

Invest Europe’s response to the Open Public Consultation on the General Block Exemption Regulation

This document addresses only the consultation questions for which answers have been provided

3. Objectives of the GBER and of the GBER revision

3.1. Objectives of the GBER

15. In its 2012 Communication on State aid modernisation, the Commission considered that the objectives of State aid modernisation were the promotion of growth, the prioritisation of enforcement on aid with the highest impact on the single market, and the simplification of the State aid rules. Do you consider that the implementation of the GBER has contributed to the achievement of these objectives?

	1 - No, not at all	2 - Yes, to a small extent	3 - Yes, to a large extent	4 - Yes, to a very large extent
Promotion of growth		X		
Prioritisation of enforcement on aid with the highest impact on the single market (“big on big, small on small”)		X		
Simplification of the State aid rules		X		

16. In your view, is the GBER well aligned with the following policy objectives?

	1 – Not at all	2 – To some extent	3 – To a large extent
Encouraging the green transition (including decarbonization)		X	
Fostering the digital transition		X	
Legal certainty (predictability and ease of understanding) for Member States and undertakings		X	
Promoting R&D and innovation		X	
Promoting the economic, social and territorial cohesion of Member States and the Union as a whole, as well as regional development of disadvantaged areas		X	
Promoting the uptake of private investment in the EU through de-risking		X	

Protecting a level playing field in the single market and minimising distortions of competition		X	
Strengthening the resilience of the EU economy against external shocks and dependency on third countries (including mining and processing of critical raw materials and growth of EU key strategic sectors referred to in the Competitiveness Compass)		X	
Supporting social protection measures		X	
Supporting the competitiveness of the EU		X	
Supporting the just transition		X	
The prioritisation of enforcement on the most distortive types of State aid, which should be notified to the Commission		X	

3.2. Objectives of the revision of the GBER

17. In your view, does the GBER adequately address the following issues?

	1. No	2. Yes, to a limited extent	3. Yes, to some extent	4. Yes, to a large extent
The reduction of the administrative burden of Member States and the Commission		X		
Improving the user-friendliness, readability, consistency and accessibility of the GBER		X		
Increasing the scope of the GBER to more aid measures			X	

Simplifying the compatibility conditions to block exempt more aid measures while keeping sufficient safeguards to avoid undue distortions			X	
Adapting the current text to take into account political, economic, technical and social changes			X	

18. Do you consider that the current GBER contributes sufficiently to achieving the objective of supporting the transition towards a climate neutral, clean and sustainable economy, in particular for SMEs? If not, please explain why. Please explain and provide examples.

Answer:

While Section 7 of the GBER (“Aid for environmental protection”) includes relevant provisions for green investment, the Regulation still requires targeted revisions to unlock private capital at scale and de-risk such investments. PE/VC funds are long-term investors in high-risk, high-impact companies, exactly the kind needed for the green transition. But the GBER does not yet provide completely a fit-for-purpose framework to that reflects how PE/VC-backed businesses grow or raise successive rounds of capital. The main barriers lie in Section 3 (“Aid for access to finance for SMEs”), particularly in how risk finance rules under Article 21 are structured. The asymmetric risk-sharing limits under Article 21(10)(b) caps first-loss absorption by public investors at 25%, which may be too low to crowd in private capital for high-risk, early-stage businesses. Follow-on investment rules in Article 21(4)(b) require advance mention in the original business plan, which is unrealistic in VC. Business plans evolve, and the need for follow-ons is standard but often not precisely forecasted. This penalizes companies with more conservative planning. Replacement capital restrictions (Article 21(7)) require at least 50% new capital per round, blocking legitimate investor exits, affecting fundraising flexibility, deterring early-stage participation, and weakening ecosystem liquidity. The EUR 15 million cap on total risk finance per undertaking (Article 21(8)) is also static. A reset after a fixed period (e.g. 2 years) would better reflect scale-up funding needs and enable continued, but proportionate, support. Last but not least, the definition of “independent private investor” (Article 2(72)) omits PE/VC funds, despite being key risk finance providers, creating structural uncertainty and limiting co-investment.

24. Do you consider that the current GBER contributes sufficiently to the competitiveness of the EU economy? If not, please explain why. Please explain and provide examples.

