



Brussels, **XXX**
[...](2021) **XXX** draft

COMMUNICATION FROM THE COMMISSION

Guidelines for State aid in the fishery and aquaculture sector

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PART I

COMMON PROVISIONS

Chapter 1

1. INTRODUCTION

- (1) Article 107(1) of the Treaty on the Functioning of the European Union ('TFEU') 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.' Although TFEU lays down the principle that State aid is prohibited, in certain cases such aid may be compatible with the internal market on the basis of Articles 107(2) and 107(3) TFEU.
- (2) In accordance with Article 107(2), point (b) TFEU, aid granted to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Secondly, on the basis of Article 107(3), point (c) TFEU, the Commission may consider to be compatible with the internal market aid to facilitate the economic development of the fishery and aquaculture sector, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Thirdly, 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 TFEU, in view of their structural, economic and social situation may be considered compatible with the internal market under Article 107(3), point (a) TFEU.
- (3) In these Guidelines, the Commission sets out the conditions and criteria under which aid for the fishery and aquaculture sector will be considered to be compatible with the internal market. As regards aid granted pursuant to Article 107(2), point (b) TFEU, these Guidelines set out the conditions under which a measure constituting aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market. The Commission also establishes the criteria for identifying the areas that fulfil the conditions of Article 107(3) TFEU and can be considered compatible with the internal market.
- (4) State aid to facilitate the economic development of the fishery and aquaculture sector is embedded in the broader common fisheries policy established by Regulation (EU) No 1380/2013 of the European Parliament and the Council¹ ('the CFP'). Within that policy the Union provides financial support to the fishery and aquaculture sector through Regulation (EU) 2021/1139 of the European Parliament and of the Council², which established the European Maritime, Fisheries and Aquaculture Fund ('the EMFAF'). The social and economic impact of State aid is the same, irrespective of whether it is (even partly) financed by the

¹ 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).

² Regulation (EU) 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 (OJ L 247, 13.7.2021, p. 1).

Union budget or by a Member State. 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 through the EMFAF. In applying and interpreting these Guidelines, the Commission takes into account the rules of the CFP and those governing the EMFAF. Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP.

- (5) The CFP, the objectives of which are set out in Article 2 of Regulation (EU) No 1380/2013 aims, in particular, at ensuring that fishery and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. In particular, the CFP is to: (a) gradually eliminate discards, on a case-by-case basis, taking into account the best available scientific advice, by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that catches are landed; (b) where necessary, make the best use of unwanted catches, without creating a market for such of those catches that are below the minimum conservation reference size; (c) provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity; (d) provide for measures to adjust the fishing capacity of the fleets to levels of fishing opportunities consistent with Article 2(2) of Regulation (EU) No 1380/2013, with a view to having economically viable fleets without overexploiting marine biological resources; (e) promote the development of sustainable Union aquaculture activities to contribute to food supplies and security and employment; (f) contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects; (g) contribute to an efficient and transparent internal market for fisheries and aquaculture products and contribute to ensuring a level-playing field for fisheries and aquaculture products marketed in the Union; (h) take into account the interests of both consumers and producers; (i) promote coastal fishing activities, taking into account socio- economic aspects; (j) be coherent with the Union environmental legislation, in particular with the objective of achieving a good environmental status by 2020 as set out in Article 1(1) of Directive 2008/56/EC of the European Parliament and of the Council³, as well as with other Union policies. Overall, in line with the CFP objectives, State aid should not lead to increase in fishing capacity of the fishing fleet, overfishing or displacement of fishing effort that could lead to such overfishing.
- (6) In the general architecture of the EMFAF, support covers interventions that contribute to the achievement of the objectives of the CFP, as set out in Article 2 of Regulation (EU) No 1380/2013. To this end the EMFAF identifies four priorities for support and sets specific objectives that an intervention should pursue. Under Article 3 of Regulation (EU) 2021/1139, the priorities of the EMFAF include: (i) fostering sustainable fisheries and the restoration and conservation of aquatic biological resources (Priority 1); and (ii) fostering sustainable aquaculture activities, and processing and marketing of fisheries and

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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).

aquaculture products, thus contributing to food security in the Union (Priority 2). Regarding Priority 1, the specific objectives are as follows: (a) strengthening economically, socially and environmentally sustainable fishing activities; (b) increasing energy efficiency and reducing CO₂ emissions through the replacement or modernisation of engines of fishing vessels; (c) promoting the adjustment of fishing capacity to fishing opportunities in cases of permanent cessation of fishing capacity and contributing to a fair standard of living in cases of temporary cessation of fishing activities; (d) fostering efficient fisheries control and enforcement, including fighting against illegal, unreported and unregulated (IUU) fishing, as well as reliable data for knowledge-based decision-making; (e) promoting a level-playing field for fishery and aquaculture products from the outermost regions; and (f) contributing to the protection and restoration of aquatic biodiversity and ecosystems. Regarding Priority 2 the specific objectives are as follows: (a) promoting sustainable aquaculture activities, especially by strengthening the competitiveness of aquaculture production while ensuring that the activities are environmentally sustainable in the long term; and (b) promoting marketing, quality and value added of fisheries and aquaculture products, as well as processing of those products.

