

Rescue & Restructuring State aid guidelines – Revision

ClientEarth response to the call for evidence

ClientEarth welcomes the possibility to provide feedback to the European Commission (Commission)'s call for evidence for the revision of the Rescue & Restructuring State aid guidelines (R&R Guidelines).

We focus our response on three points which are interlinked, and not directly covered by the feedback request: (i) the inconsistencies between the R&R Guidelines and other State aid guidelines, (ii) the need for environmental conditionalities and (iii) in particular the need for environmental conditionalities in case of inclusion of the steel sector.

1. Alignment with other State aid guidelines

A key aspect missing in the call for evidence is the need for consistency and coherence between the R&R Guidelines and other State aid guidelines.

The Commission itself indicated in its Staff Working Document in 2020 following the Fitness Check in 2019 that “[r]escue and restructuring aid are among the most distortive types of State aid. It is therefore important to ensure that aid is only allowed under conditions that mitigate its potential harmful effects and promote effectiveness in public spending.”¹ The Commission concluded that State aid rules “[...] also need to be aligned to future challenges and Commission priorities. This is in particular important as State aid can, and should contribute to the Green Deal, as well as the [...] Industrial Strategies. This is key, given the past and, most crucially, future budgetary constraints.”²

¹ See Staff Working Document, 30 October 2020, Part 3/4 , p. 2, available at of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance.

² See Executive Summary of the Staff Working Document, p. 3.

As expressed in our recommendations for a consistent integration of environmental considerations,³ there are indeed political commitments as well as legal principles and obligations that strongly plead in favour of environmental mainstreaming in EU State aid policy.

However, in practice, State aid policy takes a siloed approach. Parts of State aid policy are aimed at supporting environmental objectives, such as the Guidelines on State aid for Climate, Environmental Protection and Energy (CEEAG), while other parts of the State aid policy are aimed at supporting other objectives without taking any account of environmental considerations. The lack of a holistic approach creates loopholes for environmentally harmful aid measures and undermines the decarbonisation of the EU economy. As pointed out by the Climate Advisory Board report “Towards EU Climate Neutrality”, the European Climate Law requires the European Commission to check that any draft measure or legislative proposal is consistent with EU climate goals. The Climate Advisory Board notes that these checks have been done on many but not all, relevant measures and proposals. According to the Board: *“they should apply to [...] climate-relevant state aid decisions and communications”*. Such checks warrant the implementation of environmental conditionalities, especially where these checks identify aid measures that involve environmental risks.

Regarding the R&R Guidelines, this issue is illustrated in Case SA.59974 – *Complexul Energeti Oltenia SA*.⁴ In January 2022, the Commission approved restructuring aid to a Romanian company active in mining fossil fuel-based power generation and local heat supply (Complexul Energetic Oltenia SA, (CEO)) following an in-depth investigation opened in March 2021. As part of the restructuring aid, CEO received State aid for totally new installed production capacity of 1,325 MW fossil gas, without any decarbonisation conditions.

In fact, this means that as from 2026, CEO will be competing as a viable operator with other operators on the market with the difference that CEO will install its new gas capacity as from 2026 thanks to the aid received without any decarbonisation conditions.⁵ In addition, CEO also benefitted from aid to support the payment of ETS allowances under the R&R Guidelines. All of this was only possible because CEO was in financial difficulty: this will therefore distort competition in the future and does not ensure a level playing field on the market.

Due to its strict interpretation and literal application of the R&R Guidelines, the Commission missed an opportunity to consider new market realities and decarbonisation goals and to avoid future inconsistencies with the CEEAG and CISAF.⁶

This case demonstrates that the R&R Guidelines are outdated as they do not foresee the same conditionality for aid under the CEEAG (e.g. for investments in new fossil gas capacities and measures allegedly ensuring security of electricity supply).

