INVEST EUROPE

Rethinking the UID definition: Redefining distress to unlock private capital at scale

Executive Summary

The current Undertaking in Difficulty (UID) definition is misclassifying healthy, investor-backed companies as distressed. By relying on static accounting indicators, the test can treat companies that are funded, operational and following credible growth plans as if their survival were at risk. This is particularly damaging for PE/VC-backed businesses in biotech, deep tech, defence, cleantech and other strategic sectors, where losses are often a planned feature of long development cycles rather than evidence of commercial failure.

The problem is not the objective of the UID framework, which remains valid. State aid rules should distinguish viable companies from firms in genuine financial distress. The problem is that the current test does not reliably make that distinction for modern, innovation-led business models. It gives insufficient weight to committed financing, investor due diligence, continued professional support and the economic function of quasi-equity instruments such as shareholder loans, convertibles and similar risk-bearing capital.

The result is a set of false positives with real economic consequences. A technical UID classification can block or delay access to State aid precisely when public support is meant to crowd in private investment, accelerate innovation and support European scaleups. It can increase financing costs, disrupt growth plans and weaken Europe's ability to retain and scale companies in sectors that are central to competitiveness, resilience and technological sovereignty.

Reform should therefore focus on the definition itself, not only on additional exemptions. First, **PE/VC-backed companies should not automatically be aggregated into a single economic unit** for UID purposes where funds, managers and portfolio companies are economically and operationally separate. Second, **protections should cover the full growth journey,** including innovative startups and scaleups. Third, **quasi-equity should be recognised for what it is: risk-bearing capital that can perform the legal and economic function of equity**. Finally, for investor-backed companies with ongoing professional support, **capital-loss indicators should not be determinative where they do not reflect real financial distress**.

In more detail

State aid is intended to promote innovation, growth, and competitiveness, while ensuring that support for companies facing genuine financial distress is assessed under the appropriate framework

The UID definition, set out in the General Block Exemption Regulation (GBER) and reflected in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Rescue and Restructuring Guidelines), is meant to support that distinction. It decides whether a company can access ordinary State aid or must instead be assessed under the rescue and restructuring rules.

However, while the objective remains valid, the current UID definition struggles to distinguish between companies that are genuinely failing and companies that are deliberately investing in their future. As a result, innovative, high-growth businesses can be classified as being "in difficulty" despite having access to financing, strong private capital support and a credible path to commercial success.

Invest Europe represents Europe's private equity, venture capital and infrastructure investment firms, as well as their investors. We call for a reform of the UID definition so that healthy, investor-

backed companies are not misclassified as distressed. The rules should reflect modern business development cycles and allow scalable, innovative companies to access the support they need to grow and strengthen Europe's competitiveness.

This paper will:

- analyse how the current UID definition produces false positives, particularly for PE and VC-backed companies whose financing models differ from traditional businesses,
- identify the reasons why the current approach is conceptually flawed, including its reliance on accounting measures that do not reflect viability, investor confidence or the risk of failure, and inconsistent with other ongoing efforts,
- assess the consequences for Europe's competitiveness, including the impact on access to finance, the effectiveness of State aid and the ability to crowd in private capital into strategic sectors, and
- propose possible directions for reform, aimed at ensuring that the UID framework better captures financial distress.

- ***Problem: the UID test mistakes investor-backed growth for distress***

1. The UID test creates false positives for PE/VC-backed companies

EU State aid rules make clear that support for companies in real financial distress should normally be assessed under the rescue and restructuring regime, not ordinary block-exempted aid. Recital 14 of Regulation 651/2014 and Section 2.2(23) of the Rescue and Restructuring Guidelines (2014/C 249/01) reflect this aim: viable firms should be treated differently from companies already facing serious financial difficulty.

The assessment of whether a firm is in difficulty is performed in three stages:

- who is assessed,
- the criteria that are applied, and
- the available exemptions.

First, the test is applied at the level of the "undertaking". Under both the 2014-2026 GBER and the draft 2027-2034 GBER, this means the wider economic unit rather than only the individual legal entity. As a result, the financial position of the wider group can affect both which UID criteria apply and whether the company passes them.

For both versions, Annex I provides the methodology for aggregating headcount and financial data (turnover and balance sheet) to determine if a company qualifies as an SME, determining the calculations for the UID test:

- data from "partner enterprises" (holding between 25% and 50%) is added pro rata to the calculation.
- data of "linked enterprises" (those with a majority of voting rights or dominant influence) are aggregated at 100%.

The 2014 Rescue and Restructuring Guidelines use the same definition for the UID assessment in footnote 10, Section 1(13), Section 1(21)(b) and (22) – footnote 8, Section 1(12), as well as Section 1(21)(b) and (22) of the draft 2026 Rescue and Restructuring Guidelines – specifically mentioning that a large undertaking is any entity that is not an SME. In addition, a beneficiary belonging to a larger business group is only eligible for aid if it can be demonstrated that its difficulties are intrinsic and not the result of an arbitrary allocation of costs within the group.

Second, Article 2(18) of the 2014-2026 GBER, and Article 2(32) of the draft 2027-2034 GBER, translate the UID concept into operational tests. These include capital-loss, insolvency, rescue-aid and restructuring-plan tests, as well as leverage and interest-coverage tests for large firms. In practice, the framework relies heavily on accounting indicators as proxies for distress and viability.

Criteria	2014-2026 GBER	Draft 2027-2034 GBER
Loss of capital - limited liability companies	For limited liability companies, capital erosion is evaluated when accumulated accounting losses are greater than half of the registered capital and relevant reserves, the company is an UID.	The same basic capital-loss test applies. "Own funds" is replaced by "equity"
Loss of capital - companies with unlimited-liability members	For private or capital-less companies, the calculation is adjusted to reflect subscribed contributions. This is the equivalent capital-loss test for partnerships and similar legal structures. It looks at whether losses have eliminated more than half of the accounting capital. If so, the company is an UID	Unchanged
Formal insolvency proceedings	If the company is already in a formal insolvency, bankruptcy, administration or comparable collective procedure under national law, or if not formally insolvent already, the legal conditions exist for creditors to ask a court or authority to open insolvency proceedings, it is an UID	Unchanged
Rescue aid	If a company has received rescue aid and has not yet repaid the loan or ended the related guarantee, the company continues to be treated as being an UID	Unchanged
Debt-to-equity ratio and EBITDA interest-coverage ratio (for non-SMEs)	For the previous two years, if a large company has very high debt compared with its accounting equity (if the debt-to-equity ratio is greater than 7.5), the company is an UID. It must satisfy also the interest condition	Unchanged
	For the previous two years, if a large company's earnings before interest, tax, depreciation and amortisation are insufficient to cover its interest costs (if EBITDA divided by interest costs is below 1.0), the company is an UID. It must satisfy also the debt condition	Unchanged

Concerning the Rescue and Restructuring Guidelines, the core balance-sheet, insolvency and financial-ratio calculations used to identify an UID within the 2014 and draft 2026 versions remain fundamentally identical to those of the 2014-2026 and draft 2027-2034 GBER texts – Section 2.2(20) in both versions of the Guidelines – with, however, a single important difference.

