

May 2019

# Reply to the European Commission's public consultation on the road map on state aid in the Fisheries and Aquaculture sector

## Introduction

ClientEarth welcomes the public consultation on the roadmap<sup>1</sup> of the European Commission on the legal framework on state aid in fisheries and aquaculture. We understand that the roadmap as described will cover the state aid guidelines for fisheries and the regulations exempting certain categories of aid from notification requirements namely *de minimis* and block exemption regulations.

We took note of the context of the roadmap as described in your public consultation. We consider that any modification of the fisheries state aid legal framework should take into account the fact that the EU fisheries sector still faces important issues such as overcapacity of its fleet<sup>2</sup>, overfishing of its resources<sup>3</sup> and high dependency of the sector from public aid. Any financial aid at EU or national level should only be granted if it contributes to achieving the objectives of the Common Fisheries Policy<sup>4</sup> and does not undermine the sustainability of EU fish stocks and the wider marine environment.

The legal framework for state aid in fisheries and aquaculture should be modified not only as a result of the changes introduced with the post-2020 European Maritime and Fisheries Fund (EMFF) Regulation for the period (2021-2027)<sup>5</sup> (the post-2020 EMFF) but also after an assessment of the implementation of the Common Fisheries Policy (CFP).

Considering the above elements, we have some key recommendations regarding your assessment of the context, the evaluation of the existing state aid framework that will feed in the impact assessment and the objectives pursued with this revision.

## Context

Article 107 of the Treaty on the Functioning of the European Union (the TFEU) is the article that drives this roadmap as it prohibits, in principle, any state aid. The TFEU allows for derogations to this principle for reasons of economic development or protection of common good. In order to grant any state aid in fisheries and aquaculture, Member States should notify the aid to the Commission and receive its authorisation.

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<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-2932405\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-2932405_en);

<sup>2</sup> <https://stecf.jrc.ec.europa.eu/reports/balance/>

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<sup>3</sup> [https://www.ipbes.net/sites/default/files/downloads/spm\\_unedited\\_advance\\_for\\_posting\\_htn.pdf](https://www.ipbes.net/sites/default/files/downloads/spm_unedited_advance_for_posting_htn.pdf); <http://www.fao.org/3/ca2702en/CA2702EN.pdf>;

<https://stecf.jrc.ec.europa.eu/reports/cfp-monitoring/>

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<sup>4</sup> 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 L354, 28.12.2013, p.22. (hereinafter referred to as CFP Regulation).

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council on the European maritime and fisheries Fund and repealing Regulation (EU) No 508/2014, COM 2018/0210 (COD) (post-2020 EMFF Proposal).

We therefore understand the objective to have a simplified process if state aid is needed, and in particular if the amount of the aid is low. However, we would like to emphasise the importance of taking into account the CFP objectives and their implementation to assess whether any state aid or any simplification of the state aid procedures is necessary in the concrete context of the policy.

To take into account the concrete context of the CFP, it is fundamental not only to take into account the objectives and legal requirements in the legislation but also to have a look at the implementation on the ground.

ClientEarth has been following the implementation of the CFP since 2013. We have identified a wide number of issues linked to the implementation of the CFP. These range from decisions on setting quotas not being in line with scientific advice<sup>6</sup>, to slow implementation of the landing obligation<sup>7</sup> or lack of implementation of the fisheries control regulation<sup>8</sup>. These different issues took place despite the availability of EU funds under the European Maritime and Fisheries Fund (EMFF)<sup>9</sup>. We are highly sceptical that additional national state aid will enable a better implementation of the CFP and will therefore contribute to achieving the objectives of the CFP.

Financial aid in the fisheries and aquaculture sector can have environmental or economic perverse effects. Over the last 30 years, EU funds in the fisheries sector have mostly been used to finance measures that have proven to be inefficient both for the objectives of the CFP itself, as well as in purely economic terms<sup>10</sup>. State aid in the fisheries and aquaculture sector is national public aid that can have similar negative consequences. In addition, *de minimis* and block exemptions regulations are exempting certain categories of aid from notification requirements under EU law, which makes the system less transparent and regulated.

In this particular context, and until it is proven that state aid granted alongside with EU aid are really beneficial for rebuilding fish stocks, restoring the marine environment and having a long term viable sector, we consider that aid granted at EU level should constitute the principal financial aid available for the sector. This ensures at least a regulated, limited, transparent and consistent access to financial aid throughout the EU.

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<sup>6</sup> <https://www.clientearth.org/eu-fishing-limits-jeopardise-2020-sustainable-fishing-deadline/>; <https://www.documents.clientearth.org/library/download-info/reporting-on-progress-of-tac-decisions-and-the-state-of-fish-stocks-towards-msy-why-it-is-important-and-how-to-improve-it/>; <https://www.documents.clientearth.org/library/download-info/15604/>

<sup>7</sup> <https://www.documents.clientearth.org/library/download-info/implementation-of-the-landing-obligation-in-2019-urgent-recommendations-for-the-uk-government-and-devolved-administrations/>; <https://www.documents.clientearth.org/library/download-info/discards-and-high-levels-of-bycatch-threaten-to-undermine-effective-reform-of-the-common-fisheries-policy-cfp/>

<sup>8</sup> <https://www.documents.clientearth.org/library/download-info/slipping-through-the-net-the-control-and-enforcement-of-fisheries-in-france-ireland-the-netherlands-poland-spain-and-the-uk-england/>

<sup>9</sup> Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L149, 20.5.2014, p.1. (EMFF Regulation). [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/629187/IPOL\\_STU\(2019\)629187\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/629187/IPOL_STU(2019)629187_EN.pdf)

<sup>10</sup> <http://fishsubsidy.org/EU/schemes>; Court of Auditors, Special Report No 3/93 concerning the implementation of the measures for the restructuring, modernization and adaptation of the capacities of fishing fleets in the Community, OJ C 2 , 04.1.1994, p.1; Special Report No 12/2011 "Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?" 12/12/2011. <https://www.clientearth.org/eu-fund-proposal-would-artificially-keep-unsustainable-fisheries-afloat/>.

