

AECM reply to Commission's call for evidence on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01)

The European Association of Guarantee Institutions (AECM) welcomes the European Commission's call for evidence on the revision of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.

Drawing on the practical experience of AECM members in applying the current rules, we would like to highlight that the main challenge in the existing framework lies in the definition of an "undertaking in difficulty" (UiD), which does not fit certain categories of companies, and would like to suggest the following:

1. Extend the period during which a company is classified as a newly established undertaking

The existing definition of an UiD, as set out in paragraph 20 et seq. of the 2014 Guidelines, classifies an undertaking as "in difficulty" if, inter alia, accumulated losses exceed half of subscribed share capital, provided that the company has been in existence for more than three years.

This rigid three-year threshold, during which a company is treated as a "newly established undertaking," inadvertently captures a wide range of viable but investment-intensive firms, notably technology-oriented young companies, growth-oriented SMEs, and particularly innovative or R&D-intensive start-ups that:

- Have negative equity in their early years due to substantial upfront investment and delayed revenue generation;
- Rely predominantly on venture capital and equity financing rather than debt; and
- Pursue scalable, high-growth business models where profitability is intentionally deferred until later growth stages.

For example, a deep-tech start-up developing new semiconductor materials or clean hydrogen technology may show accumulated accounting losses and negative equity during its first five years owing to high R&D intensity and long development cycles. Nevertheless, such a firm may continue to attract substantial private investment, validate its technology, and demonstrate a credible path to market entry and profitability.

As a result, these undertakings risk being classified as "in difficulty" under the current criteria, despite demonstrating technological progress, market potential, private investor confidence, and long-term viability. This limits their access to State



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aid under other instruments that promote innovation, digitalisation, and the green and twin transitions.

To address this issue, **we recommend extending the period during which a company is considered a newly established undertaking from three to five years.** This adjustment would better reflect current economic, technological, and sustainability realities, while fully preserving the core objectives of the State aid framework, ensuring that aid remains necessary, proportionate, non-distortive, and targeted to genuinely viable undertakings.

2. Clarify the term of “own funds”

The definition of “own funds” (or the “beneficiary’s own contribution”) in the Guidelines is ambiguous and has been subject to differing interpretations. AECM members have observed that, in practice, the overly conservative interpretation of own funds often leads to the classification of otherwise viable and solvent firms as undertakings in difficulty, even where there is no genuine risk of default or insolvency.

To this end, **we kindly ask the European Commission to clarify the interpretation of “own funds” and acknowledge that funds that are economically similar to equity, for instance mezzanine or subordinated financing, should be included when assessing the financial situation of a company.**

While the 2014 Guidelines do not provide an explicit definition of “own funds,” Commission practice generally interprets the term narrowly as balance-sheet equity (share capital plus reserves) and internal resources such as retained earnings or asset sales. This narrow interpretation is problematic because it:

- Excludes mezzanine or equity-like financing;
- Conflicts with the economic reality of modern financing, particularly for SMEs and innovative firms; and
- Is inconsistent with broader EU financial definitions, such as GBER Article 2(66) on equity-like investments.

Equity-like instruments, such as mezzanine capital, share key characteristics of equity:

- Subordination to debt capital;
- Long-term maturity and limited repayment rights;
- Income-dependent remuneration or profit participation; and
- Economic loss absorption.



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From a rating and creditworthiness perspective, mezzanine capital is recognised as equity-like and strengthens a company's solvency position. Excluding such instruments distorts the economic assessment of a firm's financial health and its access to finance.

Moreover, national frameworks, such as German insolvency law (Sections 19 and 39 InsO), treat subordinated loans with qualified subordination as equity substitutes rather than liabilities. In line with this national legislation, equity-like instruments should be included in the definition of "own funds" for State aid purposes.

To this end, we propose the following clarification for the term "own funds": *"In addition to balance sheet equity, financing instruments that are economically equivalent to equity are also considered own funds. These include, in particular, subordinated loans, typical silent partnerships and other equity-like financing, provided that they are available to the company on a long-term basis and are subject to a qualified subordination agreement with pre-insolvency enforcement restrictions."*

To further substantiate our request, we wish to cite the expert assessment provided by Creditreform Rating AG¹ on the consideration of mezzanine capital within the definition of "firms in difficulty" (see the detailed expert assessment at the end of the document).

