

Invest Europe's Position on the draft for a new General Block Exemption Regulation for the 2027-2034 period

Executive Summary

The General Block Exemption Regulation (GBER) shapes how public support mobilises private capital to finance innovation, growth and competitiveness across Europe.

While the draft revision for the 2027-2034 period introduces greater flexibility, notably a clearer framework for startups and innovative enterprises, an expanded small mid-cap (SMC) category, greater flexibility for follow-on investments, reduced risk finance eligibility thresholds as well as replacement capital requirements, and broader exclusions for undertakings in difficulty (UIDs), it does not consistently reflect how companies grow or how private capital is deployed in practice.

Companies that are comparable in size may be treated differently because of their ownership structure (SMEs) or balance sheet composition (UIDs), creating cliff-edge effects and disincentivising private investment. The current framework also underestimates the role of private equity and venture capital (PE/VC)-funds and market-based public investors as independent private investors.

Risk finance aid eligibility conditions continue to rely on rigid age and turnover thresholds that do not capture the non-linear nature of growth, even if reduced. The treatment of replacement capital, despite progress, remains restrictive, limiting investor exits and market liquidity. The cap on total investment remains static over time, constraining support for companies requiring successive funding rounds. And the calibration of the first loss piece remains conservative for higher-risk segments such as VC, where write-offs represent a larger share of outcomes.

Shortcomings in the treatment of definitions and in the design of risk finance measures risk excluding viable PE/VC-backed businesses from State aid support, even where they are economically independent, strategically relevant and strongly supported by private investors. This weakens the effectiveness of State aid as a catalyst for private investment, reduces its support companies across their full lifecycle and, ultimately, their contribution to competitiveness.

Targeted adjustments can address these issues without altering the GBER's overall structure. These include **aligning the SME definition with recent Commission Recommendations** to reflect the independence of PE/VC-backed companies, **introducing a definition and consistent treatment of scaleups, clarifying UID criteria** to include both equity and quasi-equity consistently across frameworks, and **broadening the definition of independent private investors** to reflect market-based actors, including both PE/VC funds and entities managing public resources that operate on a market basis.

In addition to **enhancing the flexibility of risk finance measures** by adapting eligibility thresholds (including clarifying the notion of "new economic activity", adding an indicative threshold of EUR 250,000 to a first commercial sale, and calibrating investment needs at around 20% of average annual turnover over three years), **easing constraints on replacement capital** (by reducing the minimum share of new capital to around 10% or removing it altogether), **introducing a reset mechanism for the investment cap** (i.e., after two years), and **calibrating the first loss piece to better crowd in private capital** (up to 40%).

In doing so, the GBER would strengthen the effectiveness of State aid, improve its targeting, while reinforcing the EU's capacity to scale innovation, build industrial strength, and enhance long-term competitiveness.

In more detail

As the voice of Europe’s private equity and venture capital (PE/VC) fund managers and their investors, Invest Europe is committed to ensuring that EU State aid frameworks promote growth, simplify procedures, and enhance competitiveness. This requires a framework that improves the effectiveness of public support in catalysing private capital and strengthens the competitiveness of the European economy.

The draft GBER introduces a number of welcome improvements in this regard, which move the framework in the right direction.

However, inconsistencies across definitions continue to create unequal conditions for companies with similar economic characteristics but different financing models, limiting the effectiveness of co-investment and the crowding-in of private capital.

At the same time, the risk finance aid framework remains insufficiently adapted to the needs of scaling companies. Static thresholds, rigid eligibility criteria, and limited flexibility in risk-sharing and investment caps constrain the ability of State aid to support companies across their full innovation and growth trajectory.