Should the post-2020 EMFF not constitute a sufficient financial support, further public aid to the sector should go through the normal notification system of the EU state aid system. This will ensure that any additional state aid is only granted if it clearly contributes to achieving the CFP.

## Evaluation

Taking into account the context of this roadmap, we would like to encourage the European Commission to think outside the box in terms of evaluation.

The evaluation should assess primarily whether the state aid granted has contributed to the achievement of the CFP objectives. As mentioned above, public aid (national or from the EU) in the fisheries and aquaculture sector, in the past and until recently, has exacerbated the problems of the sector rather than helped to develop sustainable fishing practices that benefit EU fish stocks, the marine environment and the long term viability of the sector itself.

## Objectives

In the roadmap, three objectives are listed for the review of the fisheries and aquaculture state aid framework: (i) align the state aid framework with the post-2020 EMFF Regulation; (ii) simplify the state aid control procedures and enhance transparency, consistency and legal certainty and (iii) balance these two objectives against the need to avoid distortive effects in the internal market.

We would like to encourage the Commission to rethink the first of these objectives, taking into account the context of the negotiations of the post-2020 EMFF. The post-2020 EMFF is not finalised yet. However, the report of the European Parliament on the post-2020 EMFF<sup>11</sup> and the joint statements of a majority of Member States in the Council<sup>12</sup> indicate that both co-legislators are willing to introduce harmful subsidies. We understand as being harmful subsidies the ones that increase the capacity of the vessels to catch fish, artificially maintain fishers in the sector, or that might have a negative impact on EU resources<sup>13</sup>.

In this context, we strongly disagree with the idea that the EU fisheries state aid framework needs to be aligned with the post-2020 EMFF. This should only be the case if the post-2020 EMFF is a good fund that aims at achieving the objectives of the CFP and in particular, aims to protect EU fish stocks and the marine environment and promote a viable fisheries sector. If this legislation introduces harmful subsidies with loose conditions, the EU fisheries state aid framework should offer a stronger legislative framework that better protects EU public interests.

The post-2020 fisheries state aid guidelines should include very strict conditions for granting aid irrespective of what the conditions of the post-2020 EMFF are. The future fisheries state aid

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<sup>11</sup> [http://www.europarl.europa.eu/doceo/document/TA-8-2019-0310\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0310_EN.pdf).

<sup>12</sup> Joint declaration of Spain-France-Italy in regard to the proposal on the European Maritime and Fisheries Fund for the Period 2021-2027 of 14 May 2019; Joint statement on Small-scale coastal fisheries and the from Bulgaria, Croatia, Cyprus, Greece, Malta, Poland Portugal and Slovenia of 18 March 2019.

<sup>13</sup> <https://www.clientearth.org/eu-fisheries-fund-should-only-support-sustainable-measures/>

guidelines should explicitly exclude any harmful subsidies. It means excluding any subsidy that increases the ability of the vessels to catch fish and any subsidy that artificially maintains fishers in the sector. In this category should fall, for example, the construction or acquisition of fishing vessels, engine replacement, permanent or temporary cessation. This framework should also actively support only aid that aims at contributing to having healthy fish stocks and a better marine environment, as these are the conditions for having a viable and resilient fisheries sector.

*De minimis* aid and block exemptions regulations introduce derogations to the normal EU state aid notification system and are exempting certain categories of aid from the notification requirements. These regulations will also reduce the transparency of the EU state aid system as the aid will not be notified to the Commission anymore. For the EU fisheries and aquaculture sector, it is fundamental to have a thorough picture of the public aid granted to be able to assess its effects on EU fish stocks, the wider marine environment and the viability of the sector. Therefore, any regulations granting derogations to the EU state aid notification system should keep high transparency requirements.

*De minimis* aid and block exemptions should only be allowed in very limited circumstances – essentially, when the objective of the aid is to achieve environmental sustainability. Depending on the outcomes of the negotiations for the post-2020 EMFF, these conditions should be more restrictive than the post-2020 EMFF, in particular if harmful subsidies are reintroduced in this future legislation.

## Key recommendations

In line with the above mentioned considerations, we have the following recommendations:

- Aid granted at EU level should constitute the principal financial aid available for the sector;
- Any further public aid to the sector should go through the normal notification system of the EU state aid system.
- Any state aid granted should aim at achieving environmental sustainability under the Common Fisheries Policy (the CFP)<sup>14</sup>.

Any derogation to the normal notification system of the EU state aid system should:

- Include very strict conditions in fisheries state aid guidelines and, if needed, be stricter than the conditions included in the post-2020 EMFF;
- Limit the scope of application of the block exemptions and *de minimis* proposals to measures that aim at achieving environmental sustainability;
- Increase the quality of the transparency requirements of the block exemptions and *de minimis* proposal.

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<sup>14</sup> Article 2(1) of Regulation (EU) No1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy amending Council Regulations (EC) No1954/2003 and (EC) No1224/2009 and repealing Council Regulations (EC<sup>o</sup> No2371/2002 and (EC) No639/2004 and Council Decision 2004/585/EC, OJ. L354,28.12.2013, p.22. (hereinafter referred to as CFP Regulation).

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