- (7) In 2019, the Commission launched an evaluation of the Guidelines for State aid to the fishery and aquaculture sector⁴, which showed that overall the State aid framework for the fishery and aquaculture sector is effective, it minimised the distortion of competition and effect on trade, it increased transparency, consistency and legal certainty, and it contributed to the achievement of the CFP objectives⁵. Some targeted adjustments are, however, necessary for the development of the economic activities in the fishery and aquaculture in order to align State aid rules for this sector with the EMFAF and with the horizontal rules of State aid control and for taking into account related policies stemming from the European Green Deal⁶ under the balancing test (Part I, Section 3.2.6).

Chapter 2.

2. SCOPE, DUTY TO NOTIFY AND DEFINITIONS

2.1. Scope of application of these Guidelines and the effect of EMFAF

2.1.1 The scope

- (8) 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 within the meaning of Article 107(2) or (3) TFEU.
- (9) These Guidelines apply to all aid granted to the fishery and aquaculture sector, including the components of regional aid that relate to the fishery and aquaculture sector. They also apply to all other aid that is granted to the fishery and aquaculture sector within the framework of the Union funds.

⁴ OJ C 217, 2.7.2015, p 1.

⁵ [Reference to SWD]

- (10) These Guidelines apply to all undertakings. Large enterprises tend to be less affected by market failures than Small and Medium Enterprises (SMEs). Moreover, large enterprises in the fishery and aquaculture sector are more likely to be significant players on the market and, consequently, in specific cases, aid granted to large enterprises may particularly distort competition and trade in the internal market. As aid to large enterprises in the fishery and aquaculture sectors can potentially cause distortions of competition, State aid rules for large enterprises in these Guidelines are harmonised with the general State aid rules, and are subject to the common assessment principles as laid down in Part I, Chapter 3, of these Guidelines.
- (11) Undertakings in difficulty are excluded from the scope of these Guidelines, unless an exception set out in this point applies. The Commission considers that when an undertaking is in financial difficulty, given that its very existence is in danger, it cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Therefore, where the beneficiary of the aid is considered to be an undertaking in financial difficulty within the meaning of point (30)(q) of these Guidelines, the aid will be assessed in accordance with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁷. However, the principle of not providing State aid to undertakings in financial difficulties does not apply to compensatory aid for damage caused by natural disasters and exceptional occurrences referred to in Part II, Chapter 1, Section 1.1, of these Guidelines, which is compatible with the internal market under Article 107(2) point (b) TFEU. If the financial difficulty of an undertaking active in the fishery and aquaculture sector was caused by the risk events referred to in Part II, Chapter 1, Section 1.2 or 1.3 of these Guidelines or by protected animals as referred to in Article 46 of Commission Regulation (EU) XX [NEW FIBER]⁸, aid may be granted in accordance with these Guidelines and may be compatible with the internal market under Article 107(3), point (c) TFEU. For reasons of the emergency situation and the protection of public health, the economic situation of the undertaking should not be taken into consideration regarding aid for the prevention, control and eradication of animal diseases in aquaculture under Part II, Chapter 1, Section 1.3 of these Guidelines.
- (12) When assessing aid granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered⁹. This does not apply to aid to make good the damage caused by natural disasters and exceptional occurrences under Article 107(2), point (b) TFEU (Part II, Chapter 1, Section 1.1, of these Guidelines).

⁷ OJ C 249, 31.7.2014, p. 1.

⁸ Commission Regulation .../...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 reference].

⁹ See in this respect Joined Cases T-244/93 and T-486/93, *TWD Textilwerke Deggendorf GmbH v Commission*, ECLI:EU:T:1995:160.

2.1.2 Aid for other measures

- (13) Where aid does not correspond to one of the types of aid referred to in Part II, Chapters 1 and 2, and Part I, Chapter 2, Sections 2.2 and 2.3, of these Guidelines, it is in principle not compatible with the internal market. If a Member State nevertheless intends to provide such aid or provides such aid, the Commission will assess it on a case-by-case basis directly on the basis of Article 107(3) of the Treaty, taking into account the rules laid down in Articles 107, 108 and 109 of the Treaty, and by analogy these Guidelines. Member States must clearly demonstrate that the aid complies with the principles set out in Part I, Chapter 3, of these Guidelines. The Commission will only approve such aid if the positive contribution to the development of the sector clearly outweighs the risks of distorting competition in the internal market and affecting trade between Member States.

