THE VOICE OF
PRIVATE CAPITAL
VENTURE CAPITAL
PRIVATE EQUITY
INFRASTRUCTURE
LONG TERM INVESTORS

Kerstin Jorna
Directorate General Growth
European Commission
Rue de la Loi, 200
1049 Brussels

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Dear Ms. Jorna,

The European businesses supported by the European private equity and venture capital industry are, as many others, suffering greatly from the economic shock caused by the Covid-19 pandemic. For many of these scale-ups, start-ups or larger companies, state support, either in the form of direct financial aid or through state guarantee to bank loans, will be necessary to endure in the next few weeks and months.

Companies backed by the fund managers we represent, a vast majority of them (around 85%) SMEs, are active in all sectors of the European economy, from ICT to biotech and healthcare, energy or transportation. Overall, between 2015 and 2019, our industry invested its capital and expertise in 26,335 businesses across Europe.

Of all those businesses, only a few were eligible to the state aid programmes in place before the Covid-19 crisis. We therefore welcomed the European Commission's decision on 19 March to set up a Temporary State Aid Framework allowing Member States to take the necessary steps in these exceptional circumstances to help all undertakings that are suffering from the effects of the crisis.

However, although authorised under the Temporary Framework to go beyond what is normally allowed under EU law, a vast majority of the EU Member States based their programmes on existing support mechanisms determined by the General Block Exemption Regulation (GBER). Many of them used in particular the definition of an "SME" (initially set in Recommendation 2033/361/EC) as a benchmark to determine which businesses should receive financial support in the current crisis. By using this definition, they excluded "linked enterprises", as defined in paragraphs 2 and 3 of Article 3 of the Annex to the SME Recommendation, from these programmes.

This means that, with the exception of a handful Member States where explicit clarity has been given, any companies in which a private equity or venture capital manager has a participation beyond a defined threshold are at this stage not entitled to benefit from state support, either because Member States directly referenced the SME definition or because credit institutions providing the loans restricted those to undertakings labelled as SMEs under EU law.

This is very unfortunate as thousands of businesses backed by venture capital and private equity that have or will be denied the support they needed to withstand the crisis, are also not in a position to rely on their fund manager (and other portfolio companies' success) in the way businesses part of a conglomerate could.

SMEs owned by venture capital and private equity indeed <u>do not</u>, as opposed to companies part of a trade group, benefit from:

- access to a central cash management
- a central shared liquidity plan
- shared services such as purchase, administration and legal advice

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Moreover, none of the companies part of a private equity fund portfolio operate with reference to each other, meaning that none of them can invest in each other and cash flow in one portfolio company cannot be used in another.

Even when the manager holds a dominant influence, the ownership of the private equity or venture capital manager also does not offer the SMEs similar advantage to the ones a parent company in a trade group would enjoy. Fund managers cannot for example transfer money (dividends/proceeds) from a performing company to a failing one and there is no element of unified management between portfolio companies. In many cases, a manager will also invest in a wide range of businesses, active in different sectors, as opposed to the general strategy that a group follows.

Most importantly, institutional investors' uncalled commitments into the fund are neither equivalent to cash reserves nor to credit lines, as the purpose of these commitments is to finance the growth and development of this company during the limited life of the closed-ended fund. When faced with unplanned liquidity issues, private equity and venture capital owned businesses operate as any other SMEs and will typically finance themselves through loans.

While the current definition of "linked enterprise" has been recognised in various occasions not to reflect the realities of private equity and venture capital investments, and not to take into consideration the fragility of the businesses these funds support, this has never been has harmful as of today, when many businesses, including a great deal of start-ups, are at the risk of disappearing if they are not in a position to be eligible to the existing support programmes, and where the EU definition of SME liable to result in uneven treatment of companies and distortions of competition.

In light of this, our associations urge DG Competition, in coordination with DG Growth, to issue a temporary statement clarifying that, when defining an SME for the purpose of the state aid programmes put forward in the context of the Covid-19 crisis, the relevant staff headcount and financial ceilings apply but no consideration should be given to Article 3 of the Annex to the SME Recommendation for businesses that are owned by venture capital and private equity managers. This statement would be in line with the spirit of the Recommendation, which aims to ensure that only those enterprises which really need support and advantages accruing to SMEs from the different rules or measures in their favour actually benefit from them, and would provide a breath of relief for businesses owned by private equity and venture capital funds, allowing them to apply for funding they would require to survive.

We of course remain at your disposal for more questions and will stand ready to give you additional details on the specificities of private equity and venture capital investments and on the needs of the businesses they support.

Your sincerely,

Eric de Montgolfier
Invest Europe Chief Executive

Martin Bresson
Invest Europe Public Affairs Director

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 25 employees in Brussels, Belgium.

For more information please visit www.investeurope.eu.