Exemptions	2014 Rescue and Restructuring Guidelines	Draft 2026 Rescue and Restructuring Guidelines
Loss of capital - limited liability companies	Same as the 2014-2026 and draft 2027-2034 GBER	Now explicitly includes "financial instruments absorbing losses on a going concern basis", including, on the equity side (offsetting losses), instruments that the company is not required to reimburse or remunerate in the absence of positive distributable net earnings, such as certain preferred shares, silent participations and perpetual or qualifying convertible bonds, according to the applicable accounting standards. Instruments that convert into equity only upon default or when the

		company ceases trading (the "gone concern" scenario) are excluded
Loss of capital - companies with unlimited-liability members	Same as the 2014-2026 and draft 2027-2034 GBER	The same addition as for limited-liability companies applies
Formal insolvency proceedings	Same as the 2014-2026 and draft 2027-2034 GBER	Unchanged
Debt-to-equity ratio and EBITDA interest-coverage ratio (for non-SMEs)	Same as the 2014-2026 and draft 2027-2034 GBER	Unchanged

Third, the framework recognises that the definition can produce unintended results. It therefore provides exemptions that allow aid to be granted in some cases even where a firm meets the UID criteria. These exemptions do not change the UID definition itself, and beneficiaries must still satisfy any other applicable conditions.

Exemptions	2014-2026 GBER	Draft 2027-2034 GBER
Young SMEs less than three years old	SMEs in existence for less than three years are, unless they are subject to insolvency proceedings (Articles 1(4)(c), 2(18)(a) and (b))	Unchanged, though moved into the overall exclusion list, and out of the UID definition (Article 1(5)(a))
Risk-finance aid	For the purpose of receiving risk finance aid, an SME is exempt from the capital loss criteria if it fulfills the specific operating conditions in Article 21(3)(b) and has undergone due diligence by a selected financial intermediary (Articles 1(4)(c), 2(18)(a) and (b))	Unchanged, moved into the overall exclusion list, and out of the UID definition (Article 1(5)(e)), referencing Articles 25 and 26)
Natural-disaster compensation	Aid schemes granted under Article 50 designed to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions, and wildfires of natural origin (Article 1(4)(c))	Unchanged, aid moved to Article 68 (Article 1(5)(i))
Young-enterprise and startup aid	Support granted under Article 22 for unlisted small enterprises up to 5 years following their registration, that met three cumulative conditions[1] (Article 1(4)(c))	Instead of using the blanket term "startup aid" for any unlisted small enterprise, the text formally introduces "young enterprises" (any unlisted small enterprise up to 5 years following its registration, that has met three cumulative conditions[2]), while maintaining "startups"

[1] The company eligible to startup aid: (a) has not taken over the activity of another company (unless the turnover of the overtaken activity accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the take-over), (b) has not yet distributed profits, and (c) has not acquired another undertaking or has not been formed through a merger (unless the turnover of the acquired undertaking accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the acquisition or the turnover of the undertaking formed through a merger is less than 10% higher than the combined turnover that the merging undertakings had in the financial year preceding the merger).

[2] The young enterprise: (a) has not taken over the activity of another company (unless the turnover of the overtaken activity accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the take-over), (b) has not yet distributed profits (with the exception of profit distributions that do not exceed 10% of the cumulated profits earned since the undertaking's registration), and (c) has not acquired another undertaking or has not been formed

		as a distinct category – not yet defined (Article 1(5)(f))
Regional operating aid	Schemes granted under Article 15 in outermost regions, sparsely populated areas, or very sparsely populated areas (Article 1(4)(c))	Unchanged, aid moved to Article 16 (Article 1(5)(c))
Community-led local development (CLLD) projects	Small amounts of aid for SMEs participating in or benefiting from CLLD projects under Article 19b (Article 1(4)(c))	Unchanged, aid moved to Article 19(2) (Article 1(5)(d))
InvestEU support	Aid, under Article 56(f)), involved in financial products for SMEs supported by the InvestEU Fund (Article 1(4)(c))	This is extended to SMCs receiving specific InvestEU support, and moved to Articles 82(10) and 83 (Article 1(5)(j))
Aid to financial intermediaries	Financial intermediaries that manage and distribute aid, even if they are technically in difficulty, when they are involved in urban development (regional urban development aid under Article 16), risk finance (support for access to finance for SMEs under Article 21), startups (the management of startup aid under Article 22), energy efficiency (financial instruments for energy efficiency projects in buildings under Article 39), and InvestEU products (any aid involved in financial products supported by the InvestEU Fund under Section 16) (Article 1(4)(c))	Unchanged, aid moved to Articles 17, 25, 26, 29 and 56 as well as Section 10 of Chapter III (Article 1(5)(k))
Banks, insurers and reinsurers	Not included	A new exemption is added for aid to credit institutions and insurance and reinsurance undertakings as defined by the Bank Recovery and Resolution Directive (BRRD) and Solvency II (Article 1(5)(b))
Research, Development, and Innovation (R&D&I) aid for innovative companies	Not included	A major addition is the exemption for unlisted innovative enterprises operating for less than 10 years. These firms can receive aid, under Chapter III, Section 4, even if they technically meet UID criteria. Innovative enterprises are also yet to be defined (Article 1(5)(g))
Energy-tax reductions	Not included	Aid, under Article 61, in the form of tax reductions under the Energy Taxation Directive is now explicitly exempted (Article 1(5)(h))

Concerning the Rescue and Restructuring Guidelines, the exemptions are more limited, but different:

through a merger (unless the turnover of the acquired undertaking accounts for less than 10% of the turnover of the eligible undertaking in the financial year preceding the acquisition or the turnover of the undertaking formed through a merger is less than 10% higher than the combined turnover that the merging undertakings had in the financial year preceding the merger).

