

Revision of the EU Fisheries State Aid Guidelines

Explanatory statement

Produced for ClientEarth by Ziegler State Aid AntiTrust

Introduction: The Commission's Obligations under Articles 7, 9 and 11 TFEU / The EU's commitment under the UN agenda for Sustainable Development / The "Green Oath" under the Green Deal

- (1) As ClientEarth has already submitted in its response to the call for contributions on how competition policy can support the Green Deal,¹ *"the EU's constitutional provisions in Articles 3 TEU, Articles 7, 9 and 11 TFEU and Article 37 EU Charter of Fundamental Rights already require the Union, including its institutions, to pursue policies ensuring a high level of environmental protection."*² Thus, since the EU *"has not only economic, but also environmental and climate protection objectives, Treaty provisions on State aid must be balanced against the objectives pursued by environmental protection policy."*³
- (2) As made clear by the Court of Justice with its *Hinckley Point* judgment,⁴ systematically controlling that activities (in all sectors) benefitting from (any type of) aid comply with all their environmental law obligations is a basic prerequisite for ensuring that aid measures contribute to environmental protection. Accordingly, ClientEarth has already proposed introducing a general rule for any compatibility assessment under Article 107(3) TFEU: *"aid, granted individually or pursuant to a scheme, to an activity [or undertaking] that does not comply with all its EU environmental law obligations cannot be found compatible with the internal market. 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. Breach of EU environmental law by the beneficiary after aid was granted will constitute a misuse of aid."*⁵
- (3) Very much related to this is also the "green oath" as stated in the Commission's Green Deal, with the imperative "Do no harm,"⁶ which must be respected by State aid to the fisheries and aquaculture sector.
- (4) Moreover, the EU is not only bound by the Treaties and its own policies, but also by the Paris Agreement and the commitment it undertook to implement the United Nations' 2030 Agenda for Sustainable Development.⁷ As part of this Agenda, Sustainable Development Goal ("**SDG**") 14 aims at cutting marine pollution, restoring and conserving marine and coastal areas and ecosystems, ending unsustainable fishing practices, and improving the management of marine

¹ ClientEarth, "Competition policy supporting the Green Deal", November 2020, available at: https://www.clientearth.org/media/kthkuhb4/clientearth-reply-to-call-competition-policy-and-green-deal_20-11-2020.pdf

² Competition policy supporting the Green Deal (fn. 1 above), p. 9.

³ *Ibid.*

⁴ C-594/18 P Austria v. Commission ECLI:EU:C:2020:742, paras. 44-45 and 100

⁵ ClientEarth, "Revision of the State Aid Guidelines for Environmental Protection and Energy and exemption rules", January 2021, p. 5, available at: <https://www.clientearth.org/media/w01ikefa/clientearth-reply-to-the-consultation-on-revision-of-eeag-07-01-2020.pdf>; see also ClientEarth's feedback to the roadmaps on the revision of the GBER and State aid rules for IPCEIS, at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12810-Modification-of-the-General-Block-Exemption-Regulation-for-the-Green-Deal-and-the-Industrial-and-Digital-Strategies/F2207315> and <https://www.clientearth.org/latest/documents/state-aid-to-important-projects-of-common-european-interest/>

⁶ 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**"), p. 19.

⁷ See: https://ec.europa.eu/international-partnerships/sustainable-development-goals_en.

resources, to ensure both economic benefits for all and the protection of seas and oceans. SDG14 provides for different targets to be fulfilled.⁸ In particular:

- a. Under the second target, 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.*”
- b. Under the sixth target, 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 this target, the EU has been one of the drivers to start the WTO negotiations on fisheries subsidies, launched in 2001 at the Doha Ministerial conference.⁹ Based on the mandate fixed under the Ministerial Decision from the WTO’s 11th Ministerial Conference in Buenos Aires in 2017, and UN SDG Target 14.6, negotiators are expected to secure an agreement eliminating subsidies to illegal, unreported and unregulated fishing and prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing, with special and differential treatment for developing and least-developed countries. In addition, as pointed out at recital 12 of Regulation (EU) No 2021/2019, “*in the course of World Trade Organisation 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.*”

(5) All the principles mentioned above need to be explicitly referred to in a revised version of the Guidelines for the examination of State aid to the fisheries and aquaculture sector (the “**Fisheries GL**”), which must also have updated references to the various pieces of legislation and other Commission documents that are mentioned in the Introduction and throughout the guidelines (such as the European Maritime Fisheries and Aquaculture Fund).¹⁰

(6) In particular, the revised version of the Fisheries GL must be in line with recital 17a of Regulation (EU) No 2021/1139, which provides that “(t)he EMFAF should contribute to achieving the environmental, economic, social and employment objectives of the CFP, as set out in Article 2 of Regulation (EU) No 1380/2013, in particular of restoring and maintaining populations of harvested species above levels which can produce the maximum sustainable yield, of avoiding and reducing, as far as possible, unwanted catches and of minimising the negative impacts of fishing activities on the marine ecosystem. (...) That support should include innovation and investments in low-impact, selective, climate resilient and low-carbon fishing practices and techniques.” Moreover, compliance of the revised Guidelines must be also ensured with recital

⁸ See: <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-14-life-below-water/targets.html>.

