

Proposal for the revision of the EU Fisheries State Aid Guidelines

Produced for ClientEarth by Ziegler State Aid AntiTrust

CONSOLIDATED VERSION OF THE

GUIDELINES FOR THE EXAMINATION OF STATE AID TO THE FISHERY AND AQUACULTURE SECTOR



1. INTRODUCTION

- (1) Article 107(1) of the Treaty on the Functioning of the European Union ('the Treaty') stipulates that "*Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"
- (2) Article 107(2) of the Treaty lists types of aid that are compatible with the internal market, including aid to make good the damage caused by natural disasters or exceptional occurrences, that may include health crises, referred to in point (b) of paragraph 2 of that Article. Article 107(3) of the Treaty enumerates types of aid that may be considered to be compatible with the internal market, including aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest referred to in point (c) of paragraph 3 of that Article, as well as aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation referred to in point (a) of paragraph 3 of that Article.
- (3) Under Article 108(1) and (2) of the Treaty the Commission, in cooperation with the Member States, has to keep under constant review all systems of aid existing in the Member States. Under Article 108(3) of the Treaty each Member State has to inform the Commission of any plans to grant or alter aid. Detailed procedural rules for the application of Article 108 of the Treaty are set out in Council Regulation (EU) No 2015/1589¹ and Commission Regulation (EC) No 794/2004.²
- (4) Article 42 of the Treaty stipulates that the provisions of the Treaty relating to the rules on competition, which include those on State aid, apply to production of and trade in agricultural products, which include products of the fishery and aquaculture sector, to the extent determined by the European Parliament and the Council. The extent to which provisions of the Treaty on State aid apply to aid granted to the fishery and aquaculture sector has been determined in

¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

² Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1), as replaced by Commission Regulation (EU) 2015/2282 of 27 November 2015 (OJ L 325, 10.12.2015, p. 1).

Article 11 of Regulation (EU) No 2021/1139 of the European Parliament and the Council,³ which establishes the European Maritime, Fisheries and Aquaculture Fund (EMFAF).

- (5) Article 11(1) of Regulation (EU) No 2021/1139 sets out that Articles 107, 108 and 109 of the Treaty apply to aid granted by the Member States to the fishery and aquaculture sector. Article 11(2) of that Regulation provides for an exception to this general rule and foresees that Articles 107, 108 and 109 of the Treaty do not apply to payments to the fishery and aquaculture sector made by Member States pursuant to and in conformity with that Regulation and falling within the scope of Article 42 of the Treaty. However, under Article 11(3) of that Regulation, the provisions of the Treaty on State aid apply, if national provisions set up public financing as regards the fishery and aquaculture sector that goes beyond the provisions of that Regulation. In that case, the State aid rules apply to the public financing as a whole.
- (6) Some payments made by Member States under Regulation (EU) No 2021/1139 do not constitute payments to the fishery and aquaculture sector and fall outside the sector, for example, payments under Chapter V of Title II of that Regulation, which relates to the strengthening of international ocean governance and the enabling of safe, secure, clean and sustainably managed seas and oceans. Further, payments under Chapter IV of Title II of that Regulation, which relates to interventions that contribute to enabling a sustainable blue economy in coastal, island and inland areas, and to fostering the sustainable development of fisheries and aquaculture areas in general, also fall outside the fishery and aquaculture sector. However, if those payments relate to measures provided for in Chapters I, II, and III of Title II of that Regulation, they fall within the fishery and aquaculture sector.
- (7) Payments under Regulation (EU) 2021/1139 that fall outside the fishery and aquaculture sector are subject to the State aid rules of the Treaty. Where those payments constitute State aid, they should be assessed under the relevant State aid instruments. In that case, these Guidelines, Commission Regulation (EU) No 1388/2014,⁴ and Commission Regulation (EU) No 717/2014⁵ do not apply.
- (8) State aid policy and rules should be entirely consistent with, and actively support Article 37 of the Charter of Fundamental Rights of the European Union,⁶ Article 11 of the Treaty⁷ and Article 3(3) of the Treaty on the European Union.⁸ Systematically controlling that activities (including in the fishery and aquaculture sectors) benefitting from aid comply with all their environmental law obligations is a basic prerequisite for ensuring that aid measures contribute to environmental protection.⁹
- (9) Aid, granted individually or pursuant to a scheme, to an activity (or undertaking) that does not

³ Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 ('EMFAF Regulation').

⁴ Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

⁵ Commission Regulation (EU) No 717/2014 of 27.6.2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

⁶ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391 ff. Article 37 states that "(a) *high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.*"

⁷ "*Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.*"

⁸ "*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.(...)*"

⁹ Case C-594/18P *Austria v. Commission* ECLI:EU:C:2020:742, para. 44-45 and 100.

comply with all its EU environmental law obligations cannot be found compatible with the internal market.¹⁰ When notifying an aid measure or scheme, Member States must provide all relevant justification of compliance of the potential beneficiaries with their EU environmental law obligations. This justification is reviewed by the Commission, which performs a control of the veracity of the check and of the beneficiary's compliance with environmental obligations, and notably includes extracts of the national register of infringements provided for in Article 93 of the Control Regulation¹¹ that show that no serious infringements have been registered with regard to the undertaking to which the aid beneficiary belongs for as long as records are to be kept under Article 93(4) of the said Regulation. Breach of EU environmental law by the beneficiary after aid was granted will constitute a misuse of aid and will trigger recovery of the aid.

- (10) These Guidelines set out the principles that the Commission will apply when assessing whether aid to the fishery and aquaculture sector can be considered compatible with the internal market under Article 107(2) or Article 107(3) of the Treaty.
- (11) State aid to the fishery and aquaculture sector is embedded within the broader framework of the Common Fisheries Policy (CFP). Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP, and in particular those listed under Article 2 of the CFP. Therefore, the Commission applies and interprets these Guidelines in accordance with the rules of the CFP. Within the CFP, the Union provides financial support to the fishery and aquaculture sector through the EMFAF. The social and economic impact of public support is the same, irrespective of whether it is (even partly) financed by the Union or by a Member State alone. The Commission therefore considers that there should be consistency and coherence between its policy of State aid control and the support which is granted under the CFP. While State aid should not, in principle, be granted to operations that are not eligible for support under the EMFAF, certain State aid measures, due to their positive contribution to the objectives of the CFP under specific circumstances, could nevertheless be compatible with the internal market.
- (12) The CFP, the objectives of which are set out in Article 2 of Regulation (EU) No 1380/2013 of the European Parliament and the Council,¹² aims, amongst others, to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and that they are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits and contributing to the availability of food supplies. In particular, Article 2(2) of the CFP sets out the objective of ensuring that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.
- (13) Moreover, the use of State aid in the fishery and aquaculture sector must be in line with Council Regulation (EC) No 1005/2008 ('IUU Regulation'),¹³ and in particular with the objectives as stated under its Article 1. The use of State aid in the fishery and aquaculture sector shall also

¹⁰ *Ibid.*

¹¹ Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 197/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control {SEC(2018) 267 final}, {SWD(2018) 279 final}, {SWD(2018) 280 final} ('Proposal Control Regulation'). [To be adapted once the New Regulation has been issued.]