Exemptions	2014 Rescue and Restructuring Guidelines	Draft 2026 Rescue and Restructuring Guidelines
Young SMEs less than three years old	SMEs in existence for less than three years are, unless they are subject to insolvency proceedings (Section 2.2(24)(b))	Unchanged (Section 2.2(24)(b))
Innovative startups	Not included	A major addition is the exemption for innovative startups which will not be considered UIDs for 5 years following their registration (unless insolvent). Innovative startups are defined as per the European Commission's March 2026 Recommendation on the definitions of innovative enterprises, startups and scaleups are also yet to be defined (Section 2.2(24)(c))

Despite these exemptions, the core capital-erosion tests remain built for conventional businesses, where sustained losses are usually a warning sign. For innovative, high-growth companies, the same losses may reflect planned investment. This mismatch has persisted for more than a decade and, under the drafts, would continue for another eight years.

For PE/VC-backed companies, the tests can classify healthy businesses as UIDs even when losses are expected and financing relies on convertibles, shareholder loans, SAFEs or other quasi-equity instruments. The risk is compounded when the assessment is made on a consolidated group basis, even though that aggregation does not reflect the economic reality of many private capital structures.

A company may be loss-making because its business is failing. But it may also be loss-making because its investors are deliberately financing several years of development before revenues or profits are expected. The UID definition does not adequately distinguish between the two, despite the fact that the former situation is what the UID framework seeks to identify, while the latter is a normal and often essential feature of innovation financing.

Overview	Company A	Company B
Existence of losses	Yes, because of weak demand, declining revenues and continued commercial underperformance	Yes, because of planned spending on R&D, staff, regulatory approvals or production capacity before revenues are expected
Liquidity	Limited cash and difficulty paying suppliers, employees or creditors	Sufficient cash or committed financing to continue operating
Business prospects	No credible route to recovery or sustainable profitability	A credible business plan, measurable development progress and a realistic route to commercialisation
Investor support	Existing investors are unwilling to provide further funding, and new financing cannot be secured	Professional investors have recently invested and remain willing to provide follow-on funding
Financing structure	Relies mainly on ordinary debt and trade credit with fixed repayment obligations to cover its continuing losses	Part of the funding is provided through shareholder loans, convertibles, SAFEs or preference shares that are treated as liabilities rather than equity
UID assessment	Company A is consuming its remaining capital because its business is failing. Therefore, it could be considered an UID	Company B is deploying capital exactly as intended under an investor-backed growth plan. However, if the UID calculation shows that it has "lost" more than half of its capital, it could be considered an UID, even though it

remains funded, operational and capable of continuing its activities

The UID definition can therefore capture false positives: companies that are funded, operational and following a credible growth path, but are treated as distressed because the legal test does not reflect the commercial realities of PE- and VC-backed businesses.

Policy implication: Recalibrate the UID test so that it identifies genuine financial distress, not normal investor-backed growth based on planned losses and staged financing.

2. The design flaw: accounting tests are replacing economic judgement

To this day, a company can raise millions from private investors, create jobs, develop breakthrough technologies, and be identified as strategically important for Europe, yet still be treated by as if it were in financial difficulty, because the current definition uses static indicators.

a. The framework penalises PE/VC-backed companies from the outset

The same investment relationship can be recognised in one part of the framework and ignored in another, creating inconsistent outcomes for otherwise identical companies.

A healthy company can be pulled into UID status via a common fund, becoming technically "linked" to another portfolio company that is in financial distress, even if the two firms are operationally and financially independent.

The company also faces a dual burden. It may lose SME status, as explained in our position paper, and it may have to pass more UID criteria. More importantly, those criteria are applied to the financial position of the wider group, not only to the company receiving aid.

Annex IV of the draft 2027-2034 GBER introduces a breakthrough provision for the private capital industry and the companies it backs, but it only partially solves the "linked enterprise" issue because its benefits are confined to the Small Mid-Cap (SMC) definition rather than the primary SME definition (in Annex I).

For the first time, Annex IV (3)(5)(3) states that where an Alternative Investment Fund (AIF) has invested in an enterprise, the following should not be considered "linked enterprises", provided that the fund, its manager, and the portfolio companies maintain separate accounting records, and the fund and its manager have a pre-defined investment strategy to exit the company, typically by realising their value through a sale or other means:

- the portfolio company and the AIF itself,
- the portfolio company and the manager of the AIF,
- the portfolio company and other portfolio companies in which that same fund has invested (the "sibling" companies).

The UID framework does not yet use the SMC definition as a basis for relief from its strictest tests. A PE/VC-backed company could therefore be treated as "unlinked" for SMC purposes, but still "linked" under the SME definition and, as a result, more likely to be classified as a UID.

Policy implication: Align the SME, SMC and UID frameworks so that PE/VC-backed companies are not artificially aggregated with unrelated portfolio companies for State aid purposes.

b. The test measures accounting loss, not the likelihood of failure

The UID definition is meant to identify companies whose survival is at risk and channel any support through the rescue and restructuring rules.

The GBER itself explains that the definition was designed to provide clear criteria without requiring authorities to examine every aspect of a company's situation. Administrative simplicity is important. But a simple test must still be a reasonable proxy for what it is intended to measure.

The loss-of-capital test does not directly assess whether a company:

- can pay its debts when due,
- has committed funding,
- can service its financing,
- has retained the confidence of its investors, or
- has a credible route to commercialisation and profitability.

Instead, the test compares historic losses with subscribed share capital. That may be a useful signal for some traditionally financed businesses. It is much less meaningful for companies financed through repeated rounds of equity and quasi-equity investment.

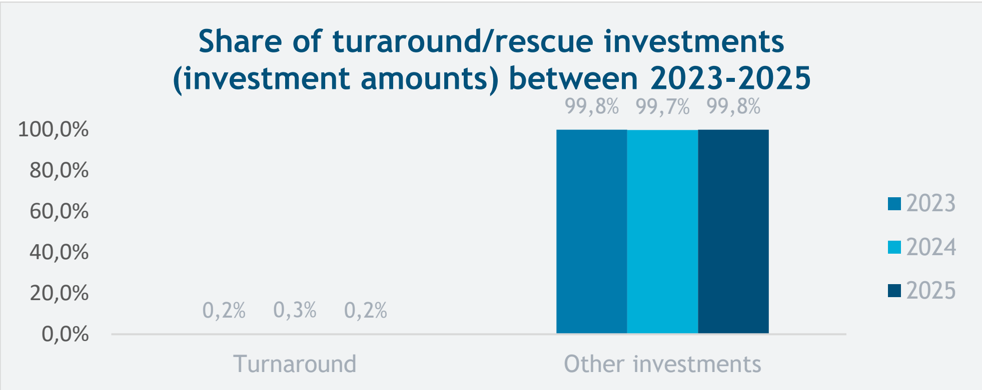
Policy implication: Ensure capital-loss indicators are not determinative where they do not reflect liquidity, solvency, committed financing or the realistic likelihood of business failure.