⁹ For more information on the negotiations, see: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm#:~:text=SDG%2014.6%20targets%20to%20by,special%20and%20differential%20treatment%20for.

¹⁰ We suggest amending the reference to Article 5 of Regulation (EU) No 508/2014 under point 11 of the current Fisheries GL by referring to the objectives stated under the recital 1 EMFAF: 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.*”

22 of Regulation (EU) No 2021/1139, stating that “(i)t should be possible for the EMFAF to support innovation and investments on board Union fishing vessels. That support (...) should not include the acquisition of equipment that increases the ability of a fishing vessel to find fish. Such support should also not lead to an increase in fishing capacity of any individual vessel, except if it directly results from an increase in gross tonnage of a fishing vessel that is necessary for improving safety, working conditions or energy efficiency. In those cases, the increase in fishing capacity of the individual vessel should be compensated by the prior withdrawal of at least the same amount of fishing capacity without public aid (...).”

- (7) The revised Fisheries GL must also indicate, in their introductory part, that they shall contribute to the objectives set out in the European Green Deal and the EU Biodiversity Strategy and, in particular, the preservation and restoration of ecosystems and biodiversity. Indeed, biodiversity loss in the seas is caused primarily by overfishing, changes in how the sea is used and climate change.¹¹
- (8) In particular, 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.”¹² Reference in the Fisheries GL to specific activities that can pursue such objectives is needed to ensure clarity. For instance, the rebuilding of oyster reefs and fish passages in costal dams can represent examples of investment opportunities for the green recovery of the ocean.¹³
- (9) The Fisheries GL must clearly explain in their Introduction that the goal of restoring and properly protecting marine ecosystems can be best achieved by fighting the overexploitation of such ecosystems and that ending overfishing would also increase the ocean’s capacity to mitigate the effects of climate change.¹⁴ Moreover, the revised Fisheries GL must refer to the recent scientific findings that leaving more big fish in the ocean can reduce carbon dioxide emissions, since big fish are important carbon sinks.
- (10) Then, the Fisheries GL must make reference to the objectives of the Common Fisheries Policy (“CFP”), set out in Article 2 of Regulation (EU) No 1380/2013 of the European Parliament and the Council, and, in particular, to 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.¹⁵

¹¹ The European Green Deal (see fn. 6 above), p. 12 ff.

¹² 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**”).

¹³ 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

¹⁴ 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/>

¹⁵ 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), Article 2(2).

- (11) 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”)¹⁶ 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 be in line with the objectives of Directive 2008/56/EC¹⁷ (“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.
- (12) The revised Fisheries GL must also clarify that State aid has to support the transition to **more selective and less damaging fishing techniques**. In accordance with the EU Biodiversity Strategy, the use of fishing gear most harmful to biodiversity, including on the seabed, and, in particular, the use of bottom-contacting fishing gear,¹⁸ shall not be supported. In addition, the ban on electric pulse fishing introduced with Regulation (EU) 2019/1241¹⁹ shall also be reflected in the Fisheries GL.
- (13) Finally, the revised Fisheries GL must also reflect the requirement under the European Green Deal²⁰ that public funding is used to develop more sustainable seafood practices, in order to avoid further biodiversity loss. The revised guidelines will have to clarify that this requirement must not translate into more overfishing. 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 and environmental results, increase climate resilience and reduce and modernise the use of inputs.
- (14) In that regard, a risk of greenwashing may arise. As awareness of environmental issues increases, there is an increased demand from consumers for green products and services. In this sense, environmental or “green” claims evoking the minor or reduced environmental impact of the products or services offered are becoming an important advertising tool for companies that can significantly impact consumers’ purchase choices. However, it is not often possible for consumers to verify the truthfulness of sustainability claims made by companies. False or misleading sustainability claims 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. Thus, the Fisheries GL should contain a “*greenwashing test*” with regards to aid to sustainable seafood, whereby beneficiaries of the aid shall (i) substantiate their sustainability claims with sound updated science; (ii) make clear which

¹⁶ 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.