Overall, the study comes to the following conclusion:

- Mezzanine capital is widely used and economically relevant. Around half of the companies surveyed use mezzanine capital; larger companies and numerous industrial and service sectors in particular have high penetration rates.
- Mezzanine capital strengthens the equity base in terms of creditworthiness. On average, mezzanine users have better credit ratings and lower default probabilities; mezzanine capital acts as a real loss buffer and stabilises the capital structure.
- The narrow UiD definition ignores an essential component of equity capital. The failure to take mezzanine equity capital into account means that companies with an economically sound capital base are formally classified as UiD.
- Taking mezzanine capital into account reduces the UiD population by around 15%. This reduction affects companies whose empirical indicators do not indicate a lack of viability.

3. Better reflect the micro-enterprises-specific considerations

¹ <https://www.creditreform-rating.de/en/>



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Chapter 6 of the Guidelines contains a section on “Aid schemes for smaller aid amounts and beneficiaries”. However, it does not adequately reflect the specific financial limitations and high economic and social importance of micro-enterprises.

To address this gap, **AECM proposes to tailor the burden-sharing, timing, and procedural requirements proportionally for micro-enterprises, allowing, for example, lower private-contribution thresholds under clearly defined conditions.**

This adjustment would ensure that micro-enterprises can access aid without being overburdened, while preserving the Guidelines’ objectives of necessity, proportionality, and aid to viable undertakings.

Brussels, 14 November 2025

About us

The 49 members of the **European Association of Guarantee Institutions (AECM)** are operating in 32 countries in Europe². They are either private / mutual sector guarantee schemes or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. This so-called SME financing gap is recognised as market failure. By guaranteeing for these enterprises, guarantee institutions help to address this market failure and facilitate SMEs' access to finance. At the end of 2024, 6 million SMEs were in the portfolios of AECM members.

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² <https://aecm.eu/members/our-members/>

Expert opinion on the consideration of mezzanine capital in the definition of "companies in difficulty"

Prepared by Creditreform Rating AG
13 November 2025

1. Initial situation and expert role of Creditreform Rating

According to the current interpretation of the General Block Exemption Regulation (GBER), companies are considered to be "companies in difficulty" (UiS) if more than half of their subscribed share capital (corporations) or equity capital (partnerships) has been eroded as a result of losses – without taking into account additional equity-like capital, such as mezzanine capital. Creditreform Rating has carried out a data analysis to examine, on the basis of Creditreform data, the extent to which this narrow definition ignores economically relevant components of own funds, thereby incorrectly classifying a significant number of companies as UiS.

Creditreform Rating AG is a leading European rating agency and part of the Creditreform Group. It is registered as an independent rating agency with ESMA and certified by the UK FCA; its ratings are recognised by the EBA and EIOPA for regulatory purposes and can be used by European banks and insurance companies to determine capital requirements under CRR III and Solvency II. Creditreform Rating's core competencies include ratings of companies and financial institutions as well as structured credit and asset-based finance ratings; ESG ratings form another central pillar of its range of services. On this basis, Creditreform Rating has an established market presence and many years of experience in quantitative and qualitative credit analysis, which is reflected in a standardised methodological framework for corporate ratings.

2. The importance of mezzanine capital in company valuation at Creditreform

2.1 Role of equity capital

Creditreform Rating uses a standardised rating system for companies that combines qualitative analysis areas (structural, business and financial risk) with a detailed analysis of financial indicators, in which the equity ratio plays a central role in assessing the capital structure and financing quality. The equity ratio is defined as:

$$\text{Equity ratio (\%)} = \text{Adjusted equity} / \text{Total assets} \times 100.$$

This means that the adjusted equity is explicitly at the centre of the rating analysis – not the equity reported purely under commercial law. The concept of adjusted equity capital aims to reflect a company's economic capital base. In practice, this includes balance sheet equity items and financing instruments that are subordinated, have a sufficiently long or indefinite term, are remunerated on a performance basis and provide for contractual loss participation or subordination.

Such instruments – including silent partnerships, profit participation rights and subordinated shareholder loans – are classified as mezzanine capital with equity characteristics in the rating process and are included in adjusted equity, provided that their contractual structure justifies this. This means that the equity ratio is always defined in such a way that equity-like funds that act as a loss buffer are included in the assessment, regardless of whether they are formally reported as equity or debt under the German Commercial Code (HGB).

2.2 Consequences for the assessment of creditworthiness

From Creditreform Rating's point of view, the decisive factor is that mezzanine capital strengthens the company's liability base, improves its debt structure, reduces the default risk for senior lenders and thus has a stabilising effect on its creditworthiness. Creditreform Rating therefore attaches central importance to the adjusted equity ratio in its creditworthiness analysis. Mezzanine capital with equity characteristics is consistently treated as part of economic equity. This definition of the equity ratio is applied in all Creditreform Rating company ratings – not only for the German economy, but for all European companies.

3. Data basis and analysis methodology

The study is based on the Creditreform balance sheet database, supplemented by information from the Creditreform economic database. The study is based on three reporting years: 2016, 2019 and 2023.