This paper identifies these misalignments and proposes targeted adjustments to better align the GBER with market realities, across:

- the definitions for SMEs, small mid-caps (SMCs), innovative enterprises, startups and scaleups,
 - the definition for Undertakings in Difficulty (UIDs),
 - the definition for independent private investors,
 - eligibility to risk finance aid,
 - replacement capital for risk finance aid,
 - total outstanding amount of investment for risk finance aid, and
 - first loss piece for risk finance aid.
- ***Definitions: how to align EU State aid rules with the financing needs of promising European businesses***

Clear and coherent definitions are the backbone of legal certainty, consistent application by Member States, and effective targeting of State aid. While the draft GBER modernises the structure and presentation of several definitions and introduces new concepts, substantive challenges persist. In fact, the GBER’s system of definitions – particularly those relating to SMEs, undertakings in difficulty (UID), and independent private investors – continues to create unintended exclusions for viable, strategic companies, including those backed by PE/VC.

1. SMEs, SMCs, innovative enterprises, startups and scaleups: ensuring a level-playing field in terms of independence and size

The draft GBER introduces a significant and welcome clarification of the concept of independence through the definition of small mid-caps (SMCs) in Annex IV – which is aligned with the May 2025 Recommendation on SMC enterprises.

The SMC Recommendation explicitly recognises that companies backed by PE/VC funds are not “linked” – and therefore not treated as part of a single economic group – where certain conditions are met, notably where the fund and the company maintain separate accounts and the fund operates on

the basis of a pre-defined exit strategy. It also clarifies that such relationships should not automatically qualify as “partner” enterprises – all changes we have long advocated for.

A similar approach has also already been adopted in the March 2026 Commission Recommendation on definitions of innovative enterprises, startups and scaleups, which further reflects the diversified financing needs of European businesses and acknowledges the role of private capital in supporting innovation and growth.

To ensure coherence across EU frameworks, **the definitions of innovative enterprises, startups and scaleups should be consistently reflected within the GBER under the new definitions of “innovative enterprise” and “start-up”** – under Article 2(89) and (34) – despite the fact that age and headcount thresholds may exclude a substantial share of investment activity, and that, taken in isolation, are an increasingly weak proxy for innovation or growth. This would avoid fragmentation in the application of EU rules and support the effective mobilisation of private capital.

Moreover, while the Recommendation introduces a definition of “scale-up”, the GBER, both in its current version and in the draft, does not include such a definition. At the same time, Article 25(3)(c) of the draft explicitly refers to “scaling up” as an eligible activity. This creates a conceptual gap between the policy framework and the legal text. **We suggest introducing a clear definition of “scale-up”, in line with the Recommendation, within the GBER**, to enhance legal certainty, but also support the effective targeting of aid measures towards companies in their growth phase.

However, the SME definition within the GBER remains unchanged, aside from minor technical adjustments. As a result, ownership-related distortions – and therefore competition distortions – continue to apply to SMEs. In practice, this creates an uneven competition framework, in which the treatment of PE/VC backing depends on company size rather than underlying economic characteristics. This inconsistency is even more significant given the fact that SMEs constitute the majority of the European economy. Maintaining divergent approaches across company categories risks limiting access to State aid for otherwise eligible and economically independent firms, while reducing coherence across EU policy instruments.

We suggest amending Annex I to reflect the derogations for PE/VC funds and Alternative Investment Funds (AIFs) as set out in Annex IV of the draft GBER, and in line with the current and ongoing revision of the SME definition. This would ensure that PE/VC-backed companies are not automatically classified as “linked” or “partner” enterprises where they meet the relevant conditions. Aligning the SME definition with the recent Commission Recommendations would improve predictability, ensure consistency across EU frameworks, and support the effective mobilisation of private capital for Europe’s competitiveness and growth.

2. Undertakings in Difficulty (UIDs): ensuring a level-playing field in terms of accounting

Static balance sheet indicators are one of the main structural limitation of the current GBER framework, and one of the main causes of lost efforts and missed opportunities. By relying on static accounting metrics, the UID definition has not yet fully captured the dynamic and evolving nature of companies’ financial positions, particularly in innovation-driven and investment-led business models, excluding viable companies and limiting the impact of State aid.

This is why the introduction of a number of targeted adjustments to the treatment of undertakings in difficulty is very welcome. In particular, within Article 1(5), certain categories of companies are allowed to receive aid despite meeting specific UID criteria under the loss of capital test. These include

unlisted innovative enterprises operating for less than ten years receiving R&D and innovation aid (Section 4), beneficiaries under of aid for young enterprises and startups (Article 29), and – as in the current version – SMEs less than three years old. This represents an important step towards accommodating the realities of early-stage and innovation-driven business models.