c. The framework overlooks professional investor judgement

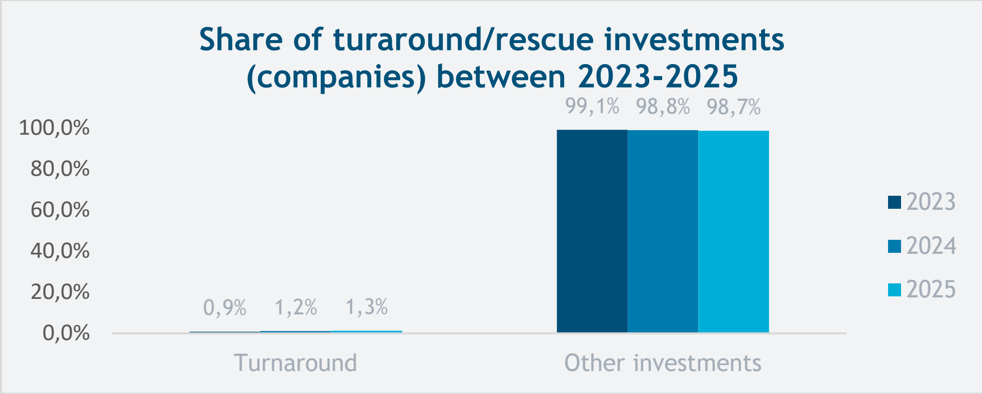
PE/VC investors do not decide whether a company is viable by looking only at the ratio between accumulated losses and registered capital. Depending on the company and its stage of development, they examine matters such as the company's progress, milestones, the strength of its management and governance, and expected path.

It is true that private capital can sometimes be provided to companies undergoing financial distress, major restructuring, or other complex situations where investors believe there is a credible path to recovery and long-term value creation. However, these cases represent a very small part of the European private capital market.

Invest Europe's market statistics show how limited this segment is. Between 2023 and 2025, turnaround and rescue investments represented less than 1% of total EU investment amounts and around 1% of companies receiving investment.[3]



[3] Turnaround/rescue is defined as financing made available to an existing business, which has experienced financial distress, with a view to re-establishing prosperity.



Source: Invest Europe / European Data Cooperative (EDC)

The overwhelming majority of PE/VC investment therefore goes to companies that investors view as viable and capable of future growth.

Private investment is, of course, not a guarantee that a company will succeed. Nor should the presence of private capital automatically exempt a company from all financial safeguards.

However, substantial investment following professional due diligence is relevant evidence. A definition that treats accounting losses as decisive while largely ignoring committed risk capital and continued investor support does not present a balanced picture of viability.

Policy implication: Give appropriate weight to professional due diligence, committed capital and continued investor support as evidence of viability.

d. The test assumes profitability arrives too early in the growth journey

Many innovative companies do not follow a simple path from establishment to revenue and then profitability.

A biotech company may need years of research, clinical development and regulatory approval. A deep-tech company may have to build and test several generations of its technology. A clean-tech or industrial company may need to construct demonstration facilities before reaching commercial scale.

These companies dedicate their initial years and capital to R&D, patent accumulation, and scaling activities to capture global market share. They may accumulate substantial losses during the exact period in which their technology, workforce and productive capacity are being built.

This cash-flow profile is not necessarily a sign of distress. For many innovative companies, it is a deliberate and expected part of building long-term value.

Policy implication: Protect the full growth journey, including scaleups and innovative companies whose most capital-intensive development stages occur before profitability.

e. The test mistakes financing form for financial condition

The UID criteria can produce different outcomes for companies with very similar operations, prospects and available resources. A company financed through a combination of shares and quasi-equity may be classified as being in difficulty, another company with a different financing structure may not be.

The difference is not necessarily their ability to survive and thrive. It is the legal and accounting form of their financing. This is because quasi-equity may be considered debt in accounting terms, but it functions as equity in economic terms.

Private capital funds primarily invest through equity; they do not normally originate loans. When a portfolio company needs additional funding, it will usually seek debt from a bank or other lender. That debt is legally and economically separate from the fund and from the fund's other portfolio companies.

PE funds may also provide quasi-equity, such as shareholder loans or convertible loan agreements, to bridge financing needs or support growth. These instruments are not ordinary creditor lending. They are typically interim, risk-bearing tools that can lead to equity ownership.

Quasi-equity often supports growth, bridges financing needs or enables future investment rounds. Its purpose is to strengthen long-term development, not to provide short-term creditor finance. It increases investor exposure and signals continued support, rather than financial weakness.

Shareholder loans and convertible loan agreements usually rank behind other liabilities. They are either converted into equity in the next financing round or, if the round does not happen, the investor bears the loss.

The draft 2026 Rescue and Restructuring Guidelines partially recognise this problem in Section 2.2(20)(a) and (b), allowing certain financial instruments absorbing losses, through on a going-concern basis and excluding only gone concern.

While all Rescue and Restructuring Guidelines compliant loss-absorbing instruments are likely quasi-equity under the GBER (as per Article 2(74) of the 2027-2034 draft[4]), many GBER quasi-equity instruments will not be considered loss-absorbing under the Guidelines because they remain liabilities – with varied interpretations across national and international accounting standards, despite the new replacement of "own funds" with "equity" – and the conversion right might not sit with the company. The recognition thus does not constitute a general recognition of the legal and economic function of quasi-equity.

As it currently stands, companies and investors may be encouraged to structure financing around regulatory outcomes rather than commercial needs, favouring accounting classification over the financing solution best suited to the business.

If not, two companies may have the same amount of long-term, risk-bearing financing and the same capacity to continue operating, but one may pass the UID test and the other may fail solely because their financing instruments are accounted for differently.

Policy implication: Recognise quasi-equity according to its function as risk-bearing capital, not solely according to its accounting classification, ensuring consistency across frameworks.

