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Public Consultation Questionnaire - Revision of the Rescue and Restructuring Guidelines

Fields marked with \* are mandatory.

# Introduction

*The Rescue and Restructuring Guidelines and the need to revise them*

The currently applicable Rescue and Restructuring Guidelines were adopted in 2014 and are based on the 2004 Rescue and Restructuring Guidelines. However, the basic principles of the Rescue and Restructuring Guidelines were laid down long before, as the European Commission at least since the 1970s allowed State aid to Undertakings in Difficulty and specific guidelines were adopted in 1994, 1997, 1999 and 2004.

Financial distress at the company level plays a signaling role in an economy, indicating that a firm is not making optimal use of its resources. While financial distress and consequent market exit plays a key role in ensuring an efficient allocation of resources, they can have negative economic consequences, which can justify public support. There is general consent that rescue and restructuring aid is distortive and detrimental to productivity and should be allowed only under strict conditions.

The Rescue and Restructuring Guidelines set out the conditions under which the Commission deems State aid granted to rescue or restructure Undertakings in Difficulty to be compatible with the internal market. Besides few exceptions, rescue or restructuring support is the only aid Undertakings in Difficulty can receive.

Since the last revision of the Rescue and Restructuring Guidelines in 2014, the Commission has applied them in a large number of cases covering various sectors of the economy. The Commission practice and the case law of the EU Courts show that the Rescue and Restructuring Guidelines in general work well. Moreover, this view was supported by the results of an evaluation conducted in the context of the Fitness Check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance published in 2020. The Fitness Check focused in particular on the Undertaking in Difficulty definition and came to the conclusion that the Undertaking in Difficulty criterion largely meets its objective to identify companies in difficulties correctly, but it is not entirely clear and easy to apply for national authorities and guidance and/or clarification might be needed.

Based on its case practice, the evaluation in context of the Fitness Check and ad hoc contributions received since the conclusion of the Fitness Check, the Commission considers that there is considerable evidence

available to allow revising the Rescue and Restructuring Guidelines.

The purpose of this public consultation is to collect feedback on the key revisions on substance envisaged by the Commission to take better into account the challenges faced by companies in the EU. In particular, the Commission is envisaging updating the scope of the guidelines. It is considering lifting the exclusion of the steel sector and to review the parameters defining an Undertaking in Difficulty.

The results of this public consultation will be summarised in a factual report, which will be published on the Have Your Say website. At the end of the survey, you can upload a file with a more detailed contribution.

# About you

**\*** Language of my contribution  Bulgarian

 Croatian  Czech

 Danish  Dutch  English

 Estonian  Finnish  French  German  Greek

 Hungarian  Irish

 Italian  Latvian

 Lithuanian  Maltese

 Polish

 Portuguese  Romanian  Slovak

 Slovenian  Spanish  Swedish

**\*** I am giving my contribution as

 Academic/research institution  Business association

 Company/business

 Consumer organisation  EU citizen

 Environmental organisation  Non-EU citizen

 Non-governmental organisation (NGO)  Public authority

 Trade union  Other

**\*** First name

**\*** Surname

**\*** Email (this won't be published)

**\*** Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

|  |  |  |  |
| --- | --- | --- | --- |
| Afghanistan | Djibouti | Libya | Saint Martin |
| Åland Islands | Dominica | Liechtenstein | Saint Pierre and  Miquelon |

 Albania  Dominican Republic

 Lithuania  Saint Vincent and the Grenadines

 Algeria  Ecuador  Luxembourg  Samoa

 American Samoa  Egypt  Macau  San Marino

 Andorra  El Salvador  Madagascar  São Tomé and

Príncipe

 Angola  Equatorial Guinea  Malawi  Saudi Arabia  Anguilla  Eritrea  Malaysia  Senegal

 Antarctica  Estonia  Maldives  Serbia

 Antigua and Barbuda

 Eswatini  Mali  Seychelles

 Argentina  Ethiopia  Malta  Sierra Leone  Armenia  Falkland Islands  Marshall Islands  Singapore

 Aruba  Faroe Islands  Martinique  Sint Maarten  Australia  Fiji  Mauritania  Slovakia

 Austria  Finland  Mauritius  Slovenia

 Azerbaijan  France  Mayotte  Solomon Islands  Bahamas  French Guiana  Mexico  Somalia