¹² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

¹³ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation), OJ L 286 29.10.2008, p. 1.

be in line with the objectives of Directive 2008/56/EC¹⁴ ('Marine Strategy Framework Directive'), as set out under its Article 1, of: *"i) protecting and preserving the marine environment, preventing its deterioration or, where practicable, restoring marine ecosystems in areas where they have been adversely affected; and ii) preventing and reducing inputs in the marine environment, with a view to phasing out pollution, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea."*

- (14) Under recital 1 of the new EMFAF Regulation for 2021-2027,¹⁵ funding targeted by the EMFAF *"is a key enabler for sustainable fisheries and the conservation of marine biological resources, for food security through the supply of seafood products, for the growth of a sustainable blue economy and for healthy, safe, secure, clean and sustainably managed seas and oceans."*
- (15) The EMFAF provides financial support to various specific themes and areas identified in Regulation (EU) No 2021/1139. Measures supported by the EMFAF are implemented on the basis of either direct or shared management principles.
- (16) State aid to the fishery and aquaculture sectors shall be in line with the commitments undertaken under the Paris Agreement and the Goals of the United Nations' 2030 Agenda for Sustainable Development, which the EU has committed to implement in its policies.¹⁶ In particular, Goal 14 (*"Conserve and sustainably use the oceans, seas and marine resources for sustainable development"*) provides different targets to be fulfilled.¹⁷ Under the second target of Goal 14, the EU has committed to *"sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans"*. Moreover, as provided by target 6 of Goal 14, the EU shall *"prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation."* To deliver on Goal 14.6, the EU has been a driver in the WTO negotiations on fisheries subsidies.¹⁸ In addition, in the course of WTO negotiations at the 2002 World Summit of Sustainable Development and at the 2012 United Nations Conference on Sustainable Development (Rio+20), the Union has committed to eliminate subsidies contributing to fisheries overcapacity and overfishing.
- (17) In addition, in line with the "green oath" in the European Green Deal,¹⁹ State aid to the fishery and aquaculture sector should respect the *"do no harm"* principle.
- (18) The European Green Deal set, among its objectives, the preservation and restoration of

¹⁴ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164, 25.6.2008, p. 19–40.

¹⁵ Regulation (EU) No 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004.

¹⁶ See: https://ec.europa.eu/international-partnerships/sustainable-development-goals_en.

¹⁷ See: <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-14-life-below-water/targets.html#55wa>.

¹⁸ Based on the mandate fixed under the Ministerial Decision from the WTO's 11th Ministerial Conference, and the UN Sustainable Development Goal Target 14.6, negotiators are expected to secure an agreement for disciplines eliminating subsidies to IUU fishing and for prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing, with special and differential treatment for developing and least-developed countries.

¹⁹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "The European Green Deal", COM(2019) 640 final, 11.12.2019 (the 'European Green Deal').

ecosystems and biodiversity. All EU policies, including the present Guidelines, should contribute to this goal, and in particular to halting biodiversity loss. The worldwide erosion of biodiversity in the seas is caused primarily by overfishing, changes in how the sea is used and climate change.²⁰

- (19) As per recital (13) Regulation EU No 2021/1139, “*the actions under this Regulation should contribute to the achievement of an overall target of 25% of the Union budget expenditures supporting a 30% target of all MFF expenditure spent on mainstreaming climate objectives and should contribute to the ambition of providing 7,5% of annual spending under the MFF to biodiversity objectives and 10% of annual spending under the MFF to biodiversity objectives in 2026 and 2027, while considering the existing overlaps between climate and biodiversity goals.*” In accordance with the EU Biodiversity Strategy, “(r)estored and properly protected marine ecosystems bring substantial health, social and economic benefits to coastal communities and the EU as a whole.” Thus, “[a]chieving good environmental status of marine ecosystems, including through strictly protected areas, must involve the restoration of carbon-rich ecosystems as well as important fish spawning and nursery areas.”²¹ Activities that can pursue such objectives are, for instance, the rebuilding of oyster reefs and fish passages in coastal dams.²²
- (20) The goal of restoring and properly protecting marine ecosystems can be best achieved by fighting the overexploitation of such ecosystems. Ending overfishing would also increase the ocean’s capacity to mitigate the effects of climate change.²³ Moreover, leaving more big fish in the ocean can reduce carbon dioxide emissions, big fish being important carbon sinks.²⁴
- (21) In accordance with the EU Biodiversity Strategy, State aid must also support the transition to more selective and less damaging fishing techniques. The use of fishing gear most harmful to biodiversity, including on the seabed and, in particular, to the use of bottom-contacting fishing gear, shall not be supported.²⁵ In addition, no State aid shall be granted to electric pulse fishing.²⁶
- (22) Finally, in accordance with the European Green Deal,²⁷ public funding must be used to develop more sustainable seafood practices, in order to avoid further biodiversity loss. In addition, fishers and aquaculture producers should transform their production methods more quickly to methods that are environmentally sustainable in the long term, and make the best use of nature-based, low-impact, selective, low-carbon and space-based solutions to deliver better climate

²⁰ The European Green Deal (see fn. 19 above), p. 12 ff.

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “EU Biodiversity Strategy for 2030”, COM(2020) 380 final, 20.05.2020 (‘The EU Biodiversity Strategy’).

²² ClientEarth, BirdLife Europe, New Economics Foundation, Oceana Europe, Our Fish, Scieana, Seas At Risk, Surfrider Foundation Europe, and WWF, “*Turning the tide on EU seas with a Green Recovery*”, June 2020, p. 3; available at: https://www.birdlife.org/sites/default/files/turning_the_tide_june2020_1.pdf.

²³ Our Fish, “Briefing Paper: Ending Overfishing is Climate Action”, 03.02.2020; available at: <https://our.fish/publications/briefing-paper-ending-overfishing-is-climate-action/>.

²⁴ G. Mariani, W. Cheung, A. Lyet, E. Sala, J. Mayorga, L. Velez, S. Gaines, T. Dejean, M. Troussellier and D. Mouillot, “Let more big fish sink: Fisheries prevent blue carbon sequestration—half in unprofitable areas”, 28.10.2020; available at: <https://advances.sciencemag.org/content/6/44/eabb4848>

²⁵ The EU Biodiversity Strategy (see fn. 21 above), p. 11.

²⁶ In compliance with Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005, PE/59/2019/REV/1, OJ L 198, 25.7.2019, p. 105–201, Article 7.

²⁷ The European Green Deal (fn. 19 above), p. 12.

and environmental results, increase climate resilience and reduce and modernise the use of inputs.

- (23) Like any claim that a certain product is sustainable or “green,” also claims that certain seafood products are sustainable, evoking their minor environmental impact, might be an important advertising tool for companies that can significantly impact consumers’ purchase choices. Consumers, however, are usually not able to verify the truthfulness of sustainability claims made by companies.²⁸ False or misleading sustainability claims, so-called “greenwashing,”²⁹ harm the consumers’ confidence that the businesses’ claims are true. This also results in unfair competition with businesses that actually offer truly sustainable products or services, sometimes at a higher price, because those products generally internalise a higher environmental cost. Until consumers are able to choose between real eco-friendly items and those which are not, businesses genuinely investing in going “green” cannot be properly rewarded by their customers and suffer a competitive disadvantage.³⁰ Therefore, beneficiaries of aid for sustainable seafood shall: (i) substantiate their sustainability claims with sound updated science; (ii) make clear which sustainability benefits their products or services offer and be honest and specific about their efforts with regard to sustainability; and (iii) use fair and science-based visual claims and labels that do not confuse consumers³¹ when comparing products or services.

2. SCOPE, DUTY TO NOTIFY AND DEFINITIONS

2.1. Scope

- (24) These Guidelines apply to all aid granted to the fishery and aquaculture sector. They apply to aid schemes and to individual aid.
- (25) These Guidelines apply to the components of regional aid that relate to the fishery and aquaculture sector.³² They also apply to all other aid that is granted to the fishery and aquaculture sector within the framework of European Structural and Investment Funds (ESI Funds) other than the EMFAF.
- (26) These Guidelines do not apply to aid granted as additional financing for the implementation of the compensation plans referred to in Article 29(b) of Regulation (EU) No 2021/1139. Such aid is approved as part of those plans in accordance with Article 29(c) of that Regulation.