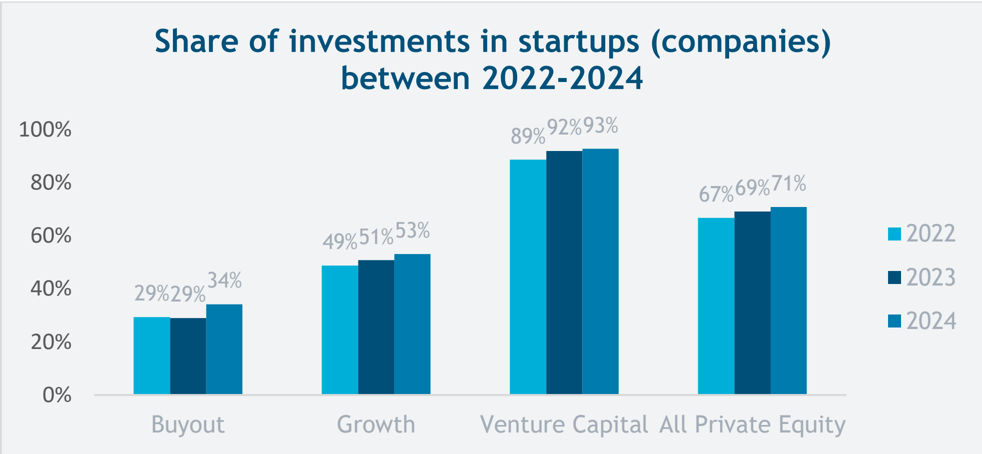
[4] As defined by the draft 2027-2034 GBER, 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying 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;

f. Narrow exemptions move the cliff edge instead of fixing the test

The draft 2027-2034 GBER and the draft Rescue and Restructuring Guidelines acknowledge that the current definition can produce inappropriate outcomes for startups and innovative companies. But instead of fixing the definition, they add more exceptions.

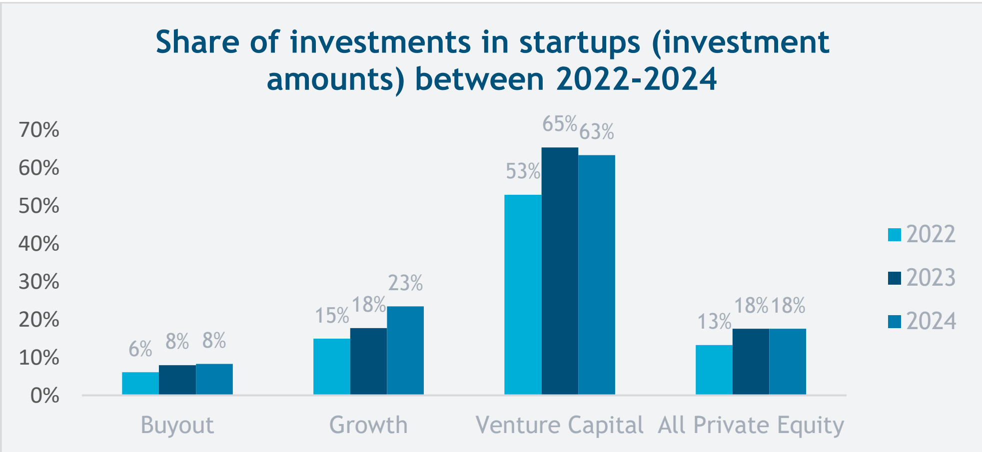
At a first glance, the specific recognitions, for instance that of startups – meaning companies with less than 100 employees, if the European Commission's March 2026 Recommendation on the definitions of innovative enterprises, startups and scaleups will be adopted also within the GBER – are an important acknowledgement that high-growth companies operate with longer investment horizons and different financing structures.

In fact, as per Invest Europe's data, a large share of startups (companies with less than 100 employees) makes up the private capital investment universe.



Source: Invest Europe / European Data Cooperative (EDC)

However, the exemption for startups merely moves the boundary when it comes to investment amounts. If we analyse the amounts of investments captured by the European Commission's startup definition, we will see that the impact is far less great than anticipated.



Source: Invest Europe / European Data Cooperative (EDC)

The underlying capital-loss tests remain. A company covered by the startup definition may be protected one year and classified as a UID the next, even if its financing, risk profile and development needs have not materially changed. It may lose protection simply because it has grown, hired people or survived long enough to enter the scaleup phase.

This is particularly problematic for companies with long development cycles. The most capital-intensive phase may begin after the company has passed the formal startup thresholds.

The exemptions, although helpful, do not address the underlying problem. They simply relocate it.

Policy implication: Fix the UID definition itself rather than relying on fragmented exemptions that leave companies exposed as they grow, hire and scale.

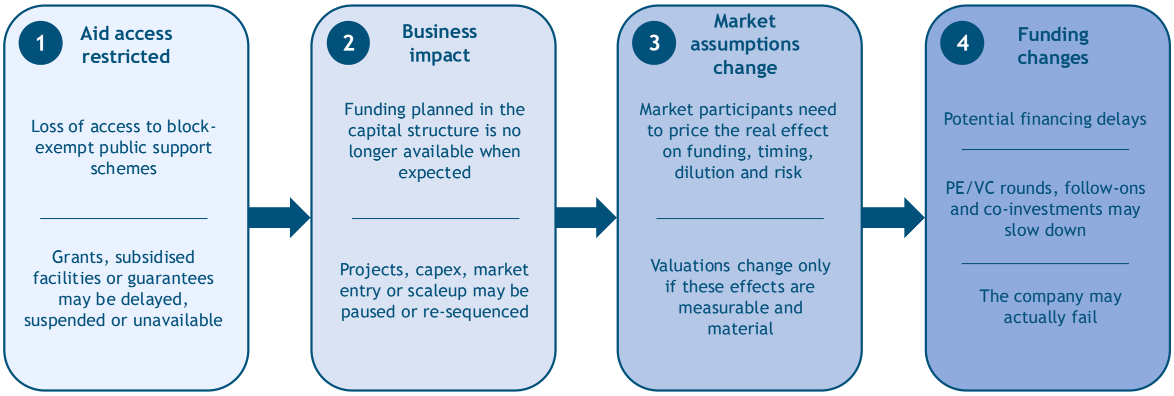
- ***Impact: false positives weaken Europe's investment and innovation pipeline***

Access to finance, including State aid, directly shapes a company's ability to innovate and scale.

When access to public support is restricted by rules that do not reflect economic reality, the consequences extend far beyond individual aid applications and can affect the broader investment ecosystem, and, ultimately, the effectiveness of public support and Europe's competitiveness.

1. Short-term impact: UID status disrupts financing and execution

For PE/VC-backed companies, UID classification is an immediate trigger point that can rapidly transform what appears to be a technical regulatory issue into a financing and execution risk.