 Bahrain  French Polynesia  Micronesia  South Africa

 Bangladesh  French Southern and Antarctic Lands

 Moldova  South Georgia and the South Sandwich Islands

 Barbados  Gabon  Monaco  South Korea  Belarus  Georgia  Mongolia  South Sudan  Belgium  Germany  Montenegro  Spain

 Belize  Ghana  Montserrat  Sri Lanka

 Benin  Gibraltar  Morocco  Sudan

 Bermuda  Greece  Mozambique  Suriname

 Bhutan  Greenland  Myanmar/Burma  Svalbard and

Jan Mayen

 Bolivia  Grenada  Namibia  Sweden

 Bonaire Saint Eustatius and Saba

 Bosnia and Herzegovina

 Guadeloupe  Nauru  Switzerland

 Guam  Nepal  Syria

 Botswana  Guatemala  Netherlands  Taiwan

 Bouvet Island  Guernsey  New Caledonia  Tajikistan  Brazil  Guinea  New Zealand  Tanzania

 British Indian Ocean Territory

 British Virgin Islands

 Guinea-Bissau  Nicaragua  Thailand

 Guyana  Niger  The Gambia

 Brunei  Haiti  Nigeria  Timor-Leste

 Bulgaria  Heard Island and  McDonald Islands

Niue  Togo

 Burkina Faso  Honduras  Norfolk Island  Tokelau

 Burundi  Hong Kong  Northern Mariana  Islands

Tonga

 Cambodia  Hungary  North Korea  Trinidad and

Tobago  Cameroon  Iceland  North Macedonia  Tunisia  Canada  India  Norway  Türkiye

 Cape Verde  Indonesia  Oman  Turkmenistan  Cayman Islands  Iran  Pakistan  Turks and

Caicos Islands

 Central African Republic

 Iraq  Palau  Tuvalu

 Chad  Ireland  Palestine  Uganda

 Chile  Isle of Man  Panama  Ukraine

 China  Israel  Papua New Guinea

 United Arab Emirates

 Christmas Island  Italy  Paraguay  United Kingdom

 Clipperton  Jamaica  Peru  United States

 Cocos (Keeling) Islands

 Japan  Philippines  United States Minor Outlying Islands

 Colombia  Jersey  Pitcairn Islands  Uruguay

 Comoros  Jordan  Poland  US Virgin Islands  Congo  Kazakhstan  Portugal  Uzbekistan

 Cook Islands  Kenya  Puerto Rico  Vanuatu

 Costa Rica  Kiribati  Qatar  Vatican City  Côte d’Ivoire  Kosovo  Réunion  Venezuela  Croatia  Kuwait  Romania  Vietnam

 Cuba  Kyrgyzstan  Russia  Wallis and Futuna

 Curaçao  Laos  Rwanda  Western Sahara

 Cyprus  Latvia  Saint Barthélemy  Yemen

 Czechia  Lebanon  Saint Helena  Ascension and Tristan da Cunha

Zambia

 Democratic Republic of the Congo

 Lesotho  Saint Kitts and Nevis

 Zimbabwe

 Denmark  Liberia  Saint Lucia

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, ‘business association, ‘consumer association’, ‘EU citizen’) country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

 I agree with the [personal data protection provisions](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement)

# Sectorial Scope of the Rescue and Restructuring Guidelines

The questions in this section aim at assessing whether the current state of the EU economy would justify a change in the sectors covered by the Rescue and Restructuring Guidelines.

## Background

Currently all sectors can benefit from aid under the Rescue and Restructuring Guidelines except the coal and steel sectors and the financial sector. Concerning the steel sector, its exclusion from the scope of the Rescue and Restructuring Guidelines had been historically motivated by the existence of significant overcapacities globally and in the EU market. The current exclusion of the steel sector means that if a steel company is under financial distress (considered an Undertaking in Difficulty) it cannot receive any State aid, including State aid under the Rescue and Restructuring Guidelines, unlike undertakings active in other metal sectors, such as aluminium.

Global overcapacity still affects European producers and their employees. Moreover, the pressure on the EU steel industry from imports is taking place against the background of decarbonisation and new challenges to the global trade system. Due to the challenges faced, the Commission adopted an Action Plan for Steel and Metals, which outlines the importance of the steel sector which is among the most vulnerable sectors in transition.