2.1.3 The effect of Regulation (EU) 2021/1139

- (14) Article 42 TFEU, provides that the Chapter of the TFEU relating to rules on competition, which includes those on State aid, applies to production of and trade in agricultural products – which include products of the fishery and aquaculture sector only –, to the extent determined by the European Parliament and the Council.
- (15) Article 10(1) of Regulation (EU) 2021/1139 lays down that Articles 107, 108 and 109 of the TFEU apply to aid granted by Member States to undertakings in the fishery and aquaculture sector. However, Article 10(2) of Regulation (EU) 2021/1139 provides for an exception to that general rule, laying down that Articles 107, 108 and 109 TFEU do not apply to payments made by Member States pursuant to Regulation (EU) 2021/1139 and falling within the scope of Article 42 TFEU. Pursuant to Article 10(3) of Regulation (EU) 2021/1139 Articles 107, 108 and 109 TFEU apply, if national provisions set up public financing as regards the fishery and aquaculture sector that goes beyond the provisions of Regulation (EU) 2021/1139. In that case, State aid rules (Articles 107, 108 and 109 TFEU) apply to that public financing as a whole. Therefore, State aid rules apply (a) within EMFAF Regulation to (i) any public financing that goes beyond the provisions of Regulation (EU) 2021/1139 and (ii) payments under Regulation (EU) 2021/1139 that fall outside the fishery and aquaculture sector within the meaning of Article 42 TFEU; and (b) to national payments made outside of the Regulation (EU) 2021/1139.
- (16) The EMFAF is based on a simple architecture without any predefined measures or detailed eligibility rules at Union level in a prescriptive manner. Instead, broad specific objectives are described under its each priority. Member States should thus indicate in their programme the most appropriate means for achieving the priorities of the EMFAF. A variety of measures identified by the Member States in those shared management programmes might be supported under the rules set out in Regulation (EU) 2021/1139 and in Regulation (EU) 2021/1060 of the European Parliament and the Council¹⁰.

¹⁰ Regulation (EU) 2021/1060 of the European Parliament and the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the

- (17) Some payments made by Member States under Regulation (EU) 2021/1139 may not constitute payments to the fishery and aquaculture sector as they can fall outside of Article 42 TFEU. This can be the case, for example, for certain payments regarding operations under Articles 14, 23, 25, 29, 30, 31, 32, 33 and 34 of Regulation (EU) 2021/1139.
- (18) Payments under Regulation (EU) 2021/1139 that fall outside the fishery and aquaculture sector are subject to the State aid rules of the TFEU. Where those payments constitute State aid, they should be assessed under the relevant State aid instruments.
- (19) These Guidelines do not apply to aid granted as additional financing for the implementation of the compensation referred to in Articles 24, 35, 36 and 37 of Regulation (EU) 2021/1139. Where Member States grant additional financing to support compensation for additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions as referred to in Article 24 of Regulation (EU) 2021/1139, Member States are to notify the State aid to the Commission which may approve it in accordance with Regulation (EU) 2021/1139 as part of that compensation. Such State aid is deemed as notified within the meaning of the first sentence of Article 108(3) TFEU.

2.2. Horizontal and other aid instruments applicable to the fishery and aquaculture sector

- (20) Where aid falls within the scope of certain horizontal guidelines or other instruments adopted by the Commission, the Commission will assess such aid on the basis of the principles set out in Part I, Chapter 3, of these Guidelines and the relevant Sections of those horizontal and other State aid instruments.
- (21) Those horizontal guidelines and other instruments include the Criteria for the analysis of the compatibility of State aid for training subject to individual notification¹¹, the Guidelines on State aid to promote risk finance investments¹², the Framework for State aid for research and development and innovation¹³, the Guidelines on State aid for environmental protection and energy 2014-2020¹⁴, the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹⁵, and the Criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification¹⁶.

Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p 159).

¹¹ Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification (OJ C 188, 11.8.2009, p. 1).

¹² Communication from the Commission — Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

¹³ Communication from the Commission — Framework for State aid for research and development and innovation (OJ C 198, 27.6.2014, p. 1).

¹⁴ OJ C 200, 28.6.2014, p. 1.

¹⁵ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

¹⁶ Communication from the Commission — Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (OJ C 188, 11.8.2009, p. 6).

- (22) The Guidelines on regional State aid for 2022-2027¹⁷ do not apply to the fishery and aquaculture sector, save where State aid is granted in that sector as part of a horizontal regional operating aid scheme.

2.3. Aid for categories of measures covered by Regulations on block exemptions

- (23) Where aid benefitting SMEs or large enterprises 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 block exemptions referred to in point (27)(a), the Commission will assess the aid taking into account the common assessment principles set out in Part I, Chapter 3, and this Section, and the criteria laid down for each category of aid set out in those Regulations. This is the case, for example, for aid to make good the damage caused by protected animals set out in Article 46 of Regulation (EU) [NEW FIBER].
- (24) The following specific conditions apply in relation to point (23):
- (a) aid of the same kind as aid falling within the category of aid to make good the damage caused by natural disasters set out in Article 44 of Regulation (EU) [NEW FIBER] is compatible with the TFEU, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.1, of these Guidelines;
 - (b) aid of the same kind as aid falling within the category of aid to make good the damage caused by adverse weather conditions set out in Article 45 of Regulation (EU) [NEW FIBER] is compatible with the TFEU, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.2, of these Guidelines.

