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HT.4404 - Public consultation on the draft new Rescue and Restructuring Guidelines

Here follows the comments and proposals of the Confederation of Swedish Enterprise on the European Commission's public consultation on the new Rescue and Restructuring guidelines.

Including the steel sector is unfortunate

We regret the inclusion of the steel sector in the draft Guidelines. In our view, the risks associated with allowing rescue and restructuring aid to steel undertakings outweigh the potential benefits of providing support to individual firms in specific cases. While the European steel industry faces significant challenges stemming from intense global competition, extending the scope of the Guidelines to cover the sector will not improve its long-term competitiveness. Instead, efforts should focus on measures that strengthen the sector's ability to compete on market terms.

Innovative start-ups

We welcome the Commission's proposal to introduce a specific safe harbour for innovative start-ups. The proposed approach recognises that young innovative companies may display financial characteristics which, while typical of research, development and commercialisation phases, do not necessarily indicate genuine economic distress.

Starting point for the calculation of the period

We would encourage the Commission to consider linking the relevant period not only to the date of registration, but also, where appropriate, to the start of operations in the relevant field of activity. Registration dates may not always accurately reflect the economic reality of an undertaking. In some cases, companies are incorporated well before commencing substantive activities, while in others the commercialisation process only begins after a considerable preparatory phase.

We therefore suggest that registration could remain the default starting point, while allowing undertakings to rely on the start of operations in the relevant field of activity where this more accurately reflects the economic timeline of the project. Such an approach would help ensure that the intended duration of the safe harbour is not inadvertently shortened by formal incorporation dates that are disconnected from actual business activity.

Interaction with other State aid instruments

We also consider it important that the Commission further clarifies how the proposed rule will interact with other State aid instruments. The draft indicates that innovative start-ups should not be regarded as undertakings in difficulty for certain purposes, but it remains somewhat unclear how this is intended to operate across the broader State aid framework.

In order for the new provision to have practical effect, the Commission should explain more explicitly how the five-year safe harbour is intended to apply in relation to other State aid rules and instruments that exclude undertakings in difficulty, including where such instruments contain their own definitions or cross-references.

Expert assessments

With regard to footnote 24 and the possibility of demonstrating innovative status through an external expert assessment, additional practical guidance would be valuable.
In particular, the Commission should clarify:

- who may qualify as an independent external expert;
- what type of evidence and methodology would be considered sufficient;
- whether previous assessments carried out under national or Union innovation programmes may be relied upon; and
- whether existing evaluations by public innovation agencies can be recognised for the purposes of the Guidelines.

Greater legal certainty in this respect would facilitate implementation and reduce unnecessary administrative burdens for both authorities and applicants.

Duration of the safe harbour

There is empirical evidence suggesting that innovative start-ups in certain sectors may require significantly longer periods to develop and commercialise their products and services than is typical in the wider economy. This is particularly the case in sectors such as life sciences, deep-tech activities and certain forms of capital-intensive industrial technology, where long development cycles, regulatory requirements, testing phases or large-scale demonstration projects can delay commercialisation for several years.

At the same time, we would caution against introducing sector-specific derogations or special rules. Defining which sectors should qualify for a longer safe harbour would inevitably give rise to difficult boundary issues, increase administrative burdens and create legal uncertainty. Innovative undertakings are often active across several technologies or business models, making sector-based distinctions both difficult to apply and prone to disputes.

The remaining question is therefore whether the general safe harbour period itself should be extended beyond the five years proposed by the Commission, for example to seven or eight years. While we understand the rationale behind such proposals, we believe that a general extension also raises important concerns.

First, innovative undertakings constitute a highly heterogeneous category. While some genuinely innovative firms face unusually long commercialisation cycles, many do not. A general extension to seven or eight years would therefore increase the likelihood that undertakings facing genuine structural difficulties, rather than merely long innovation cycles, would continue to benefit from the safe harbour.

Second, a seven or eight-year period appears comparatively long in many sectors. If an undertaking continues to display the same financial indicators associated with an undertaking in difficulty after such a period, it may reasonably be questioned whether the situation can still be explained primarily by the normal commercialisation cycle of an innovative start-up, particularly if the starting point of the safe harbour is already linked to the commencement of actual operations.

More broadly, State aid rules should avoid creating situations where inefficient or non-viable undertakings continue to receive indirect advantages at the expense of healthy competitors. Excessive flexibility risks distorting competition and reducing economic efficiency by delaying necessary market adjustment.

It is true that Member States could address some of these concerns by introducing additional eligibility criteria or safeguards within individual aid schemes. However, given the importance of legal certainty and consistent application across the Union, it would be preferable for any such mechanism to be reflected directly in the EU framework rather than being left entirely to national implementation.

Should the Commission nevertheless conclude that additional flexibility is warranted, a more proportionate solution could be a two-step approach. Under such a model, the general safe harbour would remain limited to five years, but an undertaking could qualify for a further period of up to three years where it can demonstrate that:

- it continues to satisfy the innovation criteria;
- it remains within the relevant size thresholds;
- it is not subject to insolvency proceedings and does not meet the conditions for collective insolvency; and
- it has attracted significant external financing from independent investors during the preceding three years.

Such an approach would preserve the simplicity and legal certainty of the general rule while providing targeted flexibility for undertakings that continue to demonstrate innovation potential and market confidence. It would also avoid the need for sector-specific distinctions, thereby reducing administrative burdens and limiting difficult boundary assessments.

Best regards

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