2.2. Duty to notify

- (27) The Commission reminds each Member State of its duty to notify any plans to grant new aid, as provided for in Article 108(3) of the Treaty and Article 2 of Regulation (EU) No 2015/1589.
- (28) A Member State is, however, not obliged to notify to the Commission:
- (a) aid complying with one of the Regulations on group exemptions adopted on the basis of

²⁸ ACM, “ACM draws up rules of thumb for sustainability claims,” 22 September 2020.

²⁹ See ClientEarth article on [corporate greenwashing](#).

³⁰ CMA; “CMA to examine if ‘eco-friendly’ claims are misleading,” 2.11.2020; The CMA recently announced that it will investigate descriptions and labels used to promote products and services claiming to be ‘eco-friendly’, and whether they could mislead consumers and that it intended “to publish guidance for businesses next Summer to help them support the transition to a low carbon economy without misleading consumers”.

³¹ For instance, by using a certain type of packaging or logo implying that the product is sustainable whereas this is not the case.

³² Guidelines on regional State Aid for 2022-2027, 19.4.2021, C(2021)2594 final. Those guidelines do not apply to the fishery and aquaculture sector.

Article 1 of Council Regulation (EU) No 2015/1588,³³ if they apply to the fishery and aquaculture sector, in particular:

- i. aid complying with Regulation (EU) No 1388/2014; and
- ii. training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, and aid for disadvantaged workers and workers with disabilities complying with Commission Regulation (EU) No 651/2014;³⁴

(b) *de minimis* aid complying with Regulation (EU) No 717/2014.

(29) The Commission reminds each Member State that when the system for financing an aid measure, for example, by parafiscal levies, forms an integral part of the aid measure, it should also be notified.³⁵

(30) The Commission reminds the Member States that aid granted as additional financing for the implementation of the compensation plans referred to in Article 29(b) of Regulation (EU) No 2021/1139 must be notified to the Commission as part of the compensation plans. Under Article 29(c) of that Regulation, State aid thus notified will be regarded as notified within the meaning of the first sentence of Article 108(3) of the Treaty.

2.3. Definitions

(31) For the purposes of these Guidelines, the following definitions apply:

(a) "aid" means any measure fulfilling the criteria laid down in Article 107(1) of the Treaty;

(b) "aid scheme" means any act on the basis of which, without further implementing measures being required, individual aid may be granted to undertakings defined within the act in a general and abstract manner, and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

(c) "ad hoc aid" means aid not granted on the basis of a scheme;

(d) "individual aid" means ad hoc aid and awards of aid to individual beneficiaries on the basis of an aid scheme;

(e) "date of granting the aid" means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;

(f) "aid intensity" means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

(g) "fishery and aquaculture sector" means the sector of the economy which comprises all activities of production, processing, and marketing of fishery or aquaculture products;

(h) "fishery and aquaculture products" means the products listed in Annex I to Regulation

³³ Council Regulation (EU) No 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248 24.9.2015, p. 1).

³⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

³⁵ Judgment of the General Court of 16 October 2013, *Télévision française 1 (TF1) v European Commission*, T- 275/11, ECLI:EU:T:2013:535, paragraphs 41-44.

(EU) No 1379/2013 of the European Parliament and the Council;³⁶

- (i) "SMEs" or "small and medium-sized enterprises" means undertakings fulfilling the criteria set out in Annex I to Regulation (EU) No 1388/2014;
- (j) "large undertaking" means any undertaking not fulfilling the criteria set out in Annex I to Regulation (EU) No 1388/2014;
- (k) "outermost regions" means the regions referred to in Article 349 of the Treaty. Under European Council Decision 2010/718/EU,³⁷ Saint-Barthélemy ceased to be an outermost region from 1 January 2012 on. Under European Council Decision 2012/419/EU,³⁸ Mayotte became an outermost region on 1 January 2014;
- (l) "operating aid" means aid that is aimed at or has the effect of increasing the business liquidity of an undertaking, reducing its production costs, or improving its income, in particular aid that is calculated solely on the basis of the quantity produced or marketed, product prices, units produced or the means of production;
- (m) 'sustainable blue economy' means all sectoral and cross-sectoral economic activities throughout the internal market relating to oceans, seas, coasts and inland waters, covering the Union's insular and outermost regions and landlocked countries, including emerging sectors and non-market goods and services, and being consistent, aimed at ensuring environmental, social and economic sustainability in the long term and being consistent with the Sustainable Development Goals (SDGs), in particular SDG 14, and with Union environmental legislation.

3. PRINCIPLES

3.1. Common assessment principles

- (32) To assess whether an aid measure notified to the Commission can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive impact of the aid on the development of an economic activity exceeds its potential negative effects on trade and competition.
- (33) Under Article 107(3) of the Treaty, the Commission will consider an aid measure compatible with the internal market only if it complies with each of the following criteria:
 - (a) *facilitating the development of certain economic activities or of certain economic areas*: a State aid measure must facilitate the development of certain economic activities or of certain economic areas in accordance with Article 107(3) of the Treaty without resulting in an infringement of the CFP and the EMFAF³⁹ (Section 3.3);
 - (b) *need for State intervention*: a State aid measure must be targeted towards a situation where

³⁶ Regulation (EU) 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

³⁷ European Council Decision of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy (OJ L 325, 9.12.2010, p. 4).

³⁸ European Council Decision of 11 July 2012 amending the status of Mayotte with regard to the European Union (OJ L 204, 31.7.2012, p. 131).

³⁹ See for instance Case C-156/98 Germany v. Commission EU:C:2000:467, paragraph 78 and Case C-333/07 Régie Networks v. Rhone Alpes Bourgogne EU:C:2008:764, paragraphs 94-116; see also Austria v. Commission (fn. 9 above), paragraphs 44-45 and 100.

aid can bring about a material improvement that the market cannot deliver itself, for example, by remedying a market failure or addressing an equity or cohesion concern (Section 3.4);

- (c) *appropriateness of the aid measure*: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest (Section 3.5);
 - (d) *incentive effect*: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location (Section 3.6);
 - (e) *proportionality of the aid* (aid limited to the minimum necessary): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned (Section 3.7);
 - (f) *avoidance of undue negative effects on competition and trade between Member States*: as Court clarified, in order to assess whether a measure adversely affects trading conditions to an extent contrary to the common interest, the Commission must weigh the positive effect of the planned aid for the development of the activities that the aid is intended to support and the negative effects that the aid may have on the internal market⁴⁰ (Section 3.8);
 - (g) *transparency of the aid*: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder (Section 3.9).
- (34) Certain categories of aid schemes may further be made subject to an *ex post* evaluation as set out in points (141) to (144). The Commission may limit the duration of those schemes, normally to four years or less, with a possibility to re-notify their prolongation afterwards.
- (35) If the beneficiary's activity or an aid measure or any conditions attached to it, including its financing method when that method constitutes a non-severable part of the measure, entail a violation of Union law, the aid is incompatible with the internal market.
- (36) Aid for export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network, or to other costs linked to the export activity and aid contingent upon the use of domestic over imported goods is incompatible with the internal market.
- (37) When assessing aid granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered. This does not apply, however, to aid to make good the damage caused by natural disasters under Article 107(2)(b) of the Treaty.
- (38) The common assessment principles overall have to be applied taking into account the specific context of the CFP. They therefore apply to all aid under these Guidelines, unless Sections 4 and 5 provide for derogations due to particular considerations in the fishery and aquaculture sector.