Even more importantly, the draft clarifies that – through the exception in Article 1(5)(e), applicable to risk finance measures covered in Article 25 – companies qualifying as UIDs under Article 2(32) criteria (a) or (b) may still receive such support. This reflects an important recognition that high-growth and innovation-driven companies often operate under long-term investment horizons and rely on financing instruments that differ from traditional corporate structures.

However, these welcome updates do not address relevant accounting issues in the UID definition itself. In particular, criteria (a) and (b) continue to rely on the relationship between accumulated losses and equity. While the draft replaces the notion of “own funds” with “equity”, this change does not resolve the fundamental issue. In accounting terms, equity does not always include quasi-equity instruments – despite the fact that quasi-equity remains widely used in PE/VC financing and is treated as risk-bearing capital from an economic perspective – which can be classified as debt on the balance sheet. As a result, companies that are adequately capitalised may still qualify as UIDs.

Case study

A long-established European deep-tech company, listed in the National Technology Strategy, operating in a capital-intensive sector has, over more than a decade, financed its development through successive rounds of private risk capital combined with debt-like instruments, operational leasing and public soft loans. The company has attracted substantial VC and growth equity, alongside conditional loans and other instruments that were later partially converted into equity.

Despite continued private capital support and a business model characterised by extended pre-profitability cycles, the resulting balance-sheet structure led the company to qualify as an undertaking in difficulty under the current definition.

The issue is that the classification arises late in the lifecycle of EU-level project applications of strategic relevance, after lengthy competitive selection procedures spanning multiple years. As a result, the company became ineligible for support at the disbursement stage, notwithstanding its viability, strategic relevance and prior selection.

A more economically grounded interpretation of the UID criteria is still needed. In particular, **criteria (a) and (b) or Article 2(32) should clarify that both equity and quasi-equity instruments are taken into account.**

Moreover, **the targeted exceptions introduced in the draft GBER for undertakings qualifying as UIDs should be reflected in the broader State aid framework, including the Rescue and Restructuring Guidelines.** Ensuring consistency across instruments will prevent divergent treatment of comparable companies.

3. Independent private investors: removing barriers to private (co-)investment

The draft GBER does not introduce substantive changes to the definition of “independent private investor”. While the provision has been restructured for clarity – by separating the notions of “private” and “independent” – the underlying legal criteria remain unchanged.

This unchanged approach does not reflect the evolving structure of European capital markets. In particular, it continues to omit PE/VC funds from the definition, despite their central role in providing risk finance, reducing the capacity of State aid to leverage private investment.

In addition, the current definition excludes certain entities that, while managing public resources, operate on a market basis (i.e., without direct State control) and invest alongside private investors under comparable conditions. This includes, for example, institutions such as the European Investment Fund (EIF) and, in some cases, sovereign-backed investment vehicles. The blanket exclusion of such stakeholders limits the ability of Member States to design effective co-investment schemes and further reduces the impact of State aid in crowding in private capital. This issue arises from a definition that does not fully distinguish between the origin of capital and the conditions under which it is deployed. From an economic perspective, what is relevant is whether an investor operates on a market basis – assuming risk and seeking return under *pari passu* conditions – rather than the public or private nature of its resources.

The definition of “independent private investor” should be updated to better reflect all key market stakeholders.

PE/VC funds should be explicitly recognised as “private” investors, under Article 2(81).

Additionally, under the same article, entities managing public resources should be considered “private” for the purposes of the Regulation where they operate on a market basis, including where investments are made *pari passu* with private investors or under comparable conditions, in line with established principles such as those set out in Commission Communication 2016/C 262/01.

- ***Risk finance aid: how to catalyse State aid to crowd-in private capital across all stages***

Risk finance provisions represent the primary interface between State aid and private capital. The draft GBER introduces meaningful improvements, particularly for growth-stage companies, yet certain constraints continue to limit effectiveness.