Answer:

The current design of the GBER undermines EU objectives by excluding many legitimate candidates for risk finance aid, failing to accommodate the features of private capital, and ultimately disincentivizing innovation. Beyond the risk finance issues raised in Question 18, the framework’s definitions of eligible beneficiaries are at times unrealistic, or so strict that certain provisions are rarely used.

First, under the SME definition (Annex I), firms backed by PE/VC funds are wrongly treated as part of a larger group, despite being operationally independent. The PE/VC model is built to nurture SMEs, not dominate them like a trade group parent.

Second, Article 21(3)(b)'s age-related thresholds does not sufficiently account for the non-linear nature of business growth. PE/VC-backed firms often scale gradually over several years, and across a multi-year investment horizon. The framework should reflect these real-world trajectories.

Third, the conditions under Article 21(3)(c) – aid eligibility if the firm needs >50% of average turnover as an initial investment for a new economic activity – are also rarely usable in practice. For revenue-generating SMEs, this implies a massive, often unrealistic injection, and business plans rarely span five years, while the definition of “new economic activity” is unclear.

Fourth, the definition of “undertakings in difficulty” (UID) (Article 2(18)) misclassifies viable growth-stage firms due to outdated balance sheet tests that ignore long-term investment structures and cash-flow dynamics.

Finally, the definition of “innovative enterprise” overlooks innovation in business models or services outside traditional R&D-intensive sectors, and ties companies to the EIC Seal of Excellence which, alone, is too restrictive, while additional recognition should be extended to companies (already or to be) supported by private market players such as VC.

25. Do you consider that the current GBER contributes sufficiently to improving the business environment (including access to finance) for SMEs, small mid-caps, startups and scale ups? Please explain in particular whether the possibility of benefitting from block exempted aid improves the business environment for SMEs, for example by facilitating or accelerating the completion of projects carried out by SMEs.

Answer:

The current design flaws restrict the ability of innovative businesses to secure timely public support, as many high-potential companies are excluded from risk finance support due to definitions and thresholds that don't reflect market realities – thus leaving out the most dynamic parts of the EU economy. Please see our response to Question 24.

27. Do you consider that the current GBER contributes sufficiently to promoting the uptake of private investment in the EU through de-risking? If not, please explain why.

Answer:

As Europe's innovation ecosystem matures, public investment tools must also evolve, becoming more agile and better aligned with private market practices. But this is not yet the case under the current GBER, which, at times, creates barriers rather than incentives, especially for early-stage and high-risk investments. Please see our response to Question 18.

4. Common compatibility conditions (Chapter I of the GBER)

4.3 Definitions

37. Article 2 of the GBER provides a list of definitions of certain terms or concepts. What is your position regarding the definitions laid down in the GBER?

	Answer
The current list of definitions is fine.	
Certain concepts should be defined while they currently are not.	
Certain definitions should be updated.	X
Certain definitions are unnecessary and should be deleted.	
Certain definitions rather constitute substantial compatibility conditions and should be moved to Chapter III.	
I don't know.	

39. If you replied that some definitions should be updated, please provide a list, the exact suggestion for an update and explain.

Answer:

As highlighted in our response to Question 24, several definition-related issues persist that restrict access to state aid for legitimate beneficiaries. We suggest the following updates:

- Independent private investor (Article 2(72)): the current definition omits PE/VC funds, despite their essential role in providing risk finance. We would suggest amending the existing paragraph to reflect the importance of PE/VC as sources of risk finance. The definition also excludes stakeholders like the EIF and, by extension, other government-related entities such as sovereign wealth funds. It would be preferable to interpret as “private” also those entities that manage public resources on a market basis (i.e. without direct state control), so that tax incentives are not excluded in cases where such entities co-invest alongside private investors. Definitions such as that of Communication 2016/C 262/01, which states that a public entity’s investment does not constitute state aid if the public entity operates: “pari passu” with private operators (under the same terms and conditions), or under comparable conditions to similar operations carried out by private operators (benchmarking).
- SMEs (Annex I): to acknowledge differences between PE/VC ownership and trade groups, unless addressed through the potential upcoming SME Recommendation update announced in the “Strategy for making the Single Market simple, seamless and strong” (21 May 2025), an amendment within the GBER should be introduced to ensure that, when owned by a PE/VC structure, a company always remain eligible to state aid. Additionally, within the concept of “partner enterprises”, the term “venture capital companies” is used to determine eligibility for venture-backed businesses. Indeed, venture capital AIFs may take the legal form not only of companies but also of mutual funds. As a result, an SME whose capital is held by a VC mutual fund cannot obtain public subsidies. The reference should, therefore, be clarified in order to encompass all relevant types of legal forms.
- Innovative enterprises (Article 2(80)): the current criteria focus heavily on R&D intensity or specific EU labels (e.g., the EIC Seal of Excellence). The definition should become more

sector-neutral and allow broader recognition of innovation, including labels or funding by other European or national public institutions, companies certified by independent experts, and companies having received (or about to receive) support from private market players such as VC or business angels.