¹⁷ 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 ff.

¹⁸ The EU Biodiversity Strategy (see fn. 12 above), p. 11.

¹⁹ 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.

²⁰ The European Green Deal (fn. 6 above), p. 12.

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 consumers²¹ when comparing products or services.

Definitions

- (15) We propose to include a definition for “sustainable blue economy,” to which Regulation (EU) No 2021/1139 makes reference, as “*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), and in particular SDG 14, and with Union environmental legislation.*”²²

Principles

- (16) The recent CJEU *Hinckley Point* judgment²³ will allow the Commission to rethink its assessment of national schemes, and it should increase environmental protection as required by the Treaties. Accordingly, the assessment principles of the Fisheries GL need to be amended and the requirement for the aid to meet an objective of common interest should be reviewed in light of paragraphs 20-26 of such judgment.

Specific principles for the fisheries and aquaculture sector

- (17) The Fisheries GL must clarify that each beneficiary of a State aid measure has to comply with the rules and objectives of the CFP and that the aid must support the objectives of the European Maritime, Fisheries and Aquaculture Fund for the 2021-2027 period.
- (18) Aid to the fisheries and aquaculture sector shall be made conditional on the beneficiary not having committed one or more of the serious infringements or offences set out in Article 12(1) of Regulation (EU) No 2021/1139 or a fraud as set out in Article 12(3) of that Regulation. The Fisheries GL must clearly state that, 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 and subject to the Commission’s control, Member States considering awarding State aid to the fisheries and aquaculture sector shall first consult the national register of infringements.²⁴ The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 12(4) of that Regulation apply.

²¹ For instance, by using a certain type of packaging or logo implying that the product is sustainable whereas this is not the case.

²² This definition is taken from Article 3(15) of Regulation (EU) No 2021/1139, which provides that “*‘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, aimed at ensuring environmental, social and economic sustainability in the long term and being consistent with the Sustainable Development Goals (SDGs), and in particular SDG 14, and with Union environmental legislation.*”

²³ *Austria v. Commission* (see fn. 4 above).

²⁴ As set out under the Commission’s 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 1967/2006, (EC)

- (19) Moreover, in order for the Fisheries GL to support the fight against overfishing, they must explicitly state that the grant of aid must 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. To the same end, we suggest introducing the principle that State aid financing the construction of new fishing vessels shall be considered incompatible with the internal market, and that aid (other than aid to finance the construction of new fishing vessels) for fishing vessels that do not use fossil fuel can only be granted if the fishing vessel is subject to regular inspections for 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, the Fisheries GL must specify that aid for fishing vessels can only be granted on the condition that vessels are not transferred or reflagged outside the Union during at least the first five years from the final payment of the aid.
- (20) Finally, to ensure that fishing vessels are in line with the European Green Deal and the future Battery Regulation, the Fisheries GL should specify that aid for innovative fishing vessels that use batteries as energy storage technologies can only be granted if the batteries fulfil sustainability and transparency requirements, in compliance with the requirements under Chapter II and III of the future EU Battery Regulation,²⁵ and if the batteries can be re-used, repurposed or recycled (following the waste hierarchy principle).²⁶

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

- (21) Section 3.3. of the current Fisheries GL, regarding the criterion of the “Contribution to a common objective,” must be replaced by a new section on the “Facilitation of the development of certain economic activities or of certain economic areas.”
- (22) This section should specify that 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.
- (23) In line with case law of the Court of Justice of the European Union,²⁷ the Fisheries GL should indicate that aid to an activity that contravenes provisions or general principles of EU law will be found incompatible with the internal market and that 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. Any case of non-compliance of the economic activity with environmental obligations during the aid will lead to full recovery of the aid.

No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control, COM/2018/368 final, Article 2. **[Reference to be updated once the new Control Regulation is adopted]**

²⁵ 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) 334, SWD(2020) 335, SEC(2020) 420) established requirements on sustainability, safety, labelling and information to allow the placing on the market or putting into service of batteries.

²⁶ The phase-out of non-rechargeable (or, otherwise, not sustainable) batteries is indeed coherent with the Commission’s 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. 25 above).

²⁷ Austria v. Commission (see fn. 4 above), paragraphs 44 f. and case law cited. See also *ibid.*, paragraph 100.

Need for State intervention

- (24) Section 3.4 of the current Fisheries GL should no longer make reference to the objective of common interest, so that the Fisheries GL comply with the assessment principles as clarified in the *Hinckley Point* judgment.
- (25) The need for State intervention must be envisaged in the current Fisheries GL not only for the promotion of the rationalisation and efficiency of the fishery and aquaculture sector but also when there are environmental benefits.