1. Eligibility to aid for access to finance for SMEs: aligning thresholds with growth trajectories

The accessibility of risk finance is a key component of the framework, determining which unlisted SMEs can access public support and, consequently, the effectiveness of State aid in mobilising private capital.

The draft GBER introduces meaningful improvements to the eligibility criteria for risk finance, notably by relaxing the conditions set out in Article 25(3) and expanding access for growth-stage companies. In particular, the reduction of the investment threshold under point (c) – from 50% to 30% of average annual turnover – represents a significant step towards improving the usability of the framework. The further reduction to 15% for investments in strategic areas, including environmental performance, critical raw materials, social enterprises and defence-related production capacity, is also a positive development. In addition, the explicit inclusion of “scaling up” within the concept of a new economic activity improves legal clarity and better reflects the realities of company growth.

However, certain structural limitations remain. The eligibility criteria continue to rely on assumptions that do not fully reflect the non-linear nature of business growth. Under Article 25(3)(b), age-based thresholds remain unchanged, limiting eligibility to companies within fixed timeframes following registration or first commercial sale. In practice, PE/VC-backed companies often scale gradually over

several years, following multi-stage investment cycles. Fixed age thresholds may therefore exclude companies that are still in a growth phase but fall outside these predefined limits.

Similarly, while the reduction of the threshold under point (c) improves accessibility, the underlying logic remains challenging in practice. Linking eligibility to a proportion of past turnover continues to assume a linear relationship between historical performance and future investment needs. For revenue-generating SMEs, even a 30% threshold may represent a substantial capital injection, which may not correspond to how investment decisions are structured in practice.

Furthermore, although the inclusion of “scaling up” improves clarity, the broader notion of “new economic activity” remains open to interpretation, which may lead to inconsistent application across Member States.

To further improve the usability of the framework, **additional refinement of Article 25(3)(c) could be considered.** A more forward-looking and operationally viable approach would be **further shortening the reference period for turnover assessment, and further calibrating the investment threshold to better reflect typical financing needs.** In this context, we suggest the following formulation: *“they require an initial investment which, based on a business plan prepared in view of a new economic activity, on the same or on a new market, (including scaling up), is higher than 20% of their average annual turnover in the preceding three years.”*

In addition, **further clarification of the notion of “first commercial sale”** would improve the consistent application of age-based eligibility criteria **under Article 25(3)(b). A minimum turnover threshold for determining when the first commercial sale is deemed to have occurred could be introduced.** In this context, **an indicative threshold of EUR 250,000 in turnover** could provide a clear and operational benchmark, ensuring that the eligibility period reflects the actual market entry of the undertaking.

2. Replacement capital: improving flexibility and supporting market liquidity

Replacement capital plays a key role in PE/VC markets, enabling investor exits, supporting fundraising cycles, and ensuring liquidity within the investment ecosystem. It is also particularly relevant for early-stage and minority investors, whose ability to exit is essential to recycle capital into new investments.

The draft GBER introduces a welcome adjustment to the treatment of replacement capital under Article 25(7), by reducing the minimum share of new capital required in an investment round from 50% to 30% – which improves the flexibility of the framework.

However, the requirement remains relatively rigid and does not fully reflect how investment rounds are structured. Maintaining a high minimum threshold for new capital may continue to constrain these dynamics. Investment rounds often combine varying proportions of primary and secondary transactions, depending on the stage of the company and the objectives of existing and incoming investors. A rigid requirement limits the ability to structure efficient transactions, potentially delaying exits, affecting founder ownership, and reducing the attractiveness of investment opportunities.

Further alignment with market practice would strengthen the framework. In particular, the **minimum share of new capital required in an investment round could be further reduced** to better reflect typical transaction structures – if not removed altogether. **We suggest the following reformulation:** *“Risk finance investments in the form of equity and quasi-equity investments in eligible undertakings may cover replacement capital only they also cover new capital representing at least 10% of each investment round into the eligible undertakings.”*

3. Total outstanding amount of investment: aligning support with scaleup needs

While Europe does not suffer from a lack of entrepreneurship, the transition from startup to globally competitive scaleup remains a structural challenge. In this context, a static cap on risk finance support may further limit the availability of capital at the scaleup stage, where the financing gap is the most pronounced and where Europe faces one of its most significant competitiveness challenges.

