Olivier Guersent
Directorate General Competition
European Commission
Rue de la Loi, 200
1049 Brussels

28 April 2020

Dear Mr. Guersent,

The European start-ups, scale-ups and medium-sized businesses supported by the European private equity and venture capital industry are, like many others, impacted by the economic shock caused by the Covid-19 pandemic. Between 2015 and 2019, our industry invested capital and expertise in 26,335 businesses across Europe and most of these are or will be at risk of suffering as a result of the impact of coronavirus.

The Temporary State Aid Framework recently put forward by DG Competition provides that, in principle, businesses that were already in difficulty on 31 December 2019 are not eligible to support, whereas business which face difficulty purely as a result of the Covid-19 crisis should be eligible for the new programmes set up by Member States.

We fully agree that state aid should not be granted to businesses that are not otherwise viable. However, the Temporary framework refers to the notion of “undertakings in difficulty” (UIDs), as defined in point 18 of Article 2 of the General Block Exemption Regulation (GBER). This definition is raising concerns, particularly criteria (a) and (b) which include as UIDs companies whose accumulated losses are greater than half of their share capital. A wide range of companies, whether backed by our members or not, will fit this description despite not actually being in difficulty.

First, many high growth SMEs, such as scale-ups supported by venture and growth funds are still at a stage of their life where they are not yet making a profit despite having been in operation for a number of years. It is indeed not rare for businesses held by long-term funds such as venture and growth to still not be in profit after several years, as product - and business - development can easily take years before the business is fully effective and profitable.

Second, the current definition actually has the effect of excluding many, otherwise well-performing, businesses that predominantly rely either on equity which is treated as debt for accounting purposes, or on long-term debt financing, including shareholder loans. Managers of these businesses, as well as the credit institutions lending to them in the normal course of their activities, typically use EBITDA as a metric to determine whether these companies are viable and have a sound capital structure, something that cannot be achieved by solely looking at the accumulated losses criteria.

Criteria (a) and (b) also fail to take into account these businesses’ future outlook and the ability of the company to repay its debt when the fund manager sells its shareholding at the end of its holding period.

While these latter companies typically never require state aid and are thus not constrained by the GBER definition of UIDs, the very specific nature of the Covid-19 crisis will force many of them to request loans to address the liquidity issues they have to manage. In that context, we would ask the European Commission to ensure that the Temporary Framework truly serves its purpose of addressing, for all companies, sudden shortage or unavailability of liquidity.

We ask therefore the Commission to urgently clarify, in the upcoming amendment of the Temporary framework, that Member States should not strictly apply the whole definition of UIDs, but should focus only on points c) to e) of the GBER definition, for instance by listing these three criteria in the Temporary Framework, instead of using general references to the full GBER definition. These criteria would indeed be sufficient to capture undertakings which were truly in difficulty prior to 31 December 2019. Such an approach would avoid creating a situation where companies that are sound and viable in the long-term are not entitled to receive the same support as other businesses in a similar state simply because of their financing or ownership structure.

We are of course happy to discuss this in more details with you in the future and stay at your disposal if you have any further questions.

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.