- Undertakings in difficulty (Article 2(18)): the UID definition relies on static balance sheet indicators that do not reflect how private investors assess risk. We propose two targeted updates: for companies owned by closed-ended investment funds, only criteria (c)–(e) should apply, provided other safeguards are met (Article 4 Directive 2016/1164.), for quasi-equity instruments (as per Article 2(66)), these should be recognised as part of own funds.

4.5. Undertakings in difficulty

44. In principle, aid to undertakings in difficulty cannot be block exempted (Article 1(4)(c)) GBER). There are exceptions concerning aid schemes to make good the damage caused by certain natural disasters, start-up aid schemes, regional operating aid schemes, aid schemes to SMEs benefitting from community-led local development projects, and aid to financial intermediaries under certain articles. While the general principle of exclusion should remain because State aid to undertakings in difficulty is among the most distortive types of aid, do you see a need for adaptations of the exceptions to this general exclusion or to the definition in Article 2(18) of the GBER?

	Answer
No	
Yes	X
I don't know	

45. If you consider that adaptations are necessary as regards the exclusion of undertakings in difficulties (or the definition of such undertakings) please explain what issues were encountered so far and consequently what adaptations should be done.

Answer:

The current definition of “undertakings in difficulty” (UID) under Article 2(18) leads to unintended exclusions of viable, high-potential businesses backed by PE/VC. This is especially detrimental if it leads the GBER to favor businesses much more at risk of failing compared to PE/VC-backed businesses, which are generally more resilient and vetted. We agree that state aid should not support insolvent firms. However, UID criteria (a) and (b) – focused on accumulated losses against subscribed capital – exclude many growth-stage businesses that are not distressed but are still scaling, particularly in R&D or capital-intensive sectors. PE/VC-backed firms operate with long-term investment horizons, rely on quasi-equity, and do not show early profitability. Yet they are viable, investor-backed, and essential to innovation. Given the current definition, three core issues arise. First, long-term PE/VC-backed firms may not show profitability early on due to product development cycles, not distress. Second, quasi-equity instruments (e.g., preference shares, shareholder loans) are often not counted as subscribed capital in the same way as ordinary shares and share premiums, despite the market practice, the structure of these deals and the active involvement of the fund managers in the running of the businesses backed by their funds. Third, while the ratio between accumulated losses and the subscribed share capital may help determine the viability of a business supported through bank loans, it is entirely irrelevant in the context of PE/VC financing. These tests were designed for traditional debt-financed companies and do not reflect how PE/VC-backed companies are structured or assessed for viability. In practice, many such firms may technically qualify as “UID” simply due to how their

balance sheet is composed, even though they are not distressed and are intentionally structured with high leverage or quasi-equity to fuel growth. Please see Question 39 for targeted solutions.

5. Specific conditions for compatibility (Chapter III of the GBER)

5.1 Complexity of the conditions

51. Apart from aid intensities and eligible costs, Chapter III of the GBER lays down a series of other compatibility conditions, for instance related to the eligibility of the beneficiaries and/or projects. Are any of these other compatibility conditions unnecessary or disproportionate in your view? Why? How should they be updated, relaxed or should they be completely lifted?