3.2. Specific principles for the fisheries and aquaculture sector

⁴⁰ Austria v. Commission (fn. 9 above), paragraph 101.

- (39) In addition to the common assessment principles set out in Section 3.1, the Commission also applies the specific principles for the fishery and aquaculture sector set out in this Section.
- (40) Each beneficiary of a State aid measure must comply with the rules and objectives of the CFP and the aid must support the objectives of the European Maritime Fisheries and Aquaculture Fund for the 2021-2027 period.⁴¹
- (41) An application for aid or, if no application is foreseen, an equivalent act must be considered inadmissible, if the competent authority referred to in Article 12(1) of Regulation (EU) No 2021/2019 (or any other authority considering to grant State aid) has determined that the operator concerned has committed serious infringements or offences referred to in Article 12(1) of Regulation (EU) 2021/1139 or a fraud as referred to in Article 12(3) of that Regulation. If a State aid measure, the conditions attached to it, including its financing method when the financing method forms an integral part of the State aid measure, or the activity it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market. To this end, as set out in Point (9) above, Member States considering awarding State aid to the fisheries and aquaculture sector need to ensure that their national registers of infringements do not record any judged or sanctioned serious infringement by an undertaking to which the aid beneficiary belongs for as long as records are kept by the Member State in question (Article 93(4) Control Regulation). The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 12(4) of that Regulation apply. This principle does not apply in the case of aid that meets the specific conditions set out in Sections 4, 5.3, and 5.4 of these Guidelines.
- (42) Each undertaking, after submitting an application for aid or, if no application is foreseen, an equivalent act, must continue to comply with Union law and the rules of the CFP throughout the period of implementation of the project and for a period of five years after the final payment to the beneficiary. Aid measures must explicitly provide that during those periods the beneficiary or beneficiaries must comply with Union law and the rules of the CFP. If it is determined by the competent authority that a beneficiary has committed one or more of the infringements set out in Article 12(1) of Regulation (EU) No 2021/1139 during those periods, the aid must be reimbursed in full by the beneficiary.
- (43) An aid measure of the same kind as an operation that is eligible for funding under Regulation (EU) No 2021/1139 can only be considered compatible with the internal market if it complies with the relevant provisions of that Regulation for that kind of operation, in particular with the provisions on the intensity of public aid.
- (44) No aid must be granted for activities that correspond to ineligible operations under Article 11 of Regulation (EU) No 2021/1139 unless otherwise stated in these Guidelines.
- (45) The grant of aid must also be considered incompatible if fishers have exceeded the fishing opportunities allocated by Member States in compliance with Articles 16 and 17 of the CFP Basic Regulation.
- (46) Other than as set out in the following two Points, State aid to finance the construction of new

⁴¹ The European, Maritime, Fisheries and Aquaculture Fund for the period 2021-2027 has not been adopted yet (see fn. 3 above). Recital 1 of the current proposal (in its text adopted by the Parliament on 4.4.2019 in the first reading), affirms that the fund “*is a key enabler for sustainable fisheries and, including the conservation of marine biological resources and habitats, for sustainable aquaculture, for food security through the supply of seafood products, for the growth of a sustainable blue economy, for prosperity and economic and social cohesion in fishing and aquaculture communities and for healthy, safe, secure, clean and sustainably managed seas and oceans.*” (https://www.europarl.europa.eu/doceo/document/TA-8-2019-0343_EN.pdf)

fishing vessels shall be considered incompatible with the internal market.

- (47) Any aid for fishing vessels, other than aid to finance the construction of new fishing vessels that do not use fossil fuel, can only be granted if the fishing vessels are subject to regular inspections for at least five years after receiving the aid, to ensure that the vessels comply with the CFP rules and do not fish over capacity (i.e. quotas or efforts limits). In any event, aid for fishing vessels can only be granted upon condition that vessels are not transferred or reflagged outside the Union during at least the five years from the final payment of the aid.
- (48) Aid for innovative fishing vessels that use batteries as energy storage technology can only be granted if the batteries fulfil sustainability and transparency requirements, in compliance with the requirements under Chapters II and III of the EU Battery Regulation,⁴² and if the batteries can be re-used, re-purposed or recycled (following the waste hierarchy principles).⁴³

3.3. Facilitation of the development of certain economic activities or of certain economic areas

- (49) In accordance with Article 107(3)(c) of the Treaty, an aid measure must facilitate the development of certain economic activities or of certain economic areas.
- (50) Member States considering awarding State aid to the fisheries and aquaculture sector must explain precisely how the measure intends to promote the sector and ensure sustainable fishing.
- (51) In line with case law of the Court of Justice of the European Union,⁴⁴ aid to an activity that contravenes provisions or general principles of EU law will be found incompatible with the internal market. To give full effect to this principle, any authorisation to grant aid shall be subject to satisfactory evidence of compliance of the activity, with Member States and aid beneficiaries being required to provide relevant documentation to the Commission and the Member State, respectively.⁴⁵ Any case of non-compliance of the economic activity with environmental obligations during the aid will lead to full recovery of the aid.

3.4. Need for State intervention

- (52) In order to assess whether State aid is effective, the problem to be addressed shall be identified first. State aid should be targeted towards situations where it can bring about a material improvement that the market cannot deliver on its own. This holds especially in a context of scarce public resources.
- (53) State aid measures can, under certain conditions, correct market failures, thereby contributing to the efficient functioning of markets and enhancing competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from an equity or cohesion point of view, State aid may be used to obtain a more desirable, equitable market

⁴² The EU Battery Regulation has not been adopted yet. Chapter II and III of the Commission's proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 {SWD(2020) 420 final} - {SWD(2020) 334 final} - {SWD(2020) 335 final} establishes requirements on sustainability, safety, labelling and information to allow the placing on the market or putting into service of batteries.

⁴³ The phase-out of non-rechargeable (or, otherwise, not sustainable) batteries is indeed coherent with the Commission new Circular Economy Action Plan (https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf) and with its proposal for the EU Battery Regulation (see fn.42 above).

⁴⁴ Austria v. Commission (fn. 9 above), paragraphs 44 f. and case law cited. See also *ibid.*, paragraph 100.

⁴⁵ See on this already Points (9) and (41) above.

outcome.

- (54) State aid must overall not be protective in its aim and effect, and must promote the rationalisation and efficiency of the fishery and aquaculture sector and environmental benefits. Any State aid must aim at permanent improvements in order for the sector to function on the basis of market factors.
- (55) For the purposes of these Guidelines, the Commission considers that the market is not achieving the expected objectives without State intervention and there is therefore a need for State intervention in the case of aid fulfilling the specific conditions laid down in Sections 4, 5.1, 5.3, 5.4 of these Guidelines.

3.5. Appropriateness of the aid measure

- (56) The proposed aid measure must be an appropriate policy instrument to contribute to achieving the objectives concerned. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or other less distortive forms of aid make it possible to facilitate the development of an economic activity or area in line with the CFP objectives.
- (57) The Commission considers that aid which meets the specific conditions set out in Sections 4, 5.1, 5.3, 5.4 of these Guidelines is an appropriate policy instrument. In all other cases, a Member State must demonstrate that no other less distortive policy instrument exists.
- (58) The Commission will require the Member States to provide at least an environmental and sustainability impact assessment. Likewise, the results of ex post evaluations as described in Section 6 will be taken into account to assess whether no other less distortive policy instrument exists.
- (59) Aid can be awarded in various forms. Each Member State must ensure that the aid is granted in the form that is likely to generate the least distortions of competition and trade.
- (60) Where the aid is granted in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges), the Member State must demonstrate why other potentially less distortive forms of aid, such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms), are less appropriate. Aid aiming at supporting investments in fisheries businesses should be as a priority financed through repayable instruments rather than non-repayable ones.
- (61) The results of ex post evaluations as described in Section 6 will be taken into account to assess whether no other less distortive form of aid exists.