The most immediate impact for these businesses is loss or suspension of access to many block-exempt public support schemes, which can create a near-term liquidity gap.

Companies may need to pause or resequence projects that depended on aid approval. They may also need to redesign eligible costs, seek bridge financing, obtain waivers or replace the expected support. Delays in product development, capital expenditure, market entry or scaleup plans can materially affect the company's future, especially where public co-financing was part of the original plan.

Valuers focus on the economic substance of the investment and the company's actual performance, prospects, funding position and risks, rather than mere balance sheet triggers. Fair value is the price that market participants would pay in an orderly transaction at the measurement date, based on the company's actual economic circumstances and current market-participant assumption, according to the [International Private Equity and Venture Capital Valuation (IPEV) Guidelines](). The mechanical loss of more than half of subscribed share capital is not itself evidence that a company is economically distressed. If the company continues to meet its milestones despite the technical UID status, its fair value would likely remain unchanged.

A valuation impact arises when UID classification creates economic consequences that market participants would price. This may include lower expected cash flows, additional funding needs, greater dilution, delays to milestones, higher execution risk or a higher probability of a down round. In that situation, the business may not be failing, but the investment has become riskier because a planned source of funding has been removed. If the company can replace the grant without material delay or dilution, fair value may be unchanged. Often, however, replacement funding is unavailable or costly.

In an environment where investors are increasingly selective and fundraising conditions remain challenging, replacement funding may be unavailable, more expensive or significantly dilutive. This means that otherwise viable companies may be forced to slow or even halt their development.

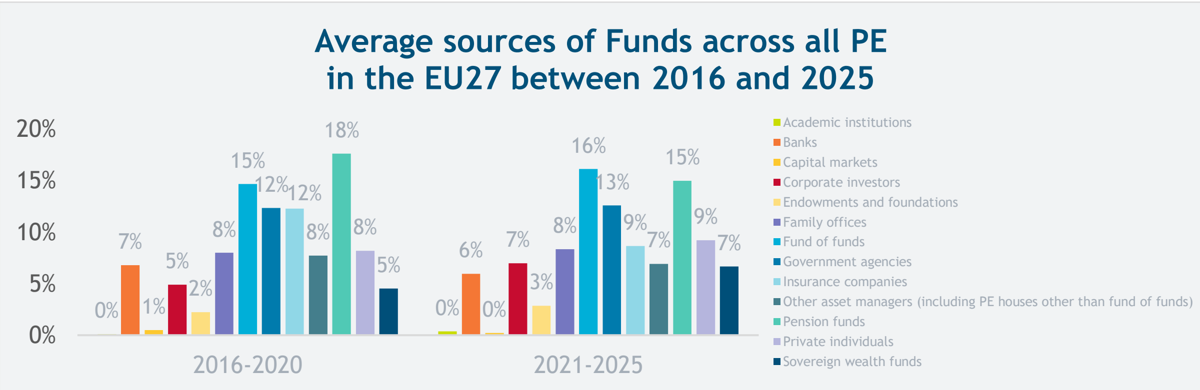
All while the scope and magnitude of the liquidity gap created cannot be simply fulfilled by rescue and restructuring aid. Rescue aid may address an immediate cash shortage, but it does not necessarily replace the economic value of the lost aid. Restructuring aid may "save" the company while materially reducing the value attributable to its existing investors. In addition, the UID classification can close the normal State-aid door without necessarily opening the rescue-and-restructuring one.

2. Long-term impact: UID false positives weaken Europe's scaleup ecosystem

Private capital plays a central role in financing companies operating in sectors that the European Union considers strategically important, including biotechnology, healthcare, artificial intelligence, semiconductors, defence, cleantech, quantum computing and advanced manufacturing – many of the companies that would be most likely to trigger the UID criteria at some point in their development.

False-positive UID classifications do not only affect one financing round, one aid measure or one company. Over time, an overly restrictive definition can weaken the interaction between public and private capital across the innovation lifecycle. It can shrink the pipeline of companies eligible for public support, reduce the crowding-in effect for private capital and deepen Europe's scaleup financing gap.

According to Invest Europe's fundraising data, while private capital fundraising in the European Union increased from an average of €46 billion annually during 2016-2020 to €75.1 billion during 2021-2025, the composition of that capital is evolving.

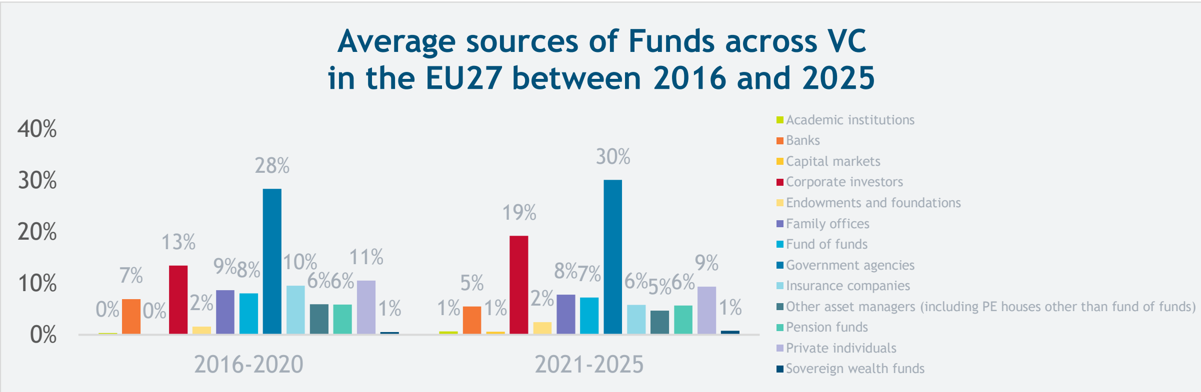


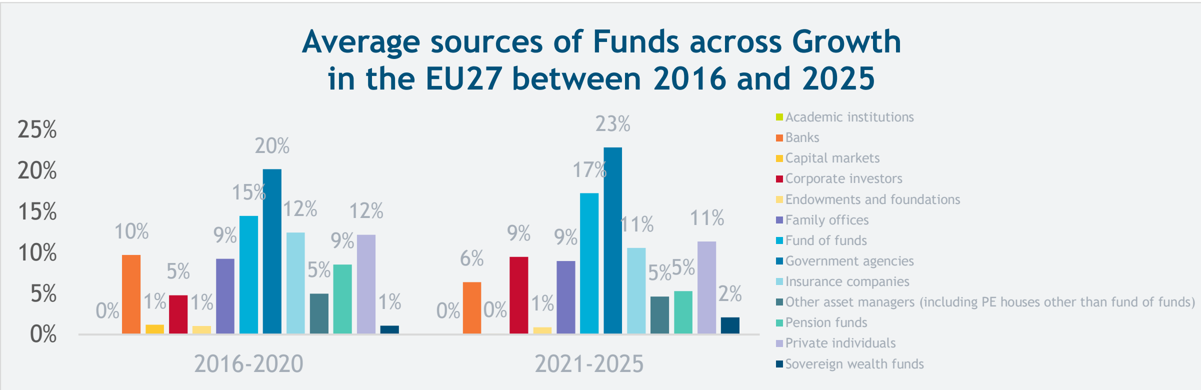
Source: Invest Europe / European Data Cooperative (EDC)

