ClientEarth

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# Rescue & Restructuring State aid guidelines – Revision

## ClientEarth comments on the revised draft guidelines

ClientEarth welcomes the possibility to comment on the European Commission (Commission)'s draft revised Rescue & Restructuring State aid guidelines (draft revised R&R Guidelines).

We reiterate our comments (as also provided in our feedback to the call for evidence) on two aspects which are interlinked and yet not addressed in the draft revised R&R Guidelines: (i) the need for consistency and coherence with other State aid guidelines and (ii) the need for environmental conditionalities, in particular considering the suggested inclusion of the steel sector to the scope of the draft revised R&R Guidelines.[1]

## 1. Alignment with other State aid guidelines

As indicated in our feedback to the call for evidence and expressed in our recommendations for a consistent integration of environmental considerations, there are political commitments as well as legal principles and obligations that strongly plead in favour of environmental mainstreaming in EU State aid policy. [2] We pointed out the siloed approach in practice of State aid policy and flagged that this lack of a

[1] See ClientEarth feedback to the call for evidence (November 2025), EU Rescue & Restructuring State aid guidelines - Revision. ClientEarth response to the call for evidence | ClientEarth
[2] See ClientEarth recommendations from April 2024 (updated April 2025), Environmental mainstreaming in EU State aid policy

holistic approach creates loopholes for environmentally harmful aid measures and undermines the decarbonisation of the EU economy.

We provided a concrete illustration of this issue in Case SA.59974 – *Complexul Energeti Oltenia SA*.[3] The Romanian company active in mining fossil fuel-based power generation and local heat supply (Complexul Energetic Oltenia SA, (CEO)) received State aid for totally new installed production capacity of 1,325 MW fossil gas, without any decarbonisation conditions. This results in a distortion of competition in the future and does not ensure a level playing field on the market (i.e. CEO competing as from 2026 as a viable operator with other operators on the market with the difference that CEO will install its new gas capacity thanks to aid received without any decarbonisation conditions). [4]

At the very least, the Commission should ensure that the safeguards provided in the CEEAG – and other frameworks – are also considered for aid granted under the R&R Guidelines.

Regrettably, as the draft revised R&R Guidelines currently stand, this issue remains unaddressed since e.g. Section 3 does not contain any provisions related to consistency with other State aid frameworks.

We stress that the revision of the R&R Guidelines still represents an important opportunity for the Commission to align with other State aid guidelines. We reiterate the examples of conditions under the CEEAG that should be included in the R&R draft revised Guidelines, e.g. in (new) Section 3.3.4.2.1:

- 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

We welcome the inclusion of (new) paragraph 44: *"The Commission will also take positively into account the preservation or improvement of the environment made possible or put into effect by the aid".*

However, such provision is no substitute to environmental conditionalities equivalent to those of other State aid frameworks such as the Climate, Energy and Environmental Aid Guidelines (CEEAG), the Clean Industrial Deal State Aid Framework (CISAF) or the Multiannual Financial Framework (MFF). This provision is indeed not sufficient as companies will not be incentivised to consider these aspects and lacks enforceability.

As flagged in our feedback to the call for evidence, if the reasons for the financial situation are linked to environmental unsustainability and/or linked to environmental costs, then this demonstrates the need for

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

[4] 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

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.

As mentioned above, this revision is therefore a very important opportunity which the Commission needs to seize, in line with its carbon neutrality goals, to ensure consistency with other State aid guidelines and to support decarbonisation.

To that effect, we reiterate our feedback to the call for evidence:

- 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 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.

Moreover, for the sake of consistency, the Commission could consider as part of its assessment under (new) paragraph 37, (b), (ii) regarding the *"existence of a restructuring plan ensuring the beneficiary's return to long-term viability which secures a **lasting contribution** to developing the economic activity or area"* [our emphasis] whether the company's business model is environmentally sustainable. At the very least, the Commission could reflect on environmental compliance with other State aid guidelines. The same would apply for the assessment of the return to long-term viability under Section 3.2.2.

Regarding the proposed inclusion of the steel sector to the scope of the R&R Guidelines, our feedback to the call for evidence still stands.[5]

It should be recalled that the steel sector has entered into a decarbonisation phase: the R&R Guidelines should not discourage this trend and should ensure a level playing field. For example, the environmental conditionalities should therefore reflect that industry trend (e.g. transition plans with key decarbonisation milestones monitoring, training for workforce to adapt to new technologies and skills, etc.). We remind the Commission that 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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[5] We also note that, in the meantime, State aid has already been granted to the steel sector in February 2026 under Article 107(3)(c) TFUE while using the (current) R&R guidelines as a point of reference, see Case 121569 – *Urgent rescue loan to Acciaierie d'Italia in Amministrazione Straordinaria*, available at SA_121569_79.pdf.