3.6. Incentive effect

- (62) Aid can only be found compatible with the internal market if it has an incentive effect. Aid has an incentive effect if it changes the behaviour of an undertaking in such a way that it engages in additional activity which it would not have carried out without the aid or would have carried out in a restricted or different manner. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal

business risk of an economic activity.⁴⁶

- (63) Operating aid and aid to facilitate the achievement of obligatory standards is in principle incompatible with the internal market, unless exceptions are expressly provided for in Union legislation or these Guidelines and in duly justified other cases. In particular, aid to pay fishing vessels' energy costs must be considered incompatible with the internal market, as it prevents aid beneficiaries from being exposed to the cost of their energy consumption and thus disincentivises them from reducing it. In any event, in compliance with the European Green Deal, no State aid for fossil fuels may be considered compatible with the internal market.
- (64) Aid which is granted in respect of an operation that the beneficiary has already begun to implement before the aid application was submitted by the beneficiary to the national authorities cannot be considered to have an incentive effect.
- (65) Aid that is compensatory in nature, such as aid that meets the specific conditions set out in Sections 4, 5.3, and 5.4, aid that meets the conditions set out in Section 5.6 are not required to have an incentive effect.
- (66) Aid in the form of tax advantages will be deemed to have an incentive effect if the measure establishes a right to the aid in accordance with objective criteria and without further exercise of discretion by the Member State and if the measure has been adopted and is in force before work on the aided project or activity has started. The latter requirement shall not apply in the case of fiscal successor schemes if the measure was already covered by the previous schemes in the form of tax advantages.

3.7. Proportionality of the aid (aid limited to the minimum necessary)

- (67) Aid must be limited to the minimum needed to induce the beneficiary to carry out an activity.
- (68) As a general rule, aid will be considered to be limited to the minimum if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of the aid (net extra cost approach).
- (69) The aid must therefore not exceed the minimum amount necessary to render the project profitable. The aid must, for example, not increase the project's internal rate of return (IRR) beyond the normal rates of return applied by the undertaking concerned in other similar investment projects. If such rates are unavailable, the aid should not increase the project's IRR beyond the costs of capital of the company as a whole or beyond the rates of return commonly observed in the industry concerned.
- (70) Where an aid measure is of the same kind as an operation that is eligible for funding under Regulation (EU) No 2021/1139, the principle of proportionality of the aid is deemed to be respected if the amount of the aid does not exceed the applicable maximum intensity of public aid set out in Article 32 and Annex III to that Regulation.
- (71) Aid that is compensatory in nature, such as aid that meets the specific conditions set out in Sections 4, 5.3, 5.4 and 5.6, is deemed proportional.
- (72) Aid may be granted concurrently under several schemes or cumulated with ad hoc aid, provided that the total amount of public funding for an activity does not exceed the relevant maximum aid

⁴⁶ Judgment of the Court of 13 June 2013, HGA and others v Commission, Joined Cases C-630/11 P to C-633/11 P, ECLI:EU:C:2013:387, paragraphs 103-123.

intensities referred to in these Guidelines

3.8. Avoidance of undue negative effects on competition and trade

- (73) For the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to facilitating the development of certain economic activities or of certain economic areas in line with the CFP objectives.⁴⁷
- (74) In line with its obligations under Articles 11 and 7 of the Treaty and Article 3 (3) TEU, as well as under Article 2(2) of the European Climate Law⁴⁸ and Articles 2(1) and 4(2) of the Paris Agreement, the Commission will in this context not only consider the benefits of the aid for the beneficiary's economic activity but also take into account the positive effects of the aid for the community at large and, in particular, how the aid contributes to the achievement of the objectives set out in the European Green Deal (in particular, the preservation and restoration of ecosystems and biodiversity), as well as the Union's climate target for 2030 and the objective to reach climate-neutrality by 2050, and the objectives set out in Article 2 of the CFP and in Article 1 of the Marine Strategy Framework Directive. Undue negative effects on the environment and the climate will be taken into account also due to their negative long-term impacts on economic growth.⁴⁹ In the overall balancing of the positive effects of the aid against its negative effects on competition and trade, the Commission will pay particular attention to the "Do no significant harm" principle, or other comparable methodologies.
- (75) The Commission has indeed recognised that climate change has a significant negative impact on the economy⁵⁰ and will thus take into account the environmental concerns as an inherent criterion for the assessment whether an aid measure has disproportionate negative effects on economic growth or not (when evaluating the economic advantages or disadvantages of a measure).⁵¹ The Commission's analysis of whether a measure has disproportionate effect on economic growth within the internal market because of possible environmental effects (and whether or in which extent the measure contributes to sustainable development within the market) is also supported by the integration of sustainable development and environmental protection into the development of the internal market called for by Article 3(3) TEU.⁵²

⁴⁷ Austria v. Commission (fn. 9 above), paragraph 101.

⁴⁸ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) No 2018/1999 ("European Climate Law").

⁴⁹ The need for the Commission to consider the impact of the aid measure on economic growth in general, has been also already stressed by the Commission in its 2001 Environmental Aid Guidelines (OJ C 37, 3.2.2001, p. 3–15), at recital 5: "The Commission's approach in these guidelines therefore consists in determining whether, and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth". Moreover, the Commission's proposal for the 8th Environmental Action Programme has the long-term priority objective for 2050 "that citizens live well, within the planetary boundaries in a regenerative economy where nothing is wasted, no net emissions of greenhouse gases are produced and economic growth is decoupled from resource use and environmental degradation." (Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2030, 14.10.2020, COM(2020) 652 final, p. 10). As results from the Parliament's amendment No. 323 of 11.03.2021 to Article 2(2)(c) of this proposal, "(...) Progress towards a regenerative growth model shall require specific contributions from specific policies such as nature restoration, agriculture and soil management, fisheries management and forestry management. (...)". [Reference to be updated once the 8th EAP is adopted]

⁵⁰ See e.g. statements in the EU Biodiversity Strategy (see fn. 21 above).

⁵¹ Cf also Judgement of the Court of Justice of 17 September 2002, Concordia Bus Finland Oy Ab, C-513/99, ECLI:EU:C:2002:495, paragraph 57.

⁵² "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social

- (76) Furthermore, each aid measure must identify the objectives of the CFP to the achievement of which it contributes and clearly demonstrate how it will contribute to achieving those objectives without negatively affecting any of the other CFP objectives, using the methodology in Annex IV EMFAF. The objectives of the CFP are set out in Article 2 of Regulation (EU) No 1380/2013 and include, amongst others, ensuring that fishing and aquaculture activities are environmentally sustainable in the long term and that they are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits and contributing to the availability of food supplies.