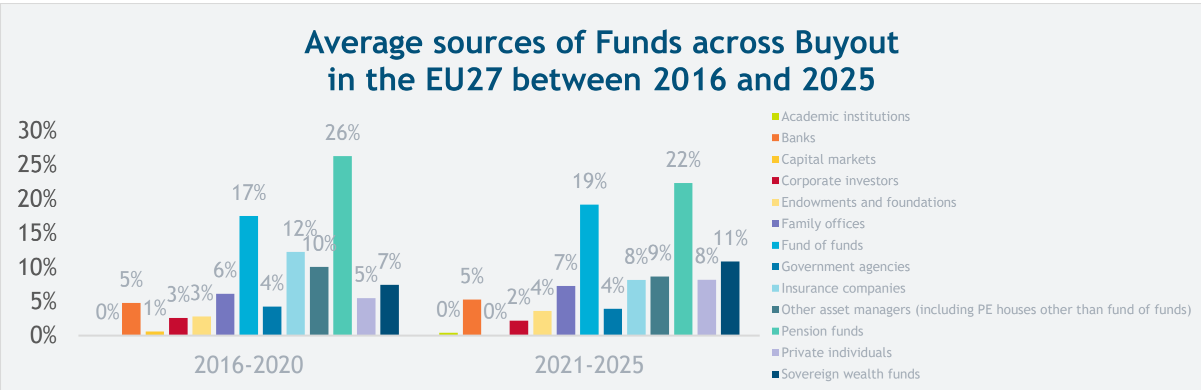
Traditional institutional investors, including pension funds and insurance companies, now represent a smaller share of fundraising. Public funding, by contrast, has become a more important source of capital.

In VC, government agencies already account for almost one-third of the average capital raised in 2020-2025, while their role in growth capital has also expanded, representing almost one-quarter.

At the same time, over the same period, pension funds, which are critical providers of patient capital, account for a smaller share of fundraising than they did five years earlier across several private capital strategies. And the same goes for insurance companies, as well as banks.







Source: Invest Europe / European Data Cooperative (EDC)

This matters because Europe already struggles to attract sufficient private investment into high-growth and high-risk sectors compared with other leading economies.

The purpose of State aid instruments should not be simply to provide funding. The objective should be to use public resources to accelerate private-sector investment into strategic sectors and technologies to promote competitiveness and resilience. Public support should be designed to crowd in private capital, but this is still not the case.

- ***Recommendations: fix the definition, not just the exemptions***

As the European Commission navigates the dual objectives of simplification and competitiveness, the ongoing revision of the UID framework represents a unique opportunity to remove unnecessary barriers to investment and unlock private capital at scale.

The revision of the UID definition is about the kind of companies Europe wants to support and help succeed. If Europe wants more innovation, more scaleups and more European champions, the definition of an UID cannot stop at accounting appearances.

Through the UID test and related reforms, the European Commission can build a more coherent and future-proof State aid rulebook. The aim should be simple: turn policy ambition into market-compatible rules that support innovators, investors and scaleups while removing obvious false positives.

The first priority should be to ensure PE/VC-backed companies are not automatically treated as part of a group for the purpose of UID assessments, restoring a level playing field between companies financed through private capital and those financed through other means.

Recommendation 1 – Prevent artificial aggregation of PE/VC-backed companies. The UID assessment should not treat economically and operationally separate funds, managers and portfolio companies as one economic unit where the relevant safeguards are met. **Proposed wording for Article 2(3) of the draft 2027-2034 GBER:** ***"Enterprises which received capital from a venture capital or private equity fund shall not be considered to form one economic unit for the purpose of this Regulation provided that the alternative investment fund and its manager, and the enterprises concerned maintain separate accounting records, and that the alternative investment fund and its manager have a pre-defined investment strategy to exit the enterprise or enterprises concerned, including by realising their value through the sale of the enterprise or other means."***

The same amendment should be implemented in Section 1(22) of the draft 2026 Rescue and Restructuring Guidelines.

In this regard, the UID definition should also align with other ongoing structural reforms focused on the very same objectives, including the European Commission's May 2025 Recommendation on Small-mid-Cap (SMC) enterprises, which has already been incorporated in the draft 2027-2034 GBER.

Recommendation 2 – Align the SME, SMC and UID frameworks. Where AIFs satisfy the relevant safeguards, including separate accounts and a predefined exit strategy, portfolio companies should not be treated as linked enterprises solely because of the investment relationship. The UID assessment should not artificially aggregate unrelated portfolio companies.

Specific wording that can be included concerning the "linked enterprise" status:
"Where an alternative investment fund as defined in Article 4(1), point (a), of Directive 2011/61/EU has invested into an enterprise, the following should not be considered "linked enterprises" for the purposes of point 3.3:

> a. ***that enterprise and that alternative investment fund;***
> b. ***that enterprise and the manager of that alternative investment fund;***
> c. ***that enterprise and another enterprise in which that alternative investment fund has invested.***
>
> ***The first subparagraph applies provided that all the following conditions are met:***
> a. ***the alternative investment fund and its manager, and the enterprises concerned maintain separate accounting records;***
> b. ***the alternative investment fund and its manager have a pre-defined investment strategy to exit the enterprise or enterprises concerned, including by realising their value through the sale of the enterprise or other means."***
>
> **Likewise, in Annex I, Article 3(2) of the draft 2027-2034 GBER, the exclusions to the "partner enterprise" concept should also reflect the derogation set out in Annex IV of the draft 2027-2034 GBER.**
>
> **Specific wording that can be included concerning the "partner enterprise" status:**
> *"However, an enterprise may be ranked as autonomous, and therefore as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, if those investors are not linked, within the meaning of point 3.3, either individually or jointly to the enterprise in question:*
> a. *public investment corporations, ~~**venture capital companies**~~ **venture capital or private equity funds**, individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;*
> b. *universities or non-profit research centres;*
> c. *institutional investors, including regional development funds;*
> d. *autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants."*
>
> **The same amendment should be implemented in footnote 8, in Section 1(12) of the draft 2026 Rescue and Restructuring Guidelines.**
>
> To avoid misalignment and legal uncertainty, **we suggest prioritizing the review of the SME definition and having it precede the adoption of the 2027-2034 GBER, as well as the review of the Rescue and Restructuring Guidelines.**

Secondly, following the same logic, exemptions should reflect the full lifecycle of high-growth, innovative businesses, as per the European Commission's March 2026 Commission Recommendation on the definitions of innovative enterprises, startups and scaleups.