Appropriateness of the aid measure

- (26) The language of section 3.5 of the current Fisheries GL must comply with the assessment principles as clarified in the *Hinckley Point* judgment.
- (27) The Fisheries GL should be amended to require Member States to produce a sustainability impact assessment of the proposed aid scheme and to clarify that aid aimed at supporting investments in fisheries businesses should be, as a priority, financed through repayable instruments rather than non-repayable ones.

Incentive effect

- (28) The Fisheries GL should clarify that aid to pay fishing vessels' energy costs must be considered incompatible with the internal market, since it prevents aid beneficiaries from being exposed to the cost of their energy consumption and thus dis-incentivises them from reducing it. In any event, in compliance with the European Green Deal,²⁸ no State aid for fossil fuels may be considered compatible with the internal market.

Proportionality of the aid

- (29) We believe that the proportionality criterion should be strict enough to avoid that the Fisheries GL allow for aid intensities that are higher than those provided under the EMFAF. Therefore, we suggest deleting point (57) from the current Fisheries GL, which provides that “[w]here the maximum aid intensity for public aid of a measure goes beyond that set out in those provisions, the principle of proportionality of the aid is deemed to be respected if the Member State demonstrates the justification for and the indispensability of the aid.”

Avoidance of undue negative effects on competition and trade

- (30) The language of section 3.8 of the current Fisheries GL must be amended to make sure it complies with the assessment principles as clarified in the *Hinckley Point* judgment.²⁹
- (31) Moreover, in order for the Fisheries GL to be in line with Articles 11 and 7 TFEU, Article 2(2) of the European Climate Law,³⁰ Articles 2(1) and 4(2) of the Paris Agreement, as well as Article 3(3) TEU and the objectives set out in Article 2 of the CFP and in Article 1 of the Marine Strategy Framework Directive, the Fisheries GL must expressly require the Commission to take into

²⁸ The European Green Deal (see fn. 6 above), paragraph 2.2.2.

²⁹ *Austria v. Commission* (see fn. 4 above), paragraph 101.

³⁰ 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) 2018/1999 (“European Climate Law”).

account 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. The current Fisheries GL should also be amended to require the Commission to take into account the undue negative effects on the environment and the climate, also due to their negative long-term impacts on economic growth.³¹ The Fisheries GL shall clarify that, 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.

- (32) Moreover, the Fisheries GL shall clarify that each aid measure must identify the objectives of the CFP (set out in Article 2 of Regulation (EU) No 1380/2013) 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.
- (33) Furthermore, in order to make sure that the Fisheries GL do not support aid having negative effects on the environment and the climate, they should clarify that when an activity infringes EU law on the environment the State aid measure cannot be considered compatible with the internal market because its negative effects manifestly outweigh any positive effect. This is in accordance with 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.
- (34) A new section should be added to the Fisheries GL on the “Absence of negative effects on the environment and the climate.” This section should specify that 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. 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 acquisition³² 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.

³¹ 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*”.

³² Regulation (EU) No 2021/1139, recital 22a, provides that “[i]t is necessary to establish specific eligibility rules for certain other investments supported by the EMFAF in the fishing fleet, so as to avoid that these investments contribute to overcapacity or overfishing. In particular, support for the first acquisition of a second hand vessel by a young fisher and for the replacement or the modernisation of the engine of a fishing vessel should also be subject to conditions, including that the vessel belongs to a fleet segment which is in balance with the fishing opportunities available to that segment and that the new or modernised engine does not have more power in kW than that of the engine being replaced.”

Transparency

- (35) Section 3.9. of the Fisheries GL should be amended to ensure further transparency and to provide a standard for transparency which is not lower than that provided under the section on “transparency” of the State aid guidelines on Regional aid that have been recently adopted by the Commission.³³

State aid to finance the construction of new fishing vessels in the outermost regions

- (36) In accordance with Regulation (EU) No 2021/1139 recital 29, aid to the outermost regions must contribute to the development of sustainable blue economy sectors, as defined in Article 3(15). In particular, the sixth target of SDG 14 provides: “*by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing.*”
- (37) To this end, the provisions under the current GL on State aid to finance the construction of new fishing vessels should be deleted and it should be made clear that State aid to finance the construction of new fishing vessels in the outermost regions cannot be considered compatible with the internal market, in line with Article 13(b) of Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7th July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund, Article 13(b) (and the exception under Article 16 of the same Regulation).

