AECM reply to Commission's public consultation on the draft new Rescue and Restructuring Guidelines

The European Association of Guarantee Institutions (AECM) and its members welcome the opportunity to provide feedback on the European Commission's draft new Rescue and Restructuring Guidelines.

Following the call for evidence on the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01), we are pleased to note that several proposals put forward by AECM have been reflected in the draft Guidelines.

More precisely, we welcome the recognition that innovative start-ups may have a capital structure that technically qualifies them as undertakings in difficulty, even though they are not necessarily at risk of failing. By providing that an innovative start-up will not be considered an undertaking in difficulty during the first five years from registration, unless it is subject to insolvency proceedings, the draft text reduces the risk of innovative start-ups being automatically excluded from other aid schemes solely because of their early-stage capital structure.

AECM also welcomes the fact that the draft Guidelines better reflect the specific situation of small and medium-sized enterprises compared with large undertakings, including through lower own-contribution thresholds for SMEs. It is also positive that, for small enterprises, Member States are not required to impose measures aimed at limiting distortions of competition.

Finally, AECM welcomes the recognition that, when assessing the relevant equity position, account should be taken of financial instruments capable of absorbing losses on a going-concern basis, where their terms provide for effective loss absorption while the undertaking continues its activities.

However, AECM would like to highlight a number of issues that, in our view, would benefit from further clarification or improvement.

- Treatment of equity-like financing

As mentioned above, AECM welcomes the clarification in the draft Guidelines that financial instruments capable of absorbing losses on a going-concern basis should be taken into account when assessing whether an undertaking is in difficulty, including, under the specified conditions, preferred shares, silent participations and certain perpetual or convertible bonds. This is an important improvement compared with the 2014 Guidelines and addresses AECM's concern that a purely balance-sheet-based assessment may not adequately reflect an undertaking's actual financial position and resilience.

However, the draft does not sufficiently recognise mezzanine financing and other hybrid instruments which, although legally classified as debt, may have equity-like characteristics, including long-term availability, subordination, limited or conditional repayment and remuneration rights and, most importantly, genuine capacity to absorb losses on a going-concern basis. A substance-over-form approach would ensure that such instruments are assessed according to their economic characteristics and loss-absorbing capacity rather than their legal form.

AECM considers that the reference to financial instruments capable of absorbing losses on a going-concern basis should not be interpreted as requiring continuous or automatic participation in operating losses. What should be decisive is whether, while the undertaking continues its trading activity, the instrument does not create an unconditional obligation to repay the principal or remunerate the holder and is capable, under its terms, of absorbing losses where necessary.

In this respect, contractual mechanisms allowing for the deferral or cancellation of remuneration, the write-down of principal or other forms of loss absorption while the undertaking remains a going concern should be sufficient to demonstrate the relevant loss-absorbing capacity. Requiring general loss-sharing throughout normal business operations would unnecessarily narrow the range of equity-like and hybrid financing instruments and could adversely affect their availability to SMEs and start-ups.

- Differentiated and proportionate approach for micro-enterprises

AECM welcomes the greater recognition given in the draft Guidelines to the specific situation of SMEs, including the lower own-contribution thresholds and the more proportionate approach to measures addressing distortions of competition for smaller enterprises.

AECM considers that this approach should be further developed by introducing a more proportionate treatment of micro-enterprises. Their financial structure, access to finance, administrative capacity and potential impact on competition can differ significantly from those of small and medium-sized enterprises and therefore warrant a differentiated assessment.

In particular, the current criteria for determining whether an undertaking is in difficulty may disproportionately affect micro-enterprises, whose capital structures are often characterised by limited equity, owner financing and a high reliance on bank debt. Accounting-based indicators, such as capital losses, may therefore not adequately reflect the undertaking's actual economic viability or its capacity to continue operating.

AECM therefore suggests introducing a simplified and proportionate assessment for micro-enterprises, whereby the fulfilment of accounting or capital-loss criteria alone would not automatically result in their classification as an "undertaking in difficulty", provided that they are not subject to insolvency proceedings and can demonstrate their capacity to continue operating. Indeed, the current criteria are not well suited to micro-enterprises, as they do not sufficiently take into account the structural specificities of very small undertakings.

Such an approach would preserve the safeguards of the Rescue and Restructuring framework while avoiding the disproportionate exclusion of economically viable micro-enterprises from access to support. It would also be consistent with the draft Guidelines' broader recognition that SMEs may require differentiated treatment in view of their specific financing and liquidity constraints.

- No-aid counterfactual requirements

AECM also notes the increased emphasis in the draft Guidelines on demonstrating a credible alternative scenario in the absence of State aid.

AECM fully recognises the importance of demonstrating the necessity and proportionality of State aid. However, the application of a detailed counterfactual analysis should be proportionate to the size and nature of the beneficiary, the type of support and the circumstances of the case.

This is particularly important for micro, small and medium-sized enterprises. Guarantee schemes frequently address situations in which an otherwise viable micro, small and medium-sized enterprises face temporary liquidity constraints or difficulties in obtaining financing due to increased risk perception, insufficient collateral or a temporary deterioration in its financial position.

In such circumstances, requiring an extensive and fully developed no-State-aid counterfactual could create disproportionate administrative and evidentiary burdens, precisely where the objective is to prevent otherwise viable micro, small and medium-sized enterprises from failing because of temporary liquidity constraints.

AECM therefore encourages the Commission to introduce a proportionate approach to the counterfactual requirement, particularly for micro and small enterprises and for aid provided through established guarantee schemes. Where a guarantee facilitates access to financing on specific State aid regimes, and where the scheme is based on clearly defined eligibility, risk-sharing and pricing conditions, the requirements for demonstrating the counterfactual should be appropriately simplified and proportionate to the circumstances of the case.

The Guidelines should also recognise that, in the absence of State support, the beneficiary may face a deterioration in its financing conditions, including the withdrawal or non-availability of financing. This possibility should be taken into account when assessing whether State intervention is necessary.

In light of the above, AECM and its members would very much appreciate if the European Commission could take our request into its kind consideration by operating the aforementioned changes in the new Rescue and Restructuring Guidelines.

Brussels, September 2026

About us

The **European Association of Guarantee Institutions (AECM)** represents 51 members operating in 33 European countries, and 7 affiliates.

AECM members comprise national promotional banks and institutions, as well as public, private and mutual guarantee schemes. Their common mission is to facilitate access to finance for SMEs by providing guarantees to economically viable businesses that lack sufficient collateral to obtain bank financing.

This so-called SME financing gap is recognised as market failure. By guaranteeing for these enterprises, guarantee institutions address effectively this market failure and facilitate SMEs' access to finance. The broader social and economic impact of this activity includes the following:

- Job creation and preservation of jobs by guaranteed companies
- Innovation and competition: crowding-in of new ideas leading to healthy competition with established market participants
- Structure and risk diversification of the European economy
- Regional development since many rural projects are supported
- Counter-cyclical role during crises

SME guarantees generally pursue a long-term objective and our members, if public, private, mutual or with mixed ownership structure, have a promotional mission.

AECM's members operate with counter-guarantees from regional, national, and European level. At the end of the year 2024, AECM's members had about EUR 218 billion of guarantee volume in portfolio, thereby granting guarantees to around 6 million SMEs. AECM's members are by far the most important counterparts of the EIF concerning EU counter-guarantees, handling EU (counter-)guarantees from the very beginning in 1998.

Have a look at our:

Statistical Yearbook 2024

Position papers

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