2.4. Duty to notify

- (25) These Guidelines apply to aid schemes and to individual aid.
- (26) The Commission reminds each Member State of its duty to notify any plans to grant new aid, as provided for in Article 108(3) TFEU and Article 2 of Council Regulation (EU) 2015/1589¹⁸.
- (27) The Commission also reminds Member States of those cases where a notification to the Commission is not required:
- (a) aid complying with one of the Regulations on block exemptions adopted on the basis of Article 1 of Council Regulation (EU) 2015/1588¹⁹, if they apply to the fishery and aquaculture sector, in particular:
 - (i) aid complying with Regulation (EU) [NEW FIBER] 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 TFEU; 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, [aid in the form of reductions in

¹⁷ Communication from the Commission – Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

¹⁸ 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).

¹⁹ Council Regulation (EU) 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).

taxes under Directive 2003/96/EC], regional investment aid in outermost regions, regional operating aid schemes, aid for European Innovation Partnerships for agricultural productivity and sustainability (EIP) Operational Group projects, aid for community-led local development ('CLLD') projects, aid to European Territorial Cooperation projects, and aid involved in financial products supported by the InvestEU Fund, except for operations listed in Article 1(1) of Commission Regulation (EU) No 717/2014²⁰, complying with the Commission Regulation (EU) No 651/2014²¹;

- (b) *de minimis* aid complying with Regulation (EU) No 717/2014.
- (28) Member States are reminded that the system of financing, for example, by parafiscal levies, forms an integral part of the aid (see paragraphs 41 to 44 of Case T-275/11)²².
- (29) 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 Part I, Chapter 3, and the conditions of the applicable Section of these Guidelines. Only aid that equally benefits domestic and imported products may be considered compatible with the internal market.

2.5. Definitions

- (30) For the purposes of these Guidelines, the following definitions apply:
 - (a) 'aid' means any measure fulfilling all the criteria laid down in Article 107(1) TFEU;
 - (b) '*ad hoc* aid' means aid not granted on the basis of a scheme;
 - (c) 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;
 - (d) '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 awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
 - (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;

²⁰ Commission Regulation (EU) No 717/2014 of 27 June 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, 28.06.2014, p. 45).

²¹ 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).

²² Case T-275/11, *Télévision française 1 (TF1) v Commission*, EU:T:2013:535. See also Case C-174/02, *Streekgewest Westelijk Noord-Brabant*, EU:C:2005:10; Case C-526/04, *Laboratoires Boiron*, ECLI:EU:C:2006:528; Joint Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 et C-83/90, *Compagnie commerciale de l'Ouest v. Receveur principal des douanes de La Pallice-Port*, EU:C:1992:118; and Case C-234/99, *Niels Nygård v Svineavgiftsfonden, and Ministeriet for Fødevarer*, EU:C:2002:244.

- (f) ‘evaluation plan’ means a document containing at least the following minimum elements: the objectives of the aid scheme to be evaluated; the evaluation questions; the results indicators; the envisaged methodology to conduct the evaluation; the data collection requirements; the proposed timing of the evaluation, including the date of submission of the final evaluation report; the description of the independent body conducting the evaluation or the criteria that will be used for its selection and the modalities for ensuring the publicity of the evaluation;
- (g) ‘fishery and aquaculture products’ means the products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and the Council²³;
- (h) ‘fishery and aquaculture sector’ means the sector of the economy which comprises all activities of production, processing, and marketing of fishery or aquaculture products;
- (i) ‘gross grant equivalent’ means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charges;
- (j) ‘individual aid’ means *ad hoc* aid and awards of aid to individual beneficiaries on the basis of an aid scheme;
- (k) ‘invasive alien species of Member State concern’ means an invasive alien species as defined in Article 3(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council²⁴;
- (l) ‘invasive alien species of Union concern’ means an invasive alien species as defined in Article 3(3) of Regulation (EU) No 1143/2014;
- (m) ‘large enterprises’ means any undertaking not fulfilling the criteria laid down in Annex I to Regulation (EU) [NEW FIBER]²⁵;
- (n) ‘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;
- (o) ‘outermost regions’ means the regions referred to in Article 349 TFEU²⁶;
- (p) ‘small and medium-sized enterprises (SMEs)’ means undertakings fulfilling the criteria down in Annex I to Regulation (EU) [NEW FIBER]²⁷;

²³ Regulation (EU) No 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).

²⁴ Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

²⁵ [New FIBER]

²⁶ Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands (OJ C 202, 7.6.2016, p. 195).

²⁷ [New FIBER]

- (q) ‘undertaking in difficulty’ means an undertaking fulfilling the criteria laid in the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²⁸;
- (31) In addition to the definitions listed in point (30), the definitions contained in the respective instruments listed under points (21), (22), (27)(a) of these Guidelines and those included in the CFP and the EMFAF must be taken into account, as relevant.

