Undertaking in Difficulty Consultation
September 2026

(EU Commission public consultation on the draft new Rescue and Restructuring Guidelines)[1]

(Scale Ireland Transparency Register Registration Number - 3351409100544-10)

Scale Ireland is Ireland's leading independent not-for-profit, representative organisation for Irish tech start-up and scaling companies. We are the biggest representative organisation for the Irish tech sector with more than 800 members. Our mission is to support, promote and advocate on behalf of indigenous tech start-up and scaling companies of all stages, sizes and sectors and to create the most favourable conditions for them to succeed. Our vision is to make Ireland a leading global location for innovation and entrepreneurship.

Scale Ireland is pleased to have the opportunity to comment on the Commission's draft Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. We have previously contributed to the Commission's consultation on the revised General Business Exemption Regulation (2025 and 2026) and we recognise the overlapping nature of this consultation with the Commission's work regarding start-ups and scaling companies over the last year and a half.

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[1] https://competition-policy.ec.europa.eu/public-consultations/2026-rescue-restructuring-guidelines_en

Scale Ireland's interest in the draft recommendation is rooted in our support for the development of a strong Irish and European start-up and scaling community.

This is a policy area that has received considerable domestic interest in Ireland from policymakers and has featured strongly in the Irish Government's White Paper on Enterprise (2022)[2] and the work of the Irish Government appointed Commission on Tax and Welfare (2022)[3]. Notwithstanding this, Ireland continues to experience significant challenges in ensuring the availability of scaling finance for its companies. We recognise that there are a number of EU wide initiatives in this regard such as the proposals for Capital Markets and the Savings and Investment directive.

Our observations are as follows:

1. We support the Commission's draft revision of the definition of undertakings in difficulty and we welcome the recognition by the Commission that this has been a problematic area.

Tech and life science start-ups differ from any other enterprises as they typically require significant early stage investment, often occurring prior to any significant revenue generation. Their funding circumstances are typically different too from traditional SMEs involving use of preference shares, convertible instruments and shareholder loans.

This has in the past allowed for the impression that these companies are in financial difficulties. Given the level of risk attached to start-ups working in our sector, this impression acts as a further impediment to the development of a healthy pro-enterprise ecosystem by potentially excluding some of these companies from European and domestic state initiated programmes of support.

The Commission's explicit recognition of this point is welcome.

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[2] https://enterprise.gov.ie/en/publications/white-paper-on-enterprise-2022-2030.html

[3] https://www.gov.ie/en/commission-on-taxation-and-welfare/campaigns/commission-on-taxation-and-welfare/

We are, of course, in agreement that public monies should not be used in support of failing business entities unless previously considered for strategic purposes by the Commission and Nation states.

However, it is important to distinguish between companies experiencing genuine losses and those that may report financial losses but who are engaged in investment-led scaling supported by venture capital.

The challenges identified by both the Draghi and Letta reports speaks to the need to secure and mobilise private capital in support of European enterprise and scaling companies. It is important that this imperative is carried through at all related levels of policy-making.

2. It follows that financial instruments deployed within this sector, particularly those that revert to equity, are not confused as simple financial liabilities. Those engaged in investing often have longer term funding intentions with appropriate risk and reward balance considerations. These quasi-equity instruments should not fall within the definition of financial difficulties. An undertaking should not be considered in difficulty where it has recently received a material investment from an independent professional investor on genuinely risk-bearing of quasi-equity terms. It is critical that these companies are not excluded from consideration for scaling state supports because of their funding structure.

3. In light of the long scaling journey which start-up companies often require, we would suggest extension of the 5 year exemption under Section 24 (c) for start-up and scaling companies to 10 years. Companies working in areas like biopharma and the semiconductor would frequently work within this extended timeline.

Alternatively, the formulation used in Article 21 (3)(b) of the GBER regulations which used the exemption for risk finance investments less than ten years following registration of less than seven years following the first commercial sale. In this context the definition of commercial sale becomes of critical importance and should specifically exclude any prototypes, pilots, demonstration projects and incidental revenues preceding regulatory approval or full scale commercial deployment or launch.

Conclusion

Scale Ireland supports the Commission's intent with regard to innovative start-ups being excluded from the definition of undertakings in difficulty and welcomes the initiative in this regard as a further step towards making Europe more competitive at a global level.

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