Within the EU market overcapacities have decreased and EU production can cover most of the EU’s domestic demand in steel (90%). Between 2014 and 2023, EU steel industry production capacity has decreased significantly (crude steel production has decreased by around 20%). In the same vein, employment in the sector decreased by around 10%. At the same time, in 2024, global overcapacity was estimated to be more than four and a half times the EU’s yearly consumption. The EU steel industry went from a substantial trade surplus to a significant deficit.

*Question 1*

In your experience, has the exclusion of the steel sector from the Rescue and Restructuring Guidelines had a positive impact on:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Yes | No | I do not know / no opinion |
| Competition within the EU steel sector |  |  |  |
| Competitiveness of the EU steel sector |  |  |  |
| Both |  |  |  |
| There has been no positive impact at all |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

*Question 2*

In your experience, has the situation of the steel sector changed compared to 2014?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | has improved | has worsened | is unchanged | I do not know / no opinion |
| The situation |  |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

*Question 3*

Based on your reply to the question above, do you consider the exclusion of the steel sector from the scope of the Rescue and Restructuring Guidelines still justified?

 Yes  No

 I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

*Question 4*

In your view, would an inclusion of the steel sector in the Rescue and Restructuring Guidelines have:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Yes | No | I do not know / no opinion |
| A positive impact on competition within the EU steel sector |  |  |  |
| A positive impact on competitiveness of the EU steel sector |  |  |  |
| A positive impact on both |  |  |  |
| no positive impact |  |  |  |
| Negative impact on competition within the sector |  |  |  |
| Negative impact on competitiveness of the sector |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Negative impact on both |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

*Question 5*

In your view, would an inclusion of the steel sector in the Rescue and Restructuring Guidelines have an impact on other industries relying on steel products as input?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | a positive impact | a negative impact | no impact | I do not know / no opinion |
| There would be |  |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

# Material Scope of the Rescue and Restructuring Guidelines

The questions in this section aim at assessing whether the current definition of Undertaking in Difficulty would need to be amended to address certain deficiencies raised previously by stakeholders.

## Background

For undertakings that meet the criteria to be defined as Undertakings in Difficulty, rescue and restructuring aid is in principle the only route available to grant State aid. This is because rescue and restructuring aid is among the most distortive types of State aid, as it interrupts the normal competitive process leading inefficient undertakings to exit the market. The Undertaking in Difficulty concept is thus of a horizontal relevance as it is applied not only as an inclusion criterion in the Rescue and Restructuring Guidelines, but also as an exclusion criterion preventing companies from receiving aid under other guidelines.

An undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Whether an undertaking fulfils this definition is assessed based on four quantitative criteria in the Rescue and Restructuring Guidelines ((i) the loss of more than half of the subscribed capital in case of limited liability companies, (ii) the loss of more than half of the book capital for companies with at least some members with unlimited liability, (iii) undertakings under collective insolvency proceedings or fulfilling the criteria for being placed in collective insolvency proceedings at the request of its creditors, (iv) undertakings that are not SMEs with a book debt to equity ratio above 7.5 and an EBITDA interest coverage ratio below 1.0 for the past 2 years).

## Start-ups and scale-ups

The Rescue and Restructuring Guidelines provide that an SME that has been in existence for less than three years will not be considered to be in difficulty unless it is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

However, in recent years it has come to the Commission’s attention that the quantitative criteria of the Undertaking in Difficulty definition may have the effect of qualifying certain start-ups or scale-ups that have a specific capital-intensive growth model and that have not yet had the time to achieve Balance Sheet growth as Undertaking in Difficulty. Although those undertakings would not be condemned to going out of business in the short or medium term, and thus barring them from receiving other forms of State aid.

The Commission reminds that the following questions concern the Undertaking in Difficulty definition of the Rescue and Restructuring Guidelines and of all other State aid rules using that term. The General Block Exemption Regulation (EU) 651/2014 (“GBER”) includes also a definition for Undertakings in Difficulty in Article 2(18) of the GBER. Aid to undertakings that fulfil the definition set out in Article 2(18) of the GBER can, in principle, not be block exempted (Article 1(4)(c)) GBER). The Undertaking in Difficulty definition of the Rescue and Restructuring Guidelines does not concern the GBER, hence no potential change to the definition in the Rescue and Restructuring Guidelines will impact the possibility of undertakings concerned to receive aid that has been block exempted.