Chapter 3

3. COMMON ASSESSMENT PRINCIPLES

- (32) On the basis of Article 107(3), point (c) TFEU, the Commission may consider compatible with the internal market State 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.
- (33) Consequently, in order to assess whether State aid for fishery and aquaculture sector can be considered compatible with the internal market, the Commission will determine whether the aid measure facilitates the development of a certain economic activity (first condition) and whether it adversely affects trading conditions to an extent contrary to the common interest (second condition).
- (34) In this Chapter, the Commission clarifies how it will carry out the compatibility assessment. It establishes general compatibility conditions and, where applicable, lays down specific conditions for aid schemes and additional conditions for individual aid which is subject to the obligation of notification.
- (35) In order to make the assessment referred to in point (33), the Commission will consider the following aspects :
 - (a) first condition: the aid facilitates the development of an economic activity:
 - (i) identification of the economic activity concerned (Section 3.1.1).
 - (ii) 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 which it would carry out in a restricted or different manner (Section 3.1.2).
 - (iii) the aid does not contravene relevant provisions and general principles of Union law (Section 3.1.3).
 - (b) second condition: the aid does not adversely affect trading conditions to an extent contrary to the common interest
 - (i) need for State intervention: the aid must bring about a material improvement that the market cannot deliver by itself, for example by remedying a market failure or addressing an equity or cohesion concern, where applicable (Section 3.2.1).

²⁸ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

(ii) appropriateness of the aid: the proposed aid must be an appropriate policy instrument to facilitate the development of the economic activity (Section 3.2.2).

(iii) proportionality of the aid (aid limited to the minimum necessary): the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned (Section 3.2.3).

(iv) 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 granted thereunder (Section 3.2.4).

(v) avoidance of undue negative effects of the aid on competition and trade (Section 3.2.5).

(vi) weighing up the positive and negative effects that aid can have on competition and trade between Member States (balancing test) (Section 3.2.6).

(36) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in points (206) to (209). In such cases, the Commission may limit the duration of those schemes (normally to four years or less) with a possibility to re-notify their prolongation afterwards.

(37) These general compatibility criteria apply to all aid under these Guidelines, unless derogations are provided for in Part I, Chapter 3, Sections 3.1 and 3.2 of these Guidelines, due to particular considerations applicable in the fishery and aquaculture sector.

3.1. First condition: the aid facilitates the development of an economic activity

3.1.1. Aided economic activity

(38) The Commission will identify, based on information provided by the Member State, which economic activity will be supported by the notified measure.

(39) The Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity.

(40) The Commission considers that aid granted in compliance with Part II, Chapter 1 can facilitate the development of the economic activities in the fishery and aquaculture sector as without aid such development may not take place to the same extent.

Additional conditions for individually notifiable aid on the basis of a scheme

(41) When awarding aid to individually notifiable investment projects on the basis of a scheme, the granting authority must demonstrate that the selected project will contribute towards the objective of the scheme and thus towards the objectives of aid in the fishery and aquaculture sectors. For this purpose, Member States should rely on the information provided by the applicant for aid where the positive effects of the investment must be described.

3.1.2. Incentive effect

- (42) Aid in the fishery and aquaculture sector can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in such a way that it engages in additional activity contributing to the development of the sector which it would not have engaged in without the aid or in which would only have engaged in a restricted or different manner. The aid must however 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.
- (43) Unless exceptions are expressly provided for in Union legislation or in these Guidelines, unilateral State aid measures which are simply intended to improve the financial situation of undertakings but which in no way contribute to the development of the fishery and aquaculture sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production, are considered to constitute operating aid, which is incompatible with the internal market. Furthermore, by its very nature, such aid is also likely to interfere with the mechanisms regulating the organisation of the internal market.
- (44) Operating aid and aid to facilitate the achievements of obligatory standards are 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.
- (45) Aid covered by Part II, Chapter 1 and aid in Article 46 [NEW FIBER] as referred to in these Guidelines should be limited to helping undertakings, which are active in the fishery and aquaculture sector facing various difficulties despite having undertaken reasonable efforts to minimise such risks. State aid should not have as an effect to entice undertakings into taking unnecessary risk. Undertakings active in the fisheries and aquaculture sectors must themselves bear the consequences of imprudent choices of production methods or products.
- (46) For the reasons explained in point (42) above, the Commission considers that aid does not present an incentive for the beneficiary, wherever work on the relevant project or activity has already started, prior to the aid application by the beneficiary to the national authorities.
- (47) The aid application must include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (48) In addition, large enterprises must describe in the application, the situation without the aid, which situation is referred to as the counterfactual scenario or alternative project or activity and submit documentary evidence in support of the counterfactual described in the application. This requirement does not apply to municipalities, which are autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.
- (49) When receiving an application, the granting authority must carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect. A counterfactual is credible, if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the project or activity concerned.

- (50) By way of derogation from points (46) to (47), aid in the form of tax advantages granted to SMEs is deemed to have an incentive effect, if the aid scheme establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State and if the aid scheme has been adopted and in force before work on the aided project or activity has started. The latter requirement does not apply in the case of fiscal successor schemes, provided the activity was already covered by the previous schemes in the form of tax advantages.
- (51) Aid that is compensatory in nature, such as referred to in Part II, Chapter 1, Sections 1.1, 1.2 and 1.3 and aid that meets the conditions laid down in Part II, Chapter 2, Sections 2.1 and 2.2 and aid to compensate damage caused by protected animals in Article 46 [NEW FIBER] is not required to have or is deemed to have an incentive effect.