It can be disputed separately whether the CEEAG comply with the Green Deal objectives as they treat fossil gas as less polluting than other fossil fuels and therefore still allow State aid in support of gas. On

³ See ClientEarth recommendations from April 2024 (updated April 2025), [Environmental mainstreaming in EU State aid policy](#)

⁴ Decision of 26 January 2022 in Case SA.59974 – Complexul Energeti Oltenia, available at [SA_59974_40197480-0000-C36B-AA20-73B13A9ED4D4_183_1.pdf](#)

⁵ See [EStAL - European State Aid Law Quarterly: One Time, Last Time, or Why the CE Oltenia Lignite Restructuring Aid Approval Makes for an Accident, Not a Precedent · Commission Decision on State Aid SA.59974 Complexul Energetic Oltenia SA · Annotation by Clemens Ziegler](#), and see also for background [EStAL - European State Aid Law Quarterly: The Decommissioning of Lignite- and Coal-Fired Power Plants in the Commission's State Aid Practice and the European Green Deal](#)

⁶ We note that the decision in Case SA.59974 was taken one day before the adoption of the CEEAG by the Commission (27 January 2022).

this issue, the European Scientific Advisory Board on Climate Change notes that State aid policy is inconsistent with other policies when it comes to the phasing out of fossil fuel subsidies, stating that: *“Despite repeated political commitments, EU State aid guidelines continue to allow fossil fuel subsidies (policy inconsistency). Fossil fuel subsidies remained relatively stable in the last decade (around EUR 50 billion per year) and even increased sharply in 2022 (to EUR 120 billion) in the context of the energy crisis.”*⁷ At the very least, the Commission should now ensure that the safeguards provided in the CEEAG – and other frameworks – are also considered for aid granted under the R&R Guidelines.

Examples of conditions under the CEEAG that should also apply under the R&R Guidelines are the following:

- The aid must not displace the emissions from one sector to the other and must deliver overall greenhouse gas emission reductions (paragraph 116)
- The aid should not stimulate or prolong the consumption of fossil-based fuels and energy (paragraph 127)
- For investments in natural gas, the Member State must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target, and how the lock in of gas-fired generation or production will be avoided (paragraph 129).

2. Need for environmental conditionalities

As explained above, the risk of inconsistency could be prevented and moderated by ensuring that equivalent environmental conditionalities (to those provided under the CEEAG, the CISAF or the MFF for example) are also considered under the R&R Guidelines.

In the current R&R Guidelines, we note regarding Restructuring aid that:

- *“[...] The restructuring plan must identify the causes for the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems”*
- *“[...] Where the beneficiary's difficulties stem from flaws in its business model [...], appropriate changes will be required.*
- *“[...] The beneficiary should provide a market survey and a sensitivity analysis identifying the driving parameters of the beneficiary's performance and the main risk factors going forward.*
- *“[...] The beneficiary's return to viability should derive mainly from internal measures, entailing in particular withdrawal from activities which would remain structurally loss-making in the medium term, or [...] entering and expanding into new activities where it has no experience and track record” [...] if “[...] duly justified and required for reasons of diversification and viability.”*

If the reasons for the financial situation are linked to environmental unsustainability and/or linked to environmental costs, then this demonstrates the need for environmental conditionalities in the assessment of long-term viability. The R&R Guidelines should certainly not be used to circumvent conditionalities imposed under other frameworks.

⁷ See the special report of the European Court of Auditors, State aid in times of crisis, Swift reaction but shortcomings in the Commission's monitoring and inconsistencies in the framework to support the EU's industrial policy objectives, 2024, p. 236.

In the Communication on EU State aid Modernisation, the Commission had announced, among others, the objective *“to foster sustainable, smart and inclusive growth in a competitive internal market”*.⁸ This objective appears to remain valid today. The calibration of measures to limit distortions of competition should be *“[...] tailored to market characteristics to make sure that effective competition is preserved.”* The purpose of the R&R Guidelines is indeed for the companies in difficulty to become viable again without State aid.

