

CALL FOR EVIDENCE FOR AN INITIATIVE (without an impact assessment)

This document aims to inform the public and stakeholders about the Commission's work, so they can provide feedback and participate effectively in consultation activities.

We ask these groups to provide views on the Commission's understanding of the problem and possible solutions, and to give us any relevant information they may have.

TITLE OF THE INITIATIVE	Revision of the Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01)
LEAD DG – RESPONSIBLE UNIT	DG COMP / Unit E3
LIKELY TYPE OF INITIATIVE	Commission autonomous act (guidelines)
INDICATIVE TIMING	Q4 2026
ADDITIONAL INFORMATION	https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/rescue-and-restructuring_en

This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.

A. Political context, problem definition and subsidiarity check

Political context

The current Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Rescue and Restructuring Guidelines) were adopted in 2014. The Guidelines set out the conditions under which State aid for rescuing and restructuring of non-financial undertakings in difficulty may be found to be compatible with the internal market on the basis of Article 107(3)(c) of the Treaty on the Functioning of the European Union. Only companies which fulfil the criteria of the Undertaking in Difficulty (UiD) definition can receive aid under these Guidelines. The Guidelines apply to all non-financial undertakings in difficulty, except to those operating in the coal sector or the steel sector.

The current Rescue and Restructuring Guidelines were evaluated as part of a wide [Fitness Check](#) of State aid rules. The Fitness Check focused in particular on evaluating the appropriateness of the UiD definition and concluded that, while the UiD definition had largely met its objective to correctly identify companies in difficulties, it was not entirely clear and that it was not easy for national authorities to apply it.

The Rescue and Restructuring Guidelines are set to expire by 31 December 2025. The Commission therefore envisages to prolong by one year the validity of the Rescue and Restructuring Guidelines, i.e. until 31 December 2026 to ensure a proper revision of those Guidelines.

Moreover, since the adoption of the current Rescue and Restructuring Guidelines more than ten years ago the market and geopolitical context has changed, in particular so for the European steel sector, which faces major challenges to its competitiveness. The Commission, in its [Action Plan for Steel and Metals](#), acknowledges these challenges.

Problem the initiative aims to tackle

The first potential issue to be addressed concerns the scope of the Guidelines, and more

<p>specifically the inclusion of the steel sector in the remit of it. This sector was excluded from the scope of the Guidelines in 2014 due to EU and global overcapacity. While there is no longer structural overcapacity in steel in the EU itself, global overcapacities still exist. The revision considers bringing the steel sector within the scope of the Rescue and Restructuring Guidelines as a way to contributing to an EU steel industry that is fit to face the current and future challenges.</p> <p>The second potential issue to be tackled concerns the technical quantitative criteria of the UiD definition which may have the unintended effect that certain undertakings, given their specific growth model (e.g. innovative start-ups with high upfront innovation costs, covered by subsequent rounds of equity finance) may fulfil those criteria for UiD although they may in fact not be in difficulty. Such unintended effects would contradict the objective of the UiD definition which is to identify undertakings that are almost certainly condemned to go out of business in the short or medium term. A further dimension of that potential problem is that it may also unjustifiably exclude inherently viable undertakings from other types of State aid. If this were found to be the case, the situation would be particularly problematic in a context where it is the objective to foster and incentivise innovation by European companies, including in particular start-ups and scale ups, to strengthen the competitiveness of the European economy.</p> <p>Third, the Commission envisages clarifying certain parts of the UiD definition, in particular in respect of the “own funds” concept, which appears to create confusion for practitioners.</p> <p>Finally, the Commission also envisages technical amendments to the structure of the Guidelines following a number of EU Courts judgments.</p>
Basis for EU action (legal basis and subsidiarity check)
Legal basis
Articles 107 and 108 TFEU. According to the case law of the EU Courts, the Commission can adopt guidelines in areas under the EU’s exclusive competence, such as competition policy in the internal market.
Practical need for EU action
<p>This initiative falls under a policy area where the EU has exclusive competence under Article 3 TFEU. Therefore, the subsidiarity principle does not apply.</p> <p>The rules issued by the Commission laying down the compatibility conditions of aid measures aim to ensure predictability and legal certainty for Member States and stakeholders on how the Commission interprets the State aid provisions in the Treaty. Given the exclusive competence of the Union, Member States cannot adopt similar measures, and the initiative therefore has an EU added value by definition.</p>
B. What does the initiative aim to achieve and how
The initiative aims to ensure that the Rescue and Restructuring Guidelines remain fit to meet their objective.
Likely impacts
This initiative will provide greater legal certainty and transparency for stakeholders as regards how the Commission will assess and ensure that State aid for rescuing or restructuring non-financial undertakings in difficulty comply with Article 107 TFEU. It is also expected to help innovation and thereby growth by reducing unjustified barriers for start-ups and scale ups as far as eligibility for various types of State aid is concerned.

Future monitoring
The Commission will continue to monitor the alignment of the guidelines with their objective, as well as with the future case law of the EU Courts.
C. Better regulation
Impact assessment
This initiative only involves limited policy choices available to the Commission, noting that the changes are focused on either aligning the Guidelines to existing legal concepts, definitions and case law or involve a purely binary choice regarding scope. An impact assessment is thus not required. A Staff Working Document, including a cost / benefit analysis, competitiveness check and an SME check will accompany the revised guidelines.
Consultation strategy
<p>This initiative will build on the feedback gathered during the public consultation carried out in the context of the Fitness Check, complemented by the information gathered through the following additional activities:</p> <ul style="list-style-type: none"> - a 12-week consultation to provide feedback on this call for evidence. - a 12-week public consultation of interested stakeholders on a questionnaire concerning the contemplated changes. <p>The draft Guidelines will be also published for stakeholders' consultation and discussions with the Member States will take place in the established fora.</p>