This allows both the level and the stability of the results over time to be assessed (before the pandemic, before the energy crisis, after multiple shocks).

The evaluations are based on a selection of all German companies with available profit and loss statements (P&L) in the respective reporting years 2016, 2019 and 2023 in the Creditreform balance sheet database. Depending on the year, this population comprises around 120,000 to 145,000 companies. For the analysis of the UiS status based on formula-based criteria (accumulated losses in relation to subscribed capital or equity), a subset of around 80,000 companies could be used for each year, for which all relevant balance sheet items were available in full. The statements on the prevalence and structure of mezzanine capital thus refer to the entire balance sheet sample used with income statements, while the UiS evaluations are based on the aforementioned subset with fully calculable UiS status.

For empirical evaluations, the creditworthiness of companies is measured using the Creditreform credit rating index. This is available for almost every German company and is considered the relevant information tool for credit decisions in corporate practice in Germany. It is a statistically derived credit rating on a scale of 100 to 600, with lower values indicating better creditworthiness. The credit rating index is linked to a one-year probability of default and is based on information from the Creditreform company and balance sheet database, including annual financial statement data, structural data, industry affiliation and observed payment practices of companies.

3.1 Prevalence and structure of mezzanine capital

The first analysis module examined the prevalence of mezzanine financing forms in the annual financial statements of German companies. In particular, subordinated loans (including shareholder loans), silent partnerships and profit participation rights were evaluated; in addition, other equity-like subordinated financing instruments were taken into account in accordance with the definition in the appendix. Both the frequency of use of mezzanine capital (proportion of companies with mezzanine capital on their balance sheets) and its relative importance (proportion of mezzanine capital in equity) were evaluated according to company size classes and industry aggregates.

3.2 Creditworthiness, mezzanine capital and effects on the UiS definition

In a second step, the creditworthiness of companies with and without mezzanine capital is compared and two UiS definitions are compared with each other.

1. COM definition (status quo): UiS if losses have resulted in more than half of the subscribed share capital or equity capital being depleted. Only equity capital reported in the balance sheet counts; mezzanine capital is not taken into account.
2. Alternative definition, including mezzanine capital: In addition, equity-like mezzanine financing is counted as own funds. This is based on the allocation of mezzanine capital to the economic equity base.

On this basis, three groups of companies were formed: companies that are considered UiS according to both definitions, companies that are only classified as UiS according to the narrow COM definition (i.e. precisely because mezzanine capital is not taken into account), and companies that are not classified as UiS in either model. Descriptive statistics were considered for these groups, including for the UiS population of German companies and the development of creditworthiness, in order to assess economic stability and actual going concern.

4. Key findings of the analysis

4.1 Mezzanine capital as a widespread financing instrument

The evaluations show that mezzanine capital is not a niche financing instrument in the German corporate sector, but rather a structurally relevant refinancing instrument:

1. High prevalence over time: In all three years under review (2016, 2019, 2023), around 46–48% of the companies considered refinance themselves with mezzanine capital, among other things. This proportion has remained remarkably stable over time, despite varying economic cycles and periods of crisis.
2. Typical scale: For companies that use mezzanine capital, the share of mezzanine capital in equity capital is between 0 and 25% of equity capital in over 90% of cases. Mezzanine capital is therefore not usually a dominant component, but it does significantly strengthen equity capital.
3. Company size: The larger the company, the more frequently mezzanine capital is used. Over 60% of large and medium-sized companies refinance themselves with mezzanine capital, among other things, while the proportion for small companies is around 40%.
4. Industry structure: Mezzanine capital is particularly prevalent in the chemical industry, the metal and electrical industry, the consumer goods industry and wholesale.

5. Size–industry hybrid analysis: The combination of industries and size classes confirms the pattern: for example, 86.6% of large chemical companies use mezzanine capital, but only 58.7% of small chemical companies.

Mezzanine capital is therefore widely established in many industries, particularly among larger companies, and effectively serves as an additional equity buffer. A UiS definition that systematically ignores this component of capital obscures a significant portion of the economic capital base of the corporate sector and thus runs the risk of underestimating the actual risk-bearing capacity of many companies.

4.2 Creditworthiness and mezzanine capital

4.2.1 Scope of the UiS population

The data shows that the absolute proportion of companies with UiS status – regardless of the definition – is very low: in 2023, around 0.42% of the companies examined will be considered UiS according to the narrow COM definition, and only 0.36% according to the expanded definition that takes mezzanine capital into account. The relative difference is therefore considerable: the UiS population is reduced by around 15% due to the economically appropriate inclusion of mezzanine capital. This difference corresponds exactly to the group of companies that are only considered UiS because mezzanine equity is not taken into account in the capital base, even though it clearly strengthens their liability and risk-bearing capacity. The results are robust across all three reporting years and show a consistent pattern.