3.8.1. General considerations

- (77) In principle, aid to the fishery and aquaculture sector can cause product market distortions and have location effects. It may therefore lead to allocative inefficiencies, undermining the economic performance of the internal market, and to distributional concerns, distorting the distribution of economic activity across different geographical areas.
- (78) Due to its positive effects on the development of the sector the Commission considers that where aid fulfils the specific conditions set out in Sections 4, 5.1, 5.3 and 5.4 the negative effects on competition and trade are limited to the minimum.
- (79) The Commission will, in general, consider the effects on competition and trade to be more limited if the aid is proportionate (aid limited to the minimum necessary) and the amount of aid is smaller compared to the overall eligible costs.
- (80) According to Article 37 of the Charter of Fundamental Rights of the European Union, requiring that “*a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development*” and Articles 11 and 7 of the Treaty, State aid measures cannot be allowed to distort competition to the disadvantage of market participants that offer less environmentally harmful solutions to achieve the same outcome of ensuring a higher level of environmental protection. Thus, State aid cannot be considered compatible with the internal market if the aid measure or the conditions attached to it result in an infringement of relevant EU law. This is notably the case when the activity infringes EU law on the environment. In such a case, the negative effects manifestly outweigh any positive effect.

3.8.2. Aid schemes

- (81) Aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level, a scheme should not lead to high levels of distortions on a cumulative basis.
- (82) The Member State therefore has to demonstrate that the negative effects of the aid will be limited to the minimum, taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries, as well as the characteristics of the targeted sector. In order to enable the Commission to assess the effects of the aid, the Member State may submit any impact assessment at its disposal, as well as ex post evaluations carried out for similar predecessor schemes.

3.8.3. Notified individual aid

progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance (...).” (Article 3(3) TEU).

- (83) When appraising the effects of notified individual aid, the Commission places particular emphasis on the negative effects linked to the prevention of exit from the market and the notion of substantial market power. These negative effects must be counterbalanced with the positive effects of the aid.
- (84) In order to identify and assess the potential distortions of competition and trade, each Member State should provide the Commission with evidence identifying the relevant product market, that is, products affected by the change of behaviour of the aid beneficiary, the geographical market, the competitors, as well as the customers and consumers concerned.
- (85) The Commission will use various criteria to assess potential distortions of competition and trade, such as the market structure of the product concerned, the performance of the market (declining or growing market), the process for selecting the aid beneficiary, and the market strategy of the beneficiary.

3.8.4. *Absence of negative effects on the environment and the climate*

- (86) State aid to the fishery and aquaculture sector may also have a negative impact towards the achievement of the European Green Deal objectives and binding European climate targets. For this reason, the Commission will conduct a “*climate and environment compatibility*” assessment of the aid measure (and in practice, of the project or activity supported by it) with the objectives of the European Green Deal and the other EU climate and environmental policies by also making reference to the climate and environment coefficients under Annex IV of Regulation (EU) No 2021/1139. When a fishery or aquaculture activity may have a negative environmental or climate impact, the Member State will be required to demonstrate why the aid measure is not supporting less harmful alternatives. In any case, capacity-enhancing subsidies (as the construction or acquisition of new fishing vessels or the modernisation of fishing vessels that lead to increasing the capacity of the vessels to catch fish, including engine replacement) and subsidies that artificially maintain fishers in the sector must not be allowed.

3.9. **Transparency**

- (87) Member States shall ensure the publication in the European Commission’s transparency award module⁵³ and on a comprehensive State aid website, at national or regional level, of the following information on State aid measures:
- (a) the full text of the aid scheme and its implementing provisions or legal basis for individual aid, or a link to it in the standardised format laid down in Annex I;
 - (b) the information on each individual aid award granted under these guidelines, referring to the standardised format laid down in Annex I.
- (88) Member States shall organise their comprehensive State aid websites, on which the information laid down in this paragraph is to be published, in such a way as to allow easy access to the information. Information shall be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. Access to the website shall be given to the general public without restrictions. No prior user registration shall be required to access the website.
- (89) In the case of aid schemes in the form of tax advantages, the conditions set out in paragraph (87)(b) shall be considered fulfilled if Member States publish the required information on

⁵³ <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

individual aid amounts in the following ranges (in EUR million): 0.03-0,5; above 0.5-1; above 1-2; above 2.

- (90) The information referred to in paragraph (87)(b) shall be published within 1 month from the date the aid was granted or, for fiscal measures, within 1 year from the date the tax declaration is due.⁵⁴ In case of unlawful but compatible aid, Member States must publish this information *ex post* within 1 month from the date of the Commission's decision declaring the aid compatible. In order to allow the enforcement of State aid rules under the Treaty on the Functioning of the European Union, the information shall be available for at least 10 years from the date on which the aid was granted.
- (91) The Commission shall publish on its website the links to the State aid websites referred to in paragraph (87).

4. AID THAT IS COMPATIBLE WITH THE INTERNAL MARKET

4.1. Aid to make good the damage caused by natural disasters and exceptional occurrences

- (92) Aid to make good the damage caused by natural disasters and exceptional occurrences is compatible with the internal market if it respects the principles set out in Section 3 and meets the specific conditions set out in this Section.
- (93) The notions of natural disasters and exceptional occurrences must be interpreted restrictively.⁵⁵
- (94) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that exceptionally severe storms and floods may constitute natural disasters. In addition, Regulation (EU) No 1388/2014 permits to block exempt also the following types of natural disasters: earthquakes, avalanches, landslides, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.
- (95) The following events are examples of exceptional occurrences that have been recognised by the Commission in cases outside the fishery and aquaculture sector: health crises, war, internal disturbances, strikes, with certain reservations and depending on their extent, major industrial and nuclear accidents, and fires resulting in widespread loss. The outbreak of an animal disease or a plant pest does in general not constitute an exceptional occurrence. The Commission has, however, in specific cases concerning the fishery and aquaculture sector accepted the very widespread outbreak of a new animal disease as an exceptional occurrence.
- (96) The Commission will continue to assess proposals to grant aid in accordance with Article 107(2)(b) of the Treaty on a case-by-case basis, having regard to its previous practice in the field.
- (97) Aid granted under this Section must additionally meet the following conditions:
- (a) the competent authority of the Member State has formally recognised the character of the event as a natural disaster or as an exceptional occurrence;
 - (b) there is a direct causal link between the natural disaster or the exceptional occurrence and

⁵⁴ In case no formal requirement for an annual declaration exists, the 31 December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

⁵⁵ Judgment of the Court of Justice of 23 February 2006, Giuseppe Atzeni and Others, Joined Cases C-346/03 and C-529/03, ECLI:EU:C:2006:130, paragraph 79.

the damage suffered by the undertaking.

- (98) Aid must be paid directly to the undertaking concerned.
- (99) Aid schemes related to a specific natural disaster or exceptional occurrence must be established within one year from the date of the occurrence of the event. The aid must be paid out within four years from that date.
- (100) In order to facilitate rapid reaction, the Commission will authorize ex ante framework aid schemes to compensate for the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions, and wild fires of natural origin, as well as health crisis, provided that the conditions under which aid can be granted in such cases of natural disasters are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point (130).
- (a) The eligible costs are the costs of the damage incurred as a direct consequence of the natural disaster or exceptional occurrence, as assessed by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking. The damage may include: material damage to assets (such as buildings, equipment, machinery, stocks, and means of production); and
- (b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.
- (101) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the natural disaster or exceptional occurrence. It must not exceed the repair cost or the decrease in fair market value caused by the natural disaster or the exceptional occurrence, that is, the difference between the asset's value immediately before and immediately after the natural disaster or exceptional occurrence.
- (102) The loss of income must be calculated by subtracting:
- (a) the result of multiplying the quantity of the fishery and aquaculture products produced in the year of the natural disaster or exceptional occurrence, or in each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year, from
- (b) the result of multiplying the average annual quantity of fishery and aquaculture products produced in the three-year period preceding the natural disaster or exceptional occurrence, or a three-year average based on the five-year period preceding the natural disaster or exceptional occurrence, excluding the highest and lowest entry by the average selling price obtained.
- (103) The damage must be calculated at the level of the individual beneficiary.
- (104) The aid and any other payments received to compensate the damage, including payments under insurance policies, must be limited to 100% of the eligible costs.