Additional conditions for individually notifiable investment aid

- (52) In addition to the requirements set out above in points (42) and (45) to (50) respectively, for individually notifiable investment aid, the Member State must provide clear evidence that the aid effectively has an impact on the investment choice. To allow for a comprehensive assessment, the Member State must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is granted to the beneficiary by any public authority.
- (53) Member States are invited to draw up genuine and official board documents, risk assessments, including the assessment of location-specific risks, financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision-making process concerning the investment or its location. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help the Member States demonstrate the incentive effect.
- (54) In this context, the level of profitability may be evaluated by using methods that are standard practice in the sector concerned and which may include methods to evaluate the net present value (NPV)²⁹ of the project, the internal rate of return (IRR)³⁰ or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the beneficiary in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the undertaking as a whole or with the rates of return commonly observed in the sector concerned.

²⁹ The net present value (NPV) of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

³⁰ The internal rate of return (IRR) is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

- (55) Where no specific counterfactual scenario is known, the incentive effect can be assumed when there is a funding gap, that is to say when the investment costs exceed the NPV of the expected operating profits of the investment on the basis of an ex ante business plan.
- (56) If the aid does not change the behaviour of the beneficiary by stimulating additional investment, it has no positive effects for development of the sector concerned. Therefore, aid will not be considered compatible with the internal market if it appears that the same investment would still be pursued without the aid.

3.1.3. No breach of relevant provisions and general principles of Union law

- (57) If a State aid measure, the conditions attached to it, including its financing method when the financing method forms an integral part of such measure, or the activity it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market³¹.
- (58) Member States must ensure that each beneficiary of a State aid measure complies with the rules of the CFP.
- (59) An application for aid or, if no application is required, an equivalent act must be considered inadmissible, if the competent authority referred to in Article 11(1) of Regulation (EU) 2021/1139 has determined that the operator concerned has committed one or more of the infringements or offences set out in that paragraph or a fraud as set out in Article 11(3) of that Regulation. The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 11(4) of that Regulation apply. This principle does not apply in the case of aid that meets the specific conditions set out in Part II, Chapter 1, Sections 1.1, 1.2 and 1.3, of these Guidelines.
- (60) Each undertaking, after submitting an application for aid or, if no application is required, an equivalent act must continue to comply with 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 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 11(1) of Regulation (EU) 2021/1139 during those periods and has as a consequence become inadmissible to apply for aid, the aid must be reimbursed by the beneficiary. This principle does not apply in the case of aid that meets the specific conditions set out in Part II, Chapter 1, Section 1.1 of these Guidelines.
- (61) No aid will be granted for activities that correspond to ineligible operations in accordance with Article 13 of Regulation (EU) 2021/1139, unless otherwise stated in these Guidelines.

³¹ See, for instance, Case C-156/98, *Germany v. Commission*, EU:C:2000:467, paragraph 78; Case C-333/07, *Société Régie Networks v. Rhône-Alpes Bourgogne*, EU:C:2008:764, paragraphs 94 to 116; Case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraph 44; and C-67/09 P, *Nuova Agricast v. Commission*, EU:C:2010:607, paragraph 51.

3.2. Second condition: the aid does not adversely affect trading conditions to an extent contrary to the common interest

- (62) Pursuant to Article 107(3), point (c) TFEU aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market, but only “where such aid does not adversely affect trading conditions to an extent contrary to the common interest.”
- (63) This Section sets out the method of exercise of the Commission’s discretion in carrying out the assessment under the second condition of the compatibility assessment referred to in point (35)(b).
- (64) By its very nature, any aid measure generates distortions of competition and has an effect on trade between Member States. However, in order to establish, if the distortive effects of the aid are limited to the minimum, the Commission will verify whether the aid is necessary, appropriate, proportionate and transparent.
- (65) The Commission will then assess the distortive effect of aid in question on competition and trading conditions. The Commission will then balance the positive effects of the aid with its negative effects on competition and trade. Where the positive effects outweigh the negative effects, the Commission will declare the aid compatible with the internal market.
- (66) The compliance of aid with the conditions in Sections 3.2.1. to 3.2.6. of this Chapter must be assessed in the specific context of the rules of the CFP and those governing the EMFAF.

3.2.1. Need for State intervention

- (67) To assess whether State aid is necessary to achieve the intended outcome, it is first necessary to diagnose the problem. State aid must be targeted to situations, where aid can bring about a material development that the market cannot deliver, for example by remedying a market failure to the aided activity or investment in question.
- (68) State aid can indeed, under certain conditions, correct market failures, thereby contributing to the efficient functioning of markets and enhancing competitiveness.
- (69) For the purposes of these Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid fulfilling the specific conditions laid down in Part II, Chapter 1, Sections 1.1, 1.2 and 1.3, Part II, Chapter 2, Section 2.2 and Part I, Chapter 2, Section 2.3. Therefore, such aid will be considered necessary.