The draft GBER introduces a welcome detailed methodology for calculating the total outstanding amount of risk finance investment under Article 25(8), by extending the scope of instruments included in the EUR 16.5 million cap, reflecting the increasing use of blended financing structures and improving the consistency of the framework.

Nevertheless, the overall cap remains unchanged and continues to apply as a static ceiling per eligible company, without any mechanism for adjustment over time. While this approach ensures simplicity, it does not fully reflect the financing needs of companies as they grow and scale. In practice, high-growth companies, particularly those supported by PE/VC, require successive rounds of financing over extended periods. A fixed cap applied over the lifetime of a company would constrain the ability to provide continued, proportionate support at later stages of development.

This limitation is particularly relevant in the context of scaleup financing, where capital needs increase significantly as companies expand operations, enter new markets, or invest in industrial capacity – a segment of the market we should support. Invest Europe’s data, in fact, indicates that capital availability across private markets remains uneven. In particular, funding for later-stage growth remains constrained. Growth funds have not returned to pre-correction levels, and buyout fundraising declined significantly between 2022 and 2024. At the same time, investment activity shows a shift towards fewer, larger transactions, reflecting increased selectivity and risk aversion. Compared to peak levels, a substantial share of growth-stage investment has not yet recovered. Without the possibility to adapt the cap over time, risk finance measures will become less relevant as companies grow, creating further discontinuity in support, but also in the European ecosystem more broadly.

The total outstanding amount of risk finance investment should be allowed to reset after a defined period, for example, every two years.

4. First loss piece: ensuring effective risk-sharing while preserving investor incentives

From a market perspective, the first loss piece is a key instrument to align incentives and mitigate risk in blended finance structures. Its calibration directly affects the attractiveness of investment opportunities for private investors, particularly in segments where risk-return profiles are less predictable.

The draft GBER introduces a more granular approach to the treatment of the “first loss piece” under Article 25(10)(b), notably by distinguishing between expected and unexpected losses. The distinction between these losses reflects the economic logic of risk-sharing. However, it does not fully address the need for a clear definition of the “first loss piece” itself, and the additional cap may limit the effectiveness of the first loss piece altogether in crowding in private capital, particularly in higher-risk segments. This latter is particularly relevant in VC segments, where risk profiles differ significantly from more mature investment strategies. In fact, according to Invest Europe’s data on divestment at cost in the EU27 in 2024, write-offs represented approximately 19% of exits in VC.

At the same time, the draft maintains the existing cap, limiting the first loss borne by the public investor to 25% of unexpected losses. While this threshold may be appropriate in many cases, it will

also be insufficient in crowding in private capital in higher-risk segments, particularly in early-stage or innovation-driven investments where uncertainty and volatility are greater.

While preserving the underlying objective of avoiding excessive risk transfer to the public sector, a more flexible approach should be considered to enhance the private capital catalyst role of public funding. **The cap on the first loss piece could be moderately increased to up to 40% of losses, while remaining below a majority share and therefore maintaining meaningful private investor exposure.**

Additional clarification could also be introduced to ensure a consistent understanding of the concept of “first loss piece”, by defining it as: the most junior risk tranche that absorbs losses first and typically corresponds to the expected loss of the investment portfolio.

- **Conclusion**

European State aid rules must fully support the competitiveness of growing, innovative companies, their investors, and the European ecosystem as a whole.

Indeed, the current barriers are directly linked to Europe’s structural competitiveness challenge. Addressing them does not require a fundamental redesign of the GBER, but targeted adjustments.

Aligning definitions, improving flexibility, and ensuring consistency with parallel EU initiatives would enhance legal certainty, strengthen the mobilisation of private capital, and reinforce the role of State aid as a catalyst for Europe’s most dynamic businesses.

In doing so, the GBER can better support the EU’s competitiveness objectives in the coming decade.