5. AID THAT MAY BE CONSIDERED COMPATIBLE WITH THE INTERNAL MARKET

5.1. Aid for categories of measures covered by a block exemption regulation

- (105) Where aid benefitting SMEs or large undertakings is of the same kind as aid falling within a

category of aid that can be considered compatible with the internal market under one of the Regulations on group exemptions referred to in point (28)(a), the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines, this Section, and the criteria laid down for each category of aid set out in those Regulations.

(106) As an exception to point (105), aid of the same kind as aid falling within the category of aid to make good the damage caused by natural disasters mentioned in Article 44 of Regulation (EU) No 1388/2014 is to be compatible with the Treaty if it meets the specific conditions set out in Section 4 of these Guidelines.

5.2. Aid falling within the scope of certain horizontal guidelines

(107) Where aid falls within the scope of certain horizontal guidelines or other instruments adopted by the Commission,⁵⁶ the Commission will assess such aid on the basis of the principles set out in Section 3 of these Guidelines and the relevant Sections of those instruments.

5.3. Aid to make good the damage caused by adverse climatic events

(108) Where aid aims to make good the damage caused by adverse climatic events, the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines and the specific conditions set out in this Section.

(109) As an exception to point (108), the Commission will assess aid of the same kind as aid falling within the category of aid to mutual funds for adverse climatic events mentioned in Article 20 of Regulation (EU) No 1388/2014 under Section 5.1 of these Guidelines.

(110) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that storms, gusts of wind causing exceptionally high waves, heavy and persistent rainfall, floods, and exceptionally elevated water temperatures over a longer period may constitute adverse climatic events. The Commission will continue to assess proposals to grant aid to make good the damage caused by adverse climatic events on a case-by-case basis, having regard to its previous practice in the field.

(111) Aid granted under this Section must additionally meet the following conditions:

- (a) the damage caused by the adverse climatic event must amount to more than 30% of the average annual turnover, calculated on the basis of the preceding three calendar years or a three-year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry;
- (b) there must be a direct causal link between the adverse climatic event and the damage suffered by the undertaking;
- (c) in the case of losses caused by adverse climatic events referred to in Article 35(1) of Regulation (EU) No 2021/1139, the Member State must justify why it intends to grant aid rather than financial compensation being paid through mutual funds for adverse climatic

⁵⁶ Horizontal guidelines and other instruments include, amongst others, the Criteria for the analysis of the compatibility of State aid for training subject to individual notification, OJ C 188, 11.8.2009, p. 1; the Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4; the Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1; the Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1; the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

events under Article 35 of that Regulation.

- (112) The Commission will authorise ex ante framework aid schemes to compensate for the damage caused by adverse climatic events, provided that the conditions under which aid can be granted are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point (153).
- (113) The aid must be paid directly to the undertaking concerned.
- (114) Aid schemes related to adverse climatic events must be established within three years from the date of the occurrence of the event. The aid must be paid out within four years from that date.
- (115) The eligible costs are the costs of the damage incurred as a direct consequence of the adverse climatic event, as assessed either by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking. The damage may include:
- (a) material damage to assets (such as buildings, vessels, equipment, machinery, stocks, and means of production); and
 - (b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.
- (116) In the case of material damage to assets, the damage must have resulted in a loss of production that amounts to more than 30% of the average annual turnover, calculated on the basis of the preceding three calendar years or a three-year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry.
- (117) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the adverse climatic event. It must not exceed the repair cost or the decrease in fair market value caused by the adverse climatic event, that is, the difference between the asset's value immediately before and immediately after the adverse climatic event.
- (118) The loss of income must be calculated by subtracting:
- (a) the result of multiplying the quantity of the fishery and aquaculture products produced in the year of the adverse climatic event, or in each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year, from
 - (b) the result of multiplying the average annual quantity of fishery and aquaculture products produced in the three-year period preceding the adverse climatic event or a three-year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry by the average selling price obtained.
- (119) The damage must be calculated at the level of the individual beneficiary.
- (120) The aid and any other payments received to compensate the damage, including payments under insurance policies, must be limited to 100% of the eligible costs.

5.4. Aid for the costs of prevention, control and eradication of animal diseases in aquaculture

- (121) Where aid aims to support costs relating to the prevention, control and eradication of animal

diseases in aquaculture, the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines and the conditions set out in this Section.

(122) As an exception to point (121), the Commission will assess aid of the same kind as aid falling within the category of aid for animal health and welfare measures mentioned in Article 39 of Regulation (EU) No 1388/2014 under Section 5.1 of these Guidelines.

(123) Aid under this Section may only be granted:

(a) in respect of diseases included in the list of animal diseases of the World Organization for Animal Health, Annex II to Regulation (EU) No 652/2014 of the European Parliament and of the Council,⁵⁷ or Part II of Annex IV to Council Directive 2006/88/EC;⁵⁸ and

(b) as part of:

- i. a programme at Union, national, or regional level for the prevention, control or eradication of animal diseases; or
- ii. emergency measures imposed by the competent national authority.

(124) The aid must be paid directly to the undertaking concerned.

(125) No aid should be granted if it is established that the beneficiary caused the disease deliberately or by negligence.

(126) Aid schemes must be established within three years from the date of the occurrence of the costs caused by the animal disease. Aid must be paid out within four years from that date.

(127) The Commission will authorise *ex ante* framework schemes, provided that the conditions under which aid can be granted are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point ((153).

(128) Eligible costs are costs related to:

- (a) health checks, analyses, tests, and other screening measures;
- (b) the purchase, storage, administration or distribution of vaccines, medicines, and substances for the treatment of animals;
- (c) the slaughtering, culling, and destruction of animals;
- (d) the destruction of animal products and of products linked to animals;
- (e) the cleaning and disinfection of the holding and equipment;
- (f) the damage incurred due to the slaughtering, culling or destruction of animals, animal

⁵⁷ Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC (OJ L 189, 27.6.2014, p. 1).

⁵⁸ Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (OJ L 328, 24.11.2006, p. 14).

products, and products linked to animals, limited to the market value of such animals and products if they had not been affected by the disease;

(g) loss of income due to difficulties in restocking;

(h) in exceptional and duly justified cases, other costs incurred due to animal diseases in aquaculture.

(129) The aid and any other payments received to compensate the damage, including payments under insurance policies, must be limited to 100% of the eligible costs.

5.5. Aid financed through parafiscal charges

(130) Where aid schemes are financed by special charges imposed on certain fishery or aquaculture products irrespective of their origin, in particular parafiscal charges, the Commission will assess the scheme on the basis of the principles set out in Section 3 and the conditions set out in this Section. Only aid that equally benefits domestic and imported products may be considered compatible with the internal market.

5.6. Operating aid in outermost regions

(131) Where aid constitutes operating aid granted in outermost regions with a view to alleviating the specific constraints in those regions as a result of their isolation, insularity, and extreme remoteness, the Commission will assess such aid on a case-by-case basis, under Article 107(3)(a) TFEU, on the basis of the principles set out in Section 3, the conditions of this Section, and the specific legal provisions applying to those regions. It will also have regard to, if applicable, the compatibility of the aid with measures under the EMFF for the region concerned and its effects on competition both in the regions concerned and in other parts of the Union.