3.2.2 Appropriateness of the aid

- (70) The proposed aid must be an appropriate policy instrument to facilitate the development of the economic activity. An aid will not be considered compatible with the internal market, if other less distortive policy instruments or other less distortive types of aid make it possible to achieve the same positive contribution to the objectives of CFP. There may be other, better placed instruments, such as

regulation, market-based instruments, infrastructure development and improvement in the business environment, to achieve those objectives.

- (71) The Commission considers that aid which meet the specific conditions laid down in Part II, Chapter 1, Sections 1.1, 1.2 and 1.3, Part II, Chapter 2, Section 2.2 and Part I, Chapter 2, Section 2.3, are an appropriate policy instrument. An aid measure of the same kind as an operation that is eligible for funding under Regulation (EU) 2021/1139 is appropriate if it complies with the relevant provisions of that regulation.
- (72) In all other cases, a Member State must demonstrate that no other less distortive policy instrument exists.

Appropriateness among different forms of aid

- (73) Aid can be granted in various forms. The Member State should however ensure that the aid is granted in the form that is likely to generate the least distortions of trade and competition.
- (74) The Commission considers that aid granted in the form provided for in these Guidelines or in the respective EMFAF intervention in accordance with Regulation (EU) 2021/1139 is an appropriate form of aid.
- (75) 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 or an alternative provision of capital on favourable terms) are less appropriate.
- (76) The compatibility assessment of an aid with the internal market is without prejudice to the applicable public procurement rules and to the principles of transparency and openness and non-discrimination in the selection process of a service provider.

3.2.3. Proportionality of the aid

- (77) Aid in the fishery and aquaculture sector is considered to be proportionate, if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided activity.

Maximum aid intensities and maximum aid amounts

- (78) In principle, in order for the aid to be proportionate, the Commission considers that the aid amount should not exceed the eligible costs.
- (79) In order to ensure predictability and a level playing field, in these Guidelines the application of maximum aid intensities for aid is foreseen.
- (80) If the eligible costs are correctly calculated and the maximum aid intensities or maximum aid amounts set out in the sections of Part II, Chapter 1 and Chapter 2

these Guidelines are respected, the criterion of proportionality is deemed to be fulfilled.

- (81) For aid measure 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 41(1) to (4) and Annex III to Regulation (EU) 2021/1139.
- (82) The maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which must be clear, specific and contemporary. For the purposes of calculating the aid intensity or aid amount and the eligible costs, all figures used must be taken before any deduction of tax or other charge.
- (83) Value added tax (VAT) is not eligible for aid, except where it is not-recoverable under national VAT legislation.
- (84) Where aid is granted in a form other than a grant, the aid amount is the gross grant equivalent of the aid.
- (85) Aid payable in several instalments is discounted to its value at the moment of granting the aid. The eligible costs are discounted to their value at the moment of granting the aid. The interest rate to be used for discounting purposes is the discount rate applicable on the date of granting the aid.
- (86) Where aid is granted by means of tax advantages, the discounting of aid tranches takes place on the basis of the discount rates applicable at the various times the tax advantage takes effect.
- (87) With the exception of Part II, Chapter 1, aid may be granted according to the following simplified cost options:
 - (a) unit costs;
 - (b) lump sums;
 - (c) flat-rate financing.
- (88) The aid amount must be established in one of the following ways:
 - (a) a fair, equitable and verifiable calculation method based on:
 - (i) statistical data, other objective information or an expert judgement; or
 - (ii) verified historical data of individual beneficiaries; or
 - (iii) the application of usual cost accounting practices of individual beneficiaries;
 - (b) in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation.
- (89) As regards EU co-financed measures, the amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) 2021/1060.
- (90) When assessing the compatibility of aid, the Commission will consider any insurance taken out, or which could have been taken out by the aid beneficiary. Regarding aid to compensate for losses caused by adverse weather conditions and

adverse climatic events, in order to avoid the risk of distorting competition, aid at the maximum aid intensity should be granted only to an undertaking that cannot be covered for such losses by insurance. This is why, in order to further improve risk management, beneficiaries must be encouraged to take out insurance wherever possible.

Additional conditions for individually notifiable investment aid and investment aid to large enterprises under notified schemes

- (91) As a general rule, for individually notifiable investment aid to be considered limited to the minimum, the aid amount must correspond to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid³², with maximum aid intensities as a cap. Likewise, in the case of investment aid granted to large enterprises under notified schemes, Member States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach', with maximum aid intensities as a cap.
- (92) The aid amount should not exceed the minimum necessary to render the project sufficiently profitable, for example, it should not lead to an increase of its Internal Rate of Return (IRR) beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, if these rates are not available, to an increase of its IRR beyond the cost of capital of the undertaking as a whole or beyond the rates of return commonly observed in the sector concerned.
- (93) For investment aid to large enterprises under notified schemes, the Member State must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. The method explained in point (92) must be used together with maximum aid intensities as a cap.
- (94) As regards individually notifiable investment aid, the Commission will verify whether the aid amount exceeds the minimum necessary to render the project sufficiently profitable, as provided in point (92). Calculations used for the analysis of the incentive effect can also be used to assess, if the aid is proportionate. The Member State must demonstrate the proportionality on the basis of documentation such as that referred to in point (53).
- (95) These additional conditions in points (91) to (94) do not apply to municipalities, which are autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitant, referred in point (48) above.