*Question 6*

In your experience, is the current exemption for SMEs that have been in existence for less than three years sufficient to allow start-ups to benefit from other forms of aid?

 Yes  No

 I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

*Question 7*

If your answer to Question 6 was “no”, which of the following options would be sufficient to address the shortcomings:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Yes | No | I do not know / no opinion |
| Extend the exemption period to five years |  |  |  |
| Exempt all undertakings that fulfil the definition of start-up laid down in Article 22(2) of the GBER |  |  |  |
| Extend the exemption period to ten years |  |  |  |

If the proposed extension period is not relevant, please provide a proposition and specify your industrial sector:

*2000 character(s) maximum*

Others (please specify)

*2000 character(s) maximum*

Please justify your answer:

*2000 character(s) maximum*

*Question 8*

Under the current rules, scale-ups fall under the definition of an Undertaking in Difficulty which prevents them from receiving aid under other State aid rules. In your view, is this specific scale-ups situation justified?

 Yes  No

 I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

*Question 9*

In your view, what would be the impact of an exemption of start-ups and/or scale-ups from the definition of Undertaking in Difficulty on the administrative burden and costs for authorities?

|  |  |  |  |
| --- | --- | --- | --- |
|  | Yes | No | I do not know / no opinion |
| It would decrease the administrative burden with respect to start- ups |  |  |  |
| It would decrease the administrative burden with respect to scale- ups |  |  |  |
| It would not decrease the administrative burden |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

*Question 10*

In your view, what would be the impact of exempting start-ups and/or scale-ups from the definition of Undertaking in Difficulty on competition between undertakings within the internal market and the competitiveness of the EU economy in a global context?

|  |  |  |  |
| --- | --- | --- | --- |
|  | Yes | No | I do not know / no opinion |
| Increase competition within the EU |  |  |  |
| Increase Competitiveness of the EU |  |  |  |
| Increase both |  |  |  |
| Decrease competition within the EU |  |  |  |
| Decrease Competitiveness of the EU |  |  |  |
| Decrease both |  |  |  |

Please justify your answer:

*2000 character(s) maximum*

## The definition of “own funds”

The term “own funds” (which represents a literal translation of the French term “fonds propres” into English) is used in the definition of Undertaking in Difficulty and serves as a benchmark against which accumulated losses of a limited liability company must be evaluated, in order to establish whether such a company is in difficulty. That term is not defined in the Rescue and Restructuring Guidelines, which may create in some language versions of the Guidelines confusion as to which parts of a company’s equity and which financial instruments are covered by the term “own funds”.

*Question 11*

In your opinion, does the term “own funds” need to be further clarified?

 Yes  No

 I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

*Question 12*

If your answer to Question 11 was “yes”, what would, in your opinion, be the necessary clarification of the term “own funds”?

*2000 character(s) maximum*

Please justify your answer:

*2000 character(s) maximum*

*Question 13*

In your opinion, using “equity” instead of “own funds” would contribute to simplifying the assessment of this criterion, given that a company’s equity is readily available from its balance sheet?

 Yes  No

 I do not know / no opinion

Please justify your answer:

*2000 character(s) maximum*

**Other comments on the definition of Undertaking in Difficulty**

*Question 14*

Do you have any other comments concerning the definition of Undertaking in Difficulty for the purposes of the Rescue and Restructuring Guidelines or other State aid rules.

 Yes  No

If yes, please elaborate:

*2000 character(s) maximum*

# Additional information

*Question 15*

Do you want to raise any other points which may be relevant for the revision of the Rescue and Restructuring Guidelines?

 Yes  No

If yes, please elaborate:

*2000 character(s) maximum*

## Additional documents

If you want to share any document (e.g. data, research paper, position paper, etc.) that may be relevant for the revision of the Rescue and Restructuring Guidelines, please upload it here. Please make sure not to include any personal data in the file you upload if you wish to remain anonymous.

Please upload your file(s)

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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Only files of the type xls,xlsx,ods are allowed

**Contact**

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