Answer:

Different compatibility create barriers to investment or do not reflect how private capital operates in practice, including:

- Follow-on investments (Article 21(4)(b)): the requirement that follow-on investments must be foreseen in the original business plan is unrealistic in the context of PE/VC. Business plans evolve significantly, and the need for follow-ons is often standard but cannot be precisely forecasted. We propose amending the paragraph as follows: “the possibility of follow-on investments was foreseen in the original business plan or the business model foresaw that further injections of capital may have been necessary to achieve a certain stage of development”.
- Replacement capital (Article 21(7)): the current 50% new capital requirement is unnecessarily rigid and limits fundraising flexibility, investor exits, and liquidity. This particularly affects early-stage minority investors and can dilute founders unnecessarily. We propose the removal of this provision or the addition of the following: “For equity and quasi-equity investments in eligible undertakings, a risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least 10 % of each investment round into the eligible undertakings.”
- “First loss piece” (Article 21(10)(b)): there could be additional flexibility regarding the maximum amount of loss that could be assumed by the public investors. While the 25% figure may work in a lot of cases, it may be relevant to increase it slightly to cover for all potential cases (while keeping it under half of the losses). We suggest increasing this cap to 40%, while still keeping it below half of the losses. We also recommend adding a definition to clarify market interpretation: “first loss piece’ means the most junior risk tranche that carries the highest risk of losses, comprising the expected losses of the target portfolio”.
- Total outstanding amount of risk finance investment (Article 21(8)): in order to reflect scaleup funding needs, we recommend allowing this threshold to reset after a fixed period (e.g. every 2 years), enabling continued yet proportionate support aligned with long-term growth trajectories.

5.2 Consistency of the conditions (within the GBER, with other EU rules and with the evolution of technology and markets)

65. Under the current Multiannual Financial Framework (2021-2027), EU funds can be granted until the end of 2029, while the GBER will expire by 31 December 2026. Should transitional provisions in the GBER be introduced to ensure that measures co-financed under the next Multiannual Financial Framework 2028-2034 remain block-exempted even after the expiry of the validity of the GBER (similarly to the provisions in Article 62(2) of Commission Regulation (EU) 2022/2472)?

	Answer
No	
Yes	X
I don't know	

66. Please explain your reply

Answer:

Given that public funding plays a catalytic role in mobilizing private investment, regulatory consistency across programming periods should be ensured. If the GBER expires without appropriate transitional provisions, co-financed measures may fall into regulatory limbo. Without clarity on whether these measures remain block-exempted, public authorities and fund managers will be uncertain about their legal basis, potentially freezing approvals, disbursements, and delaying investments, especially under multi-annual instruments running past 2026. This uncertainty risks delaying support to startups, scaleups, and innovation, which is the objective of the GBER. Moreover, with new priorities expected under the upcoming Multiannual Financial Framework (2028–2034), including the deepening of EU capital markets and greater institutional investor participation, transitional GBER provisions would help preserve flexibility and investor confidence.

5.3 Aid in the form of financial instruments

67. Member States may in some cases provide aid in the form of financial instruments instead of (or in addition to) aid in the form of grants. Financial instruments are a vehicle to deliver support via a multi-layer structure through which financial instruments (e.g. loans, guarantees, equity) are provided to final recipients in order to leverage private investment. The multi-layer structure may involve – apart from Member State authorities providing the aid – also implementing bodies or partners (e.g. international/multilateral financial institutions, national promotional banks and institutions and financial intermediaries) and private co-investors, and may therefore imply the presence of aid at different levels. Some GBER articles directly cover aid in the form of financial instruments (e.g. Article 39 on investment aid for energy efficiency in buildings in the form of financial instruments). Do current GBER rules sufficiently accommodate the use of financial instruments to provide aid to final beneficiaries?

	Answer
No	X
Yes	
I don't know	

68. If not, please explain. For example, please explain how the GBER currently falls short of supporting the use of financial instruments to provide aid to final beneficiaries and how it could address these shortcomings

Answer:

As highlighted in our responses to Questions 39 and 51, current GBER rules do not always reflect how the PE/VC industry operates. Certain provisions require fine-tuning to fully support the layered financing structures that blend public and private capital. A key example is the treatment of “first loss pieces” (repeated across Articles 39(8)(c), and 16(8)(c)). These mechanisms are welcome additions but the current 25% cap on the share of losses borne by public investors may be too low to effectively de-risk investments in high-risk sectors, such as early-stage venture. In addition, the concept of “independent private investor” (referenced also in Articles 39 (7) and (8)(c), 16 (6) and (8)(b), and 21a, 23 (2), and 56e (10)(a)(i)) currently excludes PE/VC funds, despite their central role in crowding in private capital, hindering the GBER’s capacity to unlock private investment.

69. Do the current GBER rules appropriately accommodate and promote the use of specific type of financial instrument, such as equity?