Many companies face their greatest financing challenges after they have exceeded startup thresholds but before they reach commercial maturity, maintaining the innovative nature of their business models.

> **Recommendation 3 – Protect the full growth journey.** Article 1(5) of the draft 2027-2034 GBER should be extended to cover scaleups, as defined in the European Commission recommendation, so that companies do not lose protection precisely as they enter capital-intensive growth stages. **Proposed wording for Article 1(5) of the draft 2027-2034 GBER should include:**
> - ***"aid to innovative startups in existence for less than seven years, if they qualify as undertakings in difficulty under Article 2, point (32)(a) or (b);"***

- ***"aid to innovative scaleups in existence for less than ten years, if they qualify as undertakings in difficulty under Article 2, point (32)(a) or (b);"***

Likewise, the list in Section 2.2(24) of the draft 2026 Rescue and Restructuring Guidelines should be extended as follows:

- *"an innovative startup will not be considered to be in difficulty* ***~~five~~ seven*** *years from its registration unless it meets the condition set out in point 20(c) of these guidelines; and"*
- ***"an innovative scaleup will not be considered to be in difficulty within ten years from its registration unless it meets the condition set out in point 20(c) of these guidelines."***

Thirdly, as scope and exemption can only go so far, the criteria of the definition itself require targeted amendments to establish a more substantial and durable UID definition.

In particular, the role and function of quasi-equity as risk-bearing capital under the UID capital-loss tests should be recognised beyond the current efforts.

Recommendation 4 – Recognise quasi-equity as risk-bearing capital. State aid instruments should explicitly recognise both equity and quasi-equity instruments when assessing whether more than half of capital has been lost, regardless of their accounting classification. An instrument that must convert on a qualifying event has no genuine repayment path under normal conditions. **We propose to clarify the following in Section 2.2(20)(a) and (b), including footnote 20, of the draft 2026 Rescue and Restructuring Guidelines, as well as footnote 20, which should be coherently implemented into Articles 2(32)(a) and (b) of the draft 2027-2034 GBER:** *"in the case of a limited liability company (18), where more than half of its subscribed share capital(19) has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves and all other elements generally considered as part of the equity of the company, including* ***(i)*** *financial instruments absorbing losses on a going concern basis, as recorded in the financial statements* ***~~in compliance with the applicable accounting standards~~, and (ii) qualifying subordinated instruments, as recorded in the financial statements*** *(20), leads to a negative cumulative amount that exceeds half of the subscribed share capital;"*

Footnote 20 should mention that: *"~~This includes~~* ***For the purposes of this point****:*
(a) *'financial instruments absorbing losses on a going concern basis' includes instruments that a company continuing trading activity is not obliged to reimburse or remunerate in the absence of positive distributable net earnings, such as preferred shares, silent participations or bonds that are perpetual or convertible into shares* ***~~contingent or at will of the beneficiary, according to the relevant generally applicable accounting principles or international financial reporting standards.~~****;*
(b) 'qualifying subordinated instruments' means debt or other financial instruments that:
(i) are subordinated to the claims of all other, non-subordinated creditors of the company;
(ii) provide for mandatory conversion into equity upon the occurrence of an investment round or an exit event of the company; and
(iii) have not, as at the date of the relevant financial statements, reached a scheduled maturity or long-stop date without such conversion having occurred.

For the avoidance of doubt, ***~~this excludes~~*** *debt or financial instruments that are convertible into shares only in the event of default or if the beneficiary ceases trading activity ('gone concern')* ***are excluded unless they also qualify as a qualifying convertible instrument under point (b).***

The capital-loss tests should apply only where they remain economically meaningful. They should target companies in real financial distress, not businesses that continue to attract investment, pass professional due diligence and show strong growth potential.

Recommendation 5 – Make capital-loss indicators non-determinative where investor support shows viability. For companies owned by closed-ended funds and benefiting from ongoing professional investor support, capital-loss criteria should not by themselves determine UID status. **Proposed wording:** ***"For the purposes of this definition, only points c) to e) of Article 2(32) shall apply where 25% or more of the company's capital is held by a closed-ended investment fund, subject to compliance with the Interest limitation rule of Article 4 of Directive 2016/1164."***

Instead, greater weight should be given to the other indicators to identify financial distress, including insolvency proceedings, inability to meet obligations as they fall due, unrepaid rescue aid, restructuring measures, and other indicators directly related to business survival.

The same clarification should be included in Section 2.2(20)(a) and (b) of the draft 2026 dRescue and Restructuring Guidelines: ***"For the purposes of this definition, only points c) and d) of Section 2.2(20) shall apply where 25% or more of the company's capital is held by a closed-ended investment fund, subject to compliance with the Interest limitation rule of Article 4 of Directive 2016/1164."***

Last but not least, all the above-mentioned adjustments should not exist in isolation, but should ensure consistency across the broader State aid framework and European agenda.

Recommendation 6 – Ensure consistency across the State aid rulebook. Equivalent treatment should be reflected across the GBER, the Rescue and Restructuring Guidelines and other relevant instruments, so the same company is not treated as viable under one framework and distressed under another.

Europe identifies a company as important, private investors identify the same company as promising, but State aid rules can identify that company as distressed. All of these assessments cannot be right at the same time. The assessments should be mutually reinforcing, not contradictory.

The historical objective of the UID definition remains valid: to prevent Member States from engaging in subsidy races or artificially prolonging the survival of inefficient, non-viable companies, the so-called "zombie" enterprises distorting price signals, blocking productivity growth, and crowding out private investment.

The challenge is to distinguish companies that are failing from companies that are building Europe's future. Reforming the UID definition would not weaken State aid discipline. It would make the rules more accurate, more compatible with today's economy and better aligned with Europe's competitiveness goals.

For more information, please reach out to publicaffairs@investeurope.eu