

# De minimis aid in the fishery and aquaculture sector

## Introduction

ClientEarth welcomes the public consultation on the Proposal of the Commission on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (the '*de minimis* proposal'). We acknowledge that regulating *de minimis* aid in the fishery and aquaculture sector is very important to ensure that the specificities of the fishery and aquaculture sector are taken into account within the general state aid policy of the Union.

For the reasons outlined in this briefing, ClientEarth's preferred option would be not to have *de minimis* aid in the fishery and aquaculture sector at all. We recommend that the *de minimis* proposal should not constitute a type of structural aid for the fishery and aquaculture sector, as this is covered by the European Maritime and Fisheries Fund (EMFF).

Due to recurrent problems in the sector, such as overfishing and excessive fishing capacity, the EMFF has been designed by the co-legislators with limits in terms of what funds can be spent on, specific rules for how spending must be controlled, and limits in terms of amounts available for given measures (such as permanent cessation or investments on board). The *de minimis* proposal should not allow the possibility for conditions set out in the EMFF to be circumvented. The EMFF should be the only structural aid available in the fishery and aquaculture sector. As such, in our view applying *de minimis* aid to the fisheries and aquaculture sector is not appropriate. If the current proposal is nevertheless maintained, it must at least be amended in certain crucial respects so that its potential to undermine the EMFF and EU policy objectives for this sector is restricted as far as possible.

In addition to this very important issue, ClientEarth also would like to address the inclusion of transparency provisions in the *de minimis* proposal.

## Relation between EMFF and the *de minimis* proposal

### Ceiling on cumulative amounts of *de minimis* aid down to 0.5 %

In 2001<sup>1</sup>, the Commission recognised that in view of the special rules that apply in the fishery and aquaculture sector and the risks even for low levels of aid to distort competition, *de minimis* aid should not be granted. The Commission then changed its position in 2007 on the basis of experience showing that very small amounts would not distort competition.<sup>2</sup>

We question whether in 2014, this analysis is still valid and whether the fishery and aquaculture sector would not benefit from going back to the legislation of 2001. Our preferred option would be to eliminate any kind of additional aid for the fishery and aquaculture sector, even *de minimis* aid.

However, the proposal already foresees the possibility of having *de minimis* aid for the fishery and aquaculture sector in addition to funding under the EMFF. In these circumstances, our advice is to restrict as much as possible the ceiling for *de minimis* aid in the fishery and aquaculture sector.

Recital (6) mentions that the ceiling for *de minimis* in the Member State should not exceed a value ranging between 0.5 and 2.5% of the annual output of the fishery and aquaculture sector. Due to the fact that the fishery sector struggles with overfishing and overcapacity as highlighted by the Court of Auditors both in 2011 and 2000,<sup>3</sup> that the aquaculture sector suffered from overproduction in the past<sup>4</sup> and that structural support for fishery and aquaculture will be given any way through the EMFF, it seems appropriate that if *de minimis* support is to be possible at all, this overall percentage should be restricted to 0.5% of the annual fishery and aquaculture sector.

In addition, we would recommend that the ceiling of the total amount of *de minimis* aid granted to a single undertaking over three fiscal years should be reduced from EUR 30,000 to EUR 15,000. We suggest this amount in line with the ceiling adopted in the new *de minimis* Regulation in the agriculture sector.<sup>5</sup> The approach taken in the agriculture sector seems more proportionate and appropriate and should set an example, in particular taking into account the negative effects of subsidies in the fishery sector and the problems experienced in the past regarding overproduction in the aquaculture sector as mentioned above.

Given that Member States are not required to notify the Commission of their use of *de minimis* aid there is not a clear overview of the total public aid (*de minimis* and EMFF) that is being granted to their sector and there is little transparency about the measures this aid is supporting

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<sup>1</sup> Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ L10, 13.1.2001, p.30 and Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Article 87 and 88 of the EC Treaty to *de minimis* aid, OJ L379, 28.12.2006, p.5.

<sup>2</sup> Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Article 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004, OJ L 93, 25.7.2007, p.6.

<sup>3</sup> Court of Auditors, Special report No 12/2011: "Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?", 12 December 2011 and Special Report No 3/93 concerning the implementation of the measures for the restructuring, modernization and adaptation of the capacities of fishing fleets in the Community, OJ C 2, 04.1.1994, p.1

<sup>4</sup> Ex-Post evaluation of the Financial Instrument for Fisheries Guidance (FIFG) 2000-2006. Study published 01/05/2010, Executive summary, p.9.