4.2.2 Correlation between mezzanine capital and creditworthiness

The analysis shows a clear positive correlation between mezzanine use and creditworthiness. Around 58% of companies with very good to good credit ratings will refinance themselves in 2023 using mezzanine capital, among other things, while companies with risky credit ratings use mezzanine capital much less frequently, at only around 39%. There is a reciprocal relationship here: on the one hand, mezzanine financing leads to a better credit rating by strengthening equity capital. On the other hand, companies with already solid credit ratings are more likely to have access to mezzanine financing.

In summary, it can be said that mezzanine capital is typically associated with a better risk profile and acts as an indicator and driver of higher creditworthiness. The analysis by industry underscores this finding: nearly all industries benefit from the expanded definition of equity capital, with the effect being particularly pronounced in the service sector, where nearly 19% more companies would become eligible for funding if mezzanine capital were recognised as equity capital.

4.2.3 Default rates and risk classification

The analysis of default probabilities and risk classes confirms the viability of the expanded definition: companies that use mezzanine capital have significantly lower default rates than companies without mezzanine capital across almost all industries. They are also classified as "risky".

Particularly relevant to the UiS discussion is the group of companies that are classified as UiS according to the COM definition, but would no longer be classified as UiS according to the definition that takes mezzanine capital into account. For these companies, Creditreform data does not show above-average default rates compared to formally "healthy" companies; rather, the key figures and credit ratings suggest that they are fundamentally viable.

5. Summary and conclusion

1. *Mezzanine capital is widespread and economically relevant.*
Around half of the companies surveyed use mezzanine capital; larger companies and numerous industrial and service sectors in particular have high penetration rates.
2. *Mezzanine capital strengthens the equity base in terms of creditworthiness.*
Mezzanine users have better credit ratings and lower default probabilities on average; mezzanine capital acts as a genuine loss buffer and stabilises the capital structure.
3. *The narrow UiS definition of KOM ignores an essential component of equity capital.*
The failure to take mezzanine equity into account means that companies with a sound economic capital base are formally classified as UiS.
4. *Taking mezzanine capital into account reduces the UiS population by around 15%.*
This reduction affects companies whose empirical indicators do not indicate a lack of viability.

From the perspective of Creditreform Rating, which has systematically included mezzanine capital in its adjusted equity ratio for many years, the available empirical evidence clearly supports expanding the UiS definition to include equity-like mezzanine capital. Only such an economically sound definition of own funds ensures that companies that are actually unviable continue to be excluded from aid, while solid but mezzanine-financed companies are not mistakenly treated as UiS and thus cut off from support instruments.

Appendix: Methodological definitions and segmentations

A. Definitional distinction between mezzanine capital

The following balance sheet items were treated as mezzanine capital with equity characteristics:

- Shareholder loans with equity characteristics
- Profit participation rights (corporations) with equity character
- Subordinated capital
- Contributions from silent partners
- Convertible bonds
- Liabilities to shareholders
- Liabilities to limited liability company shareholders and silent partners
- Liabilities to personally liable shareholders with a remaining term of more than 5 years
- Liabilities to affiliated companies with a remaining term of more than 5 years

B. Segmentation by credit rating

The companies were segmented by credit rating using the Creditreform credit rating index (see above). The credit rating segments were classified as follows:

- Very good/good: credit rating index 100–249
- Satisfactory: credit rating index 250–349
- Risky: credit rating index 350–499
- Default: credit rating index 500 / 600

C. Industry classification

The companies were grouped into industry aggregates based on the WZ 2008 classification of economic activities used by the Federal Statistical Office. The classification was carried out in accordance with the following WZ 08 divisions:

- Construction: WZ 41–43
- Chemicals / plastics: WZ 19–22
- Retail trade: WZ 47
- Wholesale: WZ 46
- Raw materials: WZ 01–09, 23
- Consumer goods: WZ 10–18, 31–32
- Consumer-related services: WZ 55–56, 79, 86–93, 95–96
- Metal/electrical: WZ 24–30
- Business services: WZ 61–63, 69–74, 77–78, 80–82
- Transport/logistics: WZ 49–53

D. Segmentation by company size

Companies were segmented by size based on the total assets reported in their respective annual financial statements. The size categories were defined as follows:

- **Large:** balance sheet total > £25 million
- **Medium-sized:** balance sheet total > £7.5 million and ≤ £25 million
- **Small:** Total assets > £0 and ≤ £7.5 million

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