Aid for other measures

- (38) ClientEarth proposes to insert a new section in the Fisheries GL specifying that State aid that hinders the conservation and protection of fish stocks and marine environment will not be considered compatible with the internal market. Similarly, the Fisheries GL need to clearly state that State aid for the acquisition of a first fishing vessel for young fishers, as well as State aid aiming at supporting (non-)fishers to enter the fishery and aquaculture sector, will not be considered compatible with the internal market. Nevertheless, the acquisition of a first vessel by young fishers can be eligible for aid if it complies with the conditions under Article 16 of Regulation (EU) No 2021/1139, that is, if it concerns a fishing vessel which is not longer than 24 meters in overall length and if the other conditions under Article 16(3) are respected.
- (39) In order for State aid not to support large-scale industrial fleets, the Fisheries GL should state that State aid shall, in principle, be granted only to small-scale fishers, on the condition that they do not increase their nominal capacity and/or fishing capacity.
- (40) The Fisheries GL should introduce specific provisions on State aid for safety and security reasons. In particular, such 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. The Fisheries GL should clarify that aid aimed at increasing safety on board should only be allowed for investments directed exclusively at increasing the quality of working or safety

³³ Guidelines on regional State Aid for 2022-2027, 19.4.2021, C(2021)2594 final.

conditions but not a vessel's fishing capacity, as provided by Regulation (EU) No 2021/1139, Articles 16b(3) and (4), 12a and 13a.

- (41) Furthermore, the Fisheries GL should allow aid for the full conversion of fishers permanently exiting the fisheries sector. The Fisheries GL should provide for examples of such a conversion (which can be ecotourism, participation in scientific cruises, or the activity of monitoring or patrolling protected areas). Aid for the mere diversification of activities where the beneficiary fully or partially maintains a fishing activity, or aid for existing the fisheries sector only temporarily, should not be considered compatible with the internal market. Member States shall establish effective measures to ensure that the exit of fishers from the fisheries sector is permanent.
- (42) Finally, the Fisheries GL should clearly indicate that aid aimed at supporting fishers during the closure of activities due to biological crisis or seasonal closures will not be considered compatible with the internal market.

Amendments to Notification forms

- (43) Together with the amendments on transparency suggested under paragraph 3.9 and Annex 1 to the draft Fisheries GL attached, we suggest that Regulation (EC) No 794/2004 of 21 April 2004, as amended by Regulation (EU) 2015/2282 of 27 November 2015, Part III.14 ("Supplementary information sheet for State aid to the fishery and aquaculture sector") is amended accordingly. Indeed, to increase "transparency," the information on the aid granted must be published within one month from the date of granting the aid, instead of the much too long period of 6 months provided in the said regulation. Likewise, to increase transparency, the regulation's publication waiver with respect to individual aid awards not exceeding EUR 30,000 should be removed.
- (44) Moreover, Regulation (EC) No 794/2004, Part III.14 must, to the extent necessary, also be amended to be consistent with the other changes suggested in the draft Fisheries GL. Examples of required adaptations and supplementary items (this list is not meant to be exhaustive) are:
- i) Under Section 2. on "Specific principles for the fisheries and aquaculture sector", items 2.1 and 2.2. should be aligned with the proposal for a new Point 41 of the draft Guidelines, to clarify that not only infringements committed by the operator as such need to be taken into account but also infringements by all undertakings belonging to the same aid beneficiary.
 - ii) Member States must provide all evidence demonstrating compliance of the aid beneficiary with its EU environmental law obligations, in accordance with the *Hinkley Point C* ruling.
 - iii) A new item 2.8 should be added, as follows: "*In the case of aid for fishing vessels that do not use fossil fuel, please confirm that the fishing vessels are subject, for at least five years after receiving the aid, to regular inspections to control that they comply with the CFP rules and that they do not fish over quotas or in a larger portion of the sea.*" We stress that this provision does not include vessels using fossil fuels since those should not be eligible to any aid.
 - iv) Under Section 5 on "Appropriateness of aid," a new item 5.6 should be added, as follows: "*Please demonstrate that the State aid measure does not 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.”

- v) Under Section 8 on “Effects on competition and trade,” a new item X should be added, as follows: *“Please demonstrate 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.”*

- vi) Under Section 18 on “Aid for other measures”, a new item 18.3 should be added, as follows: *“In the case of aid for the acquisition of a first fishing vessel for young fishers, please provide all evidence demonstrating that the acquisition concerns a fishing vessel which is not longer than 24 meters in overall length and complies with all the other conditions under Article 16(3) of Regulation (EU) No 2021/1139.”*

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