	Answer
Yes	
No	X

70. Please explain your reply

Answer:

Please see the answer to Question 68.

71. Should the GBER be simplified to enable participation of financial intermediaries other than banks and involvement of co-investors in financing programmes?

	Answer
Yes	X
No	

72. Please explain your reply

Answer:

As highlighted in previous questions, although private capital plays a central role in financing innovation, current rules are still too anchored in traditional banking models and do not adequately reflect the way PE/VC funds operate. PE/VC fund managers adopt long-term investment horizons, backed by committed capital over several years. They invest in multiple rounds, often in businesses with non-traditional capital structures, and support growth over time, not based on immediate profitability, but on long-term value creation. PE/VC investments follow rigorous due diligence and reflect a market-based assessment of value. The GBER must evolve to reflect this reality: private capital is an opportunity Europe cannot afford to miss.

5.5 SMEs and small mid-caps

83. Annex I to the GBER provides a definition of SMEs based on the 2003 Recommendation. Because of their limited size, SMEs generally benefit from more favourable rules under the GBER, such as specific aid categories or higher aid intensities (recitals 40-46 to the GBER). Should the SME definition be clarified?

	Answer
No	
Yes	X
I don't know	

84. Please specify and provide examples:

Answer:

The EU definition of an SME, widely cross-referenced in EU law, penalizes companies backed by PE/VC, not only putting at risk the entire PE/VC financing ecosystem, but also the very competitiveness of the EU industry. Two issues are most problematic: the “linked enterprise” concept under Annex I, and the narrow reference to “venture capital companies” as a legal form within the same Annex. Under the current rules, when a PE/VC investor meets one or more of the control criteria in Article 3(3) of Annex I, the portfolio company is presumed to be “linked” to the investor and any other companies it has backed. This results in the SME losing its status, despite having no operational ties to these other companies. It creates an unjustified exclusion based purely on ownership, not on actual group synergies or financial advantage. PE/VC-backed firms are not integrated entities. They have: separate accounts, do not share consolidated financial statements, are managed independently, and do not benefit from shared services or have access to portfolio-wide funds. The fund’s role is limited, often at the board level. It does not get involved in the day-to-day management and always has an exit strategy. There is no centralized control or group strategy, including for the investors in the fund, for which the PE firm acts an intermediary. This treatment penalizes innovative firms for choosing a type of financing that is designed to meet their specific development needs. Unless the SME definition is directly updated, to ensure consistency, we propose to add within the GBER a modification, restricted to the PE model, meeting the criteria defined above: “Enterprises which received capital from a venture or private equity fund shall be considered single undertakings for the purpose of this Regulation provided that the fund can show that it has had an exit strategy since the time it acquired its interest the enterprise in question, there are separate accounts between the manager and the enterprise in question, and the enterprise in question has no ability to receive financial aid from that fund or the other enterprises in which that fund has invested.” Moreover, the current definition refers only to “venture capital companies.” However, PE/VC funds often take the legal form of mutual funds or limited partnerships, not companies, resulting in additional exclusions from SME status and public support eligibility. The term should be broadened to include other legal forms, such as mutual funds, to avoid legal-technical barriers to SME recognition.

85. Are the current GBER rules (e.g. Articles 38b and 56e GBER) sufficient to accommodate the needs of small mid caps?

	Answer
No	X
Yes	

I don't know	
--------------	--

86. Please explain why and provide specific examples:**Answer:**

The current GBER small mid-cap definition, as per Article 2(103)(e), does not fully reflect evolving definitions, as there is a discrepancy with recent developments at EU-level. The Commission's Recommendation on the definition of small mid-cap enterprises (21 May 2025) expands the category compared to the GBER to include firms with fewer than 750 employees and turnover below EUR 150 million or a balance sheet total below EUR 129 million. In contrast, the GBER still uses a narrower definition (maximum 499 employees and lower financial thresholds, including a turnover below EUR 100 million or a balance sheet total below EUR 86 million). This risks creating misalignment across EU instruments, excluding high-potential businesses that qualify as small mid-caps under broader EU definitions but are not eligible under GBER-based schemes. Moreover, the 2025 Recommendation acknowledges the role of private capital in helping companies scale, recognizing that such investors should not automatically be treated as "linked enterprises" when they maintain separate accounts and have a clear exit strategy. We recommend that the GBER be updated to align with the May 2025 Commission Recommendation.