In that context, it does not make sense to grant R&R aid and claim that the business will be viable if there are no medium term plan to e.g. convert to greener technologies and/or commit to mitigating measures – and this in compliance with relevant conditionalities. There is no point granting R&R aid to companies that operate and/or rely on fossil fuels without any intention to change their business model in the future, or with such intention but without any environmental conditionalities (which would be imposed in other circumstances). The R&R Guidelines must be subject to environmental safeguards in order to avoid that activities which are harmful to the environment will be encouraged to strive. In its assessment under the R&R Guidelines, the Commission must review the mitigating measures for addressing the distortions of competition. In that respect, the Commission should consider the efforts brought by other companies to pursue decarbonisation goals and therefore the risks of creating double standards on the market and negative impact on the level playing field.

In addition, in line with ClientEarth’s response to the public consultation about the GBER,⁹ the R&R Guidelines should explicitly require compliance with the Do No Significant Harm (DNSH) principle. By analogy to the Commission’s proposal for the next MFF, the DNSH principle should apply horizontally to all aid objectives and is key to ensure that aid does not contribute to environmentally harmful projects. The fact that the R&R Guidelines analyse the impact on competition of the support granted to companies in difficulty does not exempt the Commission from considering if the aid can have a detrimental impact on the environment. This would actually be in line with Article 11 of the Treaty on the Functioning of the European Union (TFEU) which provides for the integration of environmental protection requirements into EU policies. Embedding the DNSH principle by identifying concrete conditionalities in aid categories is a matter of consistency with other State aid frameworks, such as the CEEAG, the Regional Aid Guidelines (RAG) and partly the CISAf. The DNSH principle serves to show that the economic activity benefitting from aid will be sustainable in the future. Indeed, for a company to be economically viable it must also be sustainable in environmental terms, in line with the drive for a carbon-free competitive industry of the European Union. Otherwise, it will not be able to withstand competition from companies that have already converted to environmentally friendly processes, with or without State aid (for example because the carbon cost will make it uncompetitive, as shown in Case SA.59974 above). In order to be approved, R&R aid should be subject to the condition that, by the end of the restructuring period the activity complies with the DNSH principle, or (if not possible under justified conditions) within a reasonable period.

Finally, the R&R Guidelines should contain express provision – equivalent to paragraphs 11 and 33 of the CEEAG – according to which the Commission cannot find compatible with the internal market an R&R aid measure if it breaches Union (environmental) law.

⁸ See paragraph 3 of the R&R Guidelines, referring to Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State aid modernisation (SAM), COM(2012) 209 final..

⁹ ClientEarth reply to the call for evidence in October 2025 about the Revision of the General Block Exemption Regulation

3. Particular need for environmental conditionalities in case of inclusion of the steel sector

Should the Commission decide to include the steel sector to the scope of the R&R guidelines, ClientEarth stresses the importance of introducing appropriate environmental conditionalities – in accordance with the two points explained above.

We note that part of the steel industry has entered into a decarbonisation phase and for that purpose has already received significant amounts of State aid (although we also note that some of these aids have not materialised yet). If the steel sector were to be added to the scope of the R&R Guidelines, environmental conditionalities should be attached and enforced accordingly, and reflect that industry trend (e.g. transition plans with key decarbonisation milestones monitoring, training for workforce to adapt to new technologies and skills, etc.). This would ensure a level playing field between businesses already engaged at their own costs (or supported by aid with conditionalities) in decarbonisation and businesses who are not and may still benefit from R&R aid under different or no conditions – by contrast with the issue explained above regarding Case SA.59974.

Considering the current state of the industry sector in the European Union, the Commission should be wary not to create a disbalance in the level playing field on the market. In the absence of such conditionalities and therefore the creation of a distortion of competition, there is a risk that businesses who are already engaged in decarbonisation or willing to engage into such efforts may be pushed out of the market. Decarbonisation conditionality can actually support and promotes competitiveness.

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