(132) The aid must not go beyond what is necessary to alleviate the specific constraints in the outermost regions as a result of their isolation, insularity, and extreme remoteness. To avoid overcompensation, the Member State must take into account other types of public intervention, including, if applicable, the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions under Articles 21 and 29b of Regulation (EU) No 2021/1139 and aid for implementing compensation for additional costs under Article 29 of that Regulation. **State aid to finance the construction of new fishing vessels in the outermost regions** shall be considered incompatible with the internal market.

5.7. Aid for other measures

(133) Where aid does not correspond to one of the types of aid mentioned in Sections 4 and 5.1 to 5.6, it is, in principle, not compatible with the internal market.

(134) If a Member State nevertheless intends to provide such aid or provides such aid, it must clearly demonstrate that the aid complies with the principles set out in Section 3. The Commission may declare the aid compatible with the internal market on the basis of a case-by-case assessment.

(135) In any event, State aid that hinders the preservation and restoration of fish stocks and marine environment will not be considered compatible with the internal market. Similarly, State aid for the acquisition of a first fishing vessel for young fishers (unless it concerns a fishing vessel which is not longer than 24 meters in overall length) and which complies with all the other conditionalities under Article 16(3) of Regulation (EU) No 2021/1139) as well as State aid aimed

at supporting (non-)fishers to enter the fishery and aquaculture sector will not be considered compatible with the internal market.

- (136) State aid shall in principle be allowed only to small-scale fishers upon the condition that they do not increase their nominal capacity and/or fishing capacity.
- (137) For safety and security reasons, State aid should only be allowed if fishers working on the vessels for which the investments on board are needed receive specific training dedicated to safety and security. Aid aiming at increasing safety on board should only be allowed for investments exclusively directed at increasing the quality of working or safety conditions but not a vessel's fishing capacity, as provided by Regulation (EU) No 2021/1139, Articles 16b(3) and (4), 12a and 13a.
- (138) State aid aimed at supporting fishers permanently exiting the fisheries sector will be allowed only in case of full conversion of the exiting fishers. Examples of such a conversion would be the activity of eco-tourism, participation in scientific cruises, or the activity of monitoring or patrolling protected areas. Aid aimed at supporting the mere diversification of activities where the beneficiary fully or partly maintains a fishing activity or aid for exiting the fisheries sector only temporarily should not be considered compatible with the internal market. Member States shall establish effective means to ensure that the exit of fishers from the fisheries sector is permanent.
- (139) Aid aimed at supporting fishers during the closure of activities due to health crisis or seasonal closures will not be considered compatible with the internal market.

6. PROCEDURAL MATTERS

6.1. Maximum duration of aid schemes and evaluation

- (140) The Commission will only authorise aid schemes of limited duration. Aid schemes must, in principle, not apply for a period exceeding seven years.
- (141) To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to an additional time limitation of normally four years or less and to the *ex post* evaluation referred to in point (34). *Ex post* evaluations will be carried out for schemes in the case of which the potential distortions of competition are particularly high, that is, schemes that may risk significantly restricting or distorting competition if their implementation is not reviewed in due time.
- (142) Given the objectives of the *ex post* evaluation and in order not to impose a disproportionate burden on Member States in respect of smaller aid amounts, the *ex post* evaluation requirement only applies to aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of a common methodology and must be made public. Each Member States must notify, together with the relevant aid scheme, a draft evaluation plan, which will be an integral part of the assessment of the scheme by the Commission.
- (143) In the case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility solely on the basis of the evaluation plan.
- (144) The *ex post* evaluation must be submitted to the Commission in due time to allow for the

assessment of the possible prolongation of the aid scheme and, in any case, upon its expiry. Any subsequent aid measure with a similar objective must take into account the results of the *ex post* evaluation.

6.2. Application of the Guidelines

- (145) The Commission will apply these Guidelines in the assessment of all aid to be granted on and after (...), irrespective of the date of notification.
- (146) Individual aid granted on the basis of an approved aid scheme and notified to the Commission pursuant to an obligation to notify such aid individually will be assessed on the basis of the Guidelines that apply to the approved aid scheme.
- (147) Aid granted unlawfully will be assessed on the basis of the Guidelines in force at the time of granting the aid.
- (148) The Guidelines for the examination of State aid to fisheries and aquaculture adopted in 2015 and amended in 2018 will no longer apply after (...), with the exception of the cases referred to in points (146) and (147).

6.3. Proposals for appropriate measures

- (149) In accordance with Article 108(1) of the Treaty, the Commission proposes that each Member State amends its existing aid schemes to conform with these Guidelines by (...).
- (150) The Commission invites each Member State to give its explicit and unconditional agreement to the appropriate measures proposed in these Guidelines within two months from the date of publication of these Guidelines in the Official Journal of the European Union.
- (151) If a Member State does not give its explicit and unconditional agreement within the foreseen period, the Commission will assume that the Member State disagrees with the proposed measures. If a Member State disagrees with the proposed measures, the Commission will proceed in accordance with Article 19(2) of Regulation (EC) No 659/1999.

6.4. Reporting and monitoring

- (152) The Commission reminds each Member State of its duty to submit annual reports to the Commission, as set out in Article 21 of Regulation (EC) No 659/1999 and Articles 5, 6, and 7 of Regulation (EC) No 794/2004.
- (153) The annual report must also include meteorological information about the type, timing, relative magnitude, and location of the natural disaster or adverse climatic event under Sections 4 and 5.3 as well as information on prevention, control, and eradication programmes under Section 5.4. This reporting obligation only relates to *ex ante* framework schemes.
- (154) Each Member State must maintain detailed records on all of its aid measures. Such records must contain all information necessary to establish that the conditions set out in these Guidelines regarding, where applicable, eligibility and aid intensity have been observed. These records must be maintained for 10 years from the date of granting the aid and must be provided to the Commission upon request.

6.5. Revision

(155) The Commission may decide to review or change these Guidelines at any time, if this is necessary for reasons related to competition policy, other Union policies, international commitments, developments in the markets, or for any other justified reason.

ANNEX I – PROVISIONS FOR THE PUBLICATION OF INFORMATION AS LAID DOWN IN SECTION 3.9

The following information on individual awards as laid down in paragraph (87)(b) of that Section shall be published:

- For individual aid, identity of the individual beneficiary ⁽⁵⁹⁾:
 - Name
 - Beneficiary's identifier
- Type of beneficiary undertaking at the time of granting:
 - SME
 - Large undertaking
- Region in which the beneficiary is located, at NUTS level II or below
- The principal economic sector in which the beneficiary has its activities, at NACE group level ⁽⁶⁰⁾
- Aid element and, where different, the nominal amount of aid, expressed as full amount in national currency ⁽⁶¹⁾
- Aid instrument ⁽⁶²⁾:
 - Grant/Interest rate subsidy/Debt write-off
 - Loan/Repayable advances/Reimbursable grant
 - Guarantee-Tax advantage or tax exemption
 - Risk finance
 - Other (please specify)
- Date of award and the date of publication
- Objective of the aid
- Identity of the granting authority or authorities
- Where applicable, name of the entrusted entity and the names of the selected financial intermediaries
- Reference of the aid measure

⁵⁹ With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication of 1.12.2003 on professional secrecy in State aid decisions, C(2003) 4582 (OJ C 297, 9.12.2003, p. 6)).

⁶⁰ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁶¹ Gross grant equivalent, or where applicable, the amount of the investment. For operating aid, the annual amount of aid per beneficiary can be provided. The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

⁶² If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

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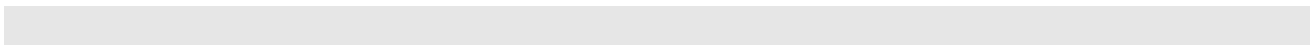
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