending for SMEs (including risk capital) was only €1.6 million in 2012. This amount increased to €4.9 million in the subsequent year, followed by €33 million in 2014. The latest data available for 2018 shows that the amount remains high at €29.2 million. Of course, this is only indicative and other factors may have played a role, but at the same time, we believe that the revision of both frameworks contributed to this notable increase.

Relevance

Is EU action still necessary?

Question 11

Based on your experience, how well do the objectives of State aid modernisation and of individual State aid rules still correspond to the current EU priorities?

11.1 On the State aid modernisation as a whole.

Invest Europe response

Fully	X
Partially	
Not at all	
I do not know	

Question 11.1.1

Please explain.

Invest Europe response

We believe that the objectives of State aid modernization in the context of the GBER and Risk Finance Guidelines, continue to correspond well with the EU priorities.

Developing a strong vibrant economic base was identified as a key strategic objective by EU leaders during the June 2019 summit. We particularly note the emphasis on the importance of public and private investment in this regard:

'Investing in our future also means encouraging and supporting public and private investment, including in infrastructure, to finance the growth of our economy and our businesses, including SMEs.' (European Council - A new strategic agenda 2019-2024)

We believe that a dynamic and practical State aid framework, and the GBER as well as the Risk Finance Guidelines more specifically, are key to delivering on this objective and we hope that some of the points raised in our response may help to even further improve the current frameworks.

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While the modernisation of the GBER and Risk Finance Guidelines has contributed positively to addressing financing needs, challenges for intermediaries in providing risk finance to SMEs remain.

Some of our members have suggested that by broadening the scope of the GBER, e.g. by raising the notification threshold, the EU could extend the positive effect on financing provided by the simplification and legal certainty embedded in the GBER regime. Broadening the scope of the GBER could equally help to further enhance the European Commission's ability to concentrate its scrutiny on those aid measures which are most likely to distort competition and improve the ex-post monitoring of measures exempted from notification under the GBER regime.

At the same time, lowering the minimum thresholds for private participation in risk finance measures (Article 21, paragraph 10 of the GBER) of 60% to 50 % could be another adjustment that could be favourable in terms of SMEs' access to finance.

Question 11.2

On the individual rules.

Invest Europe response

	Fully	Partially	Not at all	I do not know	These rules are not relevant for me
General Block Exemption Regulation	X				
Risk Finance Guidelines	X				

Question 11.2.1

Please explain especially where you answered no or partially and specify which rules you refer to.

Invest Europe response

N/A

Question 12

Based on your experience, how well adapted are the following State aid rules to recent developments in markets and technology?

Invest Europe response

	Fully	Partially	Not at all	I do not know	These rules are not relevant for me
General Block Exemption Regulation		X			
Risk Finance Guidelines		X			

Question 12.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

Please refer to our comments ‘Eligible SMEs’ and ‘Follow-on investments’ in our general remarks.

Coherence

Does the policy complement other actions or are there contradictions?

Question 13

Based on your experience, are the State aid rules subject to the current Fitness check coherent with each other?

Invest Europe response

Fully	
Partially	X
Not at all	
I do not know	

Question 13.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

We believe that the 'First loss piece' definition, included in the Risk Finance Guidelines should be added/applied in the GBER. Please see our detailed comment under Question 1.1.

Question 14

Based on your experience, to what extent are the State aid rules subject to the current Fitness check coherent with changes in EU legislation which have occurred since the State aid rules were adopted (such as for instance in the Cohesion and Regional policy, Research and Innovation, Energy Union and Climate, Environmental protection and Circular Economy, Entrepreneurship and SMEs, Capital Markets Union, Investment Plan for Europe)?

Invest Europe response

	Fully	Partially	Not at all	I do not know	These rules are not relevant for me
General Block Exemption Regulation	X				
Risk Finance Guidelines	X				

Question 14.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

We are not aware of any incoherencies between either the GBER or the Risk Finance Guidelines and other more recent changes in EU legislation. On the contrary, we do believe that the Capital Markets Union as well as the Investment Plan for Europe were drafted with similar aims in mind, i.e. ensuring sufficient and diverse funding (sources) for European enterprises.

EU added value

Did EU action provide clear added value?

Question 15

Based on your experience, have the State aid rules subject to the current Fitness check helped to deliver EU policies more efficiently?

Invest Europe response

Yes	
Partially	X
No	
I do not know	

Question 15.1

Please explain especially where you answered no or partially and please reference the rules in question.

Invest Europe response

As explicitly recalled by the Risk finance Guidelines, access to finance for SMEs is an objective of common interest underpinning the Europe 2020 strategy. This Europe 2020 strategy and the 'Innovation Union' flagship initiative aim at improving access to finance for research and innovation. The EU State aid framework should consider not only the EU dimension of the financing of innovation, but also the competing actors which are outside the EU and which do not face requirements related to State aid.

In this context, we note the recent Council conclusions on the EU industrial policy, which rightfully highlight the need for compliance with State aid control principles by third party jurisdictions to be properly addressed and enhanced, by agreeing or updating such rules and principles in dedicated competition agreements or other international agreements, such as trade agreements. In the meantime, and until a level-playing field is reached, the industry would welcome greater flexibility in the application and interpretation of the EU State aid framework.

Additional comments

Minimum private sector participation

We are aware of one case involving a publicly co-financed fund in a smaller Member State where the minimum private sector participation threshold of 10% has posed an obstacle which could not be cleared. At this stage, we cannot confirm whether this has been an isolated case or whether indeed the threshold constitutes a problematic hurdle more widely.

Combination of aid

It has also been brought to our attention that in one Member State the combination of GBER and Risk Finance Guidelines with rules linked to receiving additional structural funds was perceived as burdensome and that a greater alignment of different aid frameworks could be beneficial.

Eligible undertakings and undertakings in difficulty

The GBER and Risk Finance Guidelines provide for a derogation to the definition of undertakings in difficulty. Notably, SMEs within seven years from their first commercial sale that qualify for risk finance investments following due diligence by the selected financial intermediary will not be considered as undertakings in difficulty, unless they are subject to insolvency proceedings. This raises issues in certain sectors and markets, like life-science, where the product cycle is longer than for other companies. In that respect, the seven-year mark can prove inadequate, both for eligibility of company and potentially for the derogation related to undertakings in difficulty.

The industry would therefore call for the condition of Article 21 (5) b) of the GBER to be re-examined and to envisage further broadening the scope of eligible undertakings (cf. our general remarks) and adjusting accordingly the exception regarding undertakings in difficulty.

Contact

Thank you in advance for taking our comments into account as part of the consultation process. We would be more than happy to further discuss any of the comments made in this document.

For further information, please contact Simon Tosserams (simon.tosserams@investeurope.eu) at Invest Europe.

About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 23 employees in Brussels, Belgium.

For more information please visit www.investeurope.eu.