<sup>5</sup> Recital 3, Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L352, 24.12.2013, p.9.

and the additional subsidies injected into the sector. This is problematic in a sector that suffered from receiving the wrong types of subsidies and which made the sector less economically viable and more and more dependent on public subsidies.

### Clarification of Article 1(1)(d) and Article 3(3) of the *de minimis* proposal

In theory, *de minimis* aid is an amount so low that it does not have an impact on trade between Member States and does not create a distortion of competition. However, irrespective of the absence of effects on trade, it is crucial that *de minimis* aid should not be permitted to undermine other important EU policy objectives, such as those under the CFP.

Article 1(1)(d) of the *de minimis* aid proposal states that aid which is not eligible under the EMFF should not be eligible for *de minimis* aid either. Therefore, the aid mentioned in Article 13(c) of the EMFF on temporary and permanent cessation should specifically not be eligible under the *de minimis* regulation. These measures, which are of a structural nature, should only be financed under the EMFF and subject to the conditions set in that Regulation.

If, despite Article 1(1)(d) of the *de minimis* aid proposal and Article 13(c) of the EMFF, temporary and permanent cessations are proposed to be eligible for *de minimis* aid, then the thresholds set in Article 27(2a) of the EMFF Regulation should apply as absolute ceilings for the provision of all public aid (*de minimis* aid and EMFF funding). Similarly, the thresholds set out in Article 27(2a) of the EMFF should apply as an absolute ceiling to any public aid (*de minimis* aid and EMFF) for engine replacement.

Member States should not be able to circumvent these limitations set for policy purposes through *de minimis* aid, as it would severely undermine the whole objective of setting ceilings in spending in the EMFF.

### ClientEarth recommendations:

- If the fishery and aquaculture sector will be eligible for *de minimis* aid in addition to aid under the EMFF, we would welcome an overall ceiling of 0.5% of the output of the fishery and aquaculture sector available for *de minimis* aid for a given Member State, and a reduction of the ceiling for each beneficiary to 15 000 EUR over three fiscal years.
- Article 1(1)(d) of the *de minimis* proposal should be modified as follows to account for the arguments made above:

#### Article 1 Scope

"1. This Regulation applies to aid granted to undertakings in the fishery and aquaculture sector, with the exception of:

[...]

(d) aid to ineligible operations under Article 13 of Regulation (EU) XX [to be adapted once the European Maritime and Fisheries Fund Regulation is adopted] and aid to

decommissioning of fishing vessels and temporary cessation of fishing activities as referred to in Article 13(c) of the EMFF; [...]"

- In order to take into account the safeguards introduced in Article 27(2a) of the EMFF concerning the overall spending of Member State for engine replacement, temporary cessation and permanent cessation, Article 3(3) of the *de minimis* proposal should be supplemented as following:

Article 3 *De minimis*

"[...]"

3. The cumulative amount of *de minimis* aid granted per Member State to undertakings in the fishery and aquaculture sector over any period of three fiscal years shall not exceed the value set out in the Annex or the thresholds set in Article 27 (2a) of the EMFF. [...]"

## Transparency

Article 6(4) of the *de minimis* aid proposal stipulates that information has to be made available to the Commission upon request. However, this information is not available to the wider public. It would be advisable for the sake of transparency to have a publically available list of beneficiaries of the *de minimis* aid, similar to the list of beneficiaries required by the EMFF in Article 120. The disclosure of this information would offer valuable information as to what kind of enterprises receive *de minimis* aid, which projects are benefiting, and in which Member States it is used most frequently. Not only will this ensure greater transparency of the use of public funding, it will also constitute valuable information to better target aid in the future.

### ClientEarth recommendations:

- The *de minimis* proposal should include an obligation for Member State to publish electronically a list of the beneficiaries of *de minimis* aid with a minimum of information such as the amount of the aid, the EU fleet register number of fishing vessel (if applicable), the type of operation financed with the aid, and the year of allocation of the aid.
- Article 6 of the *de minimis* aid proposal should be supplemented with an additional paragraph:

Article 6 Monitoring

"[...] 5. Member States shall, in order to ensure transparency of *de minimis* aid, provide a list of *de minimis* aid which shall be accessible through a single website including the following information: list of beneficiaries, amount of aid received, a summary of the operation for which *de minimis* aid was granted, if applicable the EU fleet register number of the fishing vessel as regulated under Article 24 of Regulation (EU) No1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy<sup>6</sup> and the year on which the aid was granted."

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<sup>6</sup> OJ L354, 28.12.2013, p. 22.

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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