Cumulation of aid

- (96) Aid may be granted concurrently under several schemes or cumulated with *ad hoc* aid, provided that the total amount of State aid for an activity or project does not exceed the aid intensity and aid amount laid down in these Guidelines.

³² When comparing counterfactual scenarios, the aid is to be discounted by the same factor as the corresponding investment and counterfactual scenarios.

- (97) Aid with identifiable eligible costs may be cumulated with any other State aid, as long as those aids concern different identifiable eligible costs. Aid with identifiable eligible costs may be cumulated with any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this type of aid under these Guidelines.
- (98) Aid without identifiable eligible costs under these Guidelines may be cumulated with any other State aid measure with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by these Guidelines or other State aid guidelines, a regulation on block exemption or a decision adopted by the Commission.
- (99) State aid in favour of the fishery and aquaculture sector should not be cumulated with payments referred to in Regulation (EU) 2021/1139 in respect of the same eligible costs, if such cumulation would result in an aid intensity or aid amount exceeding those laid down in these Guidelines.
- (100) Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter will be considered for determining whether notification thresholds and maximum aid intensities and aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate(s) laid down in the applicable rules of Union law.
- (101) Aid authorised under these Guidelines should not be cumulated with any *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity or aid amount exceeding that fixed in these Guidelines.

3.2.4. Transparency

- (102) Member States must ensure the publication of the following information in the Commission's transparency award module³³ or on a comprehensive State aid website at national or regional level:
- (a) the full text of the aid scheme and its implementing provisions or legal basis for individual aid, or a link to it;
 - (b) the identity of the granting authority/(ies);
 - (c) the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large enterprise), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at

³³ 'State Aid Transparency Public Search', available at the following website: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>

NACE group level). Such a requirement can be waived with respect of individual aid awards not exceeding the threshold of EUR 10 000³⁴.

- (103) In the case of aid schemes in the form of tax advantages the information on individual aid amounts can be provided in the following ranges (in EUR million): 0,03-0,5; above 0,5-1; above 1-2; above 2.
- (104) Such information must be published after the decision to grant the aid has been taken, it must be kept for at least 10 years and be available for the general public without restrictions³⁵.
- (105) For reasons of transparency, Member States must carry out reporting and revision as required in Part III, Section 4.

3.2.5. *Undue negative effects on competition and trade*

- (106) Aid for the fishery and aquaculture sector may potentially cause product market distortions. For the aid to be compatible with the internal market, the negative effects of the aid in terms of distortions of competition and impact on trade between Member States must be minimised or avoided. The Commission considers that, in principle, where aid fulfils the specific conditions set out in Part II, Chapter 1, Sections 1.1, 1.2 and 1.3, Part II, Chapter 2, Section 2.2 and Part I, Chapter 2, Section 2.3 the negative effects on competition and trade are limited to the minimum.
- (107) Member States should provide evidence allowing the Commission to identify the product market(s) concerned, that is to say the market(s) affected by the change in behaviour of the aid beneficiary. In assessing the negative effects of the aid, the analysis of the distortions of competition will be focused on the foreseeable impact that the aid has on competition between undertakings in the product market(s) affected³⁶ in the fishery and aquaculture sector.
- (108) Firstly, if the aid is well targeted, proportionate and limited to the net extra costs, the negative impact of the aid is softened and the risk that the aid will unduly distort competition will be more limited. Secondly, the Commission is to establish maximum aid intensities or aid amounts. The aim is to prevent the use of State aid

³⁴ The threshold of EUR 10 000 corresponds to the threshold for the publication of information set out in Article 9 of [NEW FIBER]. It is appropriate to set the same threshold in both that Regulation and these Guidelines in order to ensure coherence between the various State aid instruments applicable to the fishery and aquaculture sector. In view of the protection of personal data, which might be at stake, the requirement of publishing information on individual aid exceeding the threshold of EUR 10 000 is proportionate to the legitimate aim it pursues, in particular as regards transparency with respect to the use of public funds.

³⁵ This information must be published within six months from the date of granting the aid (or, for aid in the form of tax advantage, within one year from the date of the tax declaration). In the case of unlawful aid, Member States will be required to ensure the publication of this information *ex post*, at least within a period of six months from the date of the Commission decision. The information must be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

³⁶ A number of markets may be affected by the aid, because the impact of the aid may not be restricted to the market corresponding to the activity that is supported but may extend to connected other markets, which are connected to that market either because they are upstream, downstream or complementary, or because the beneficiary is already present on them or may be present in the near future.

for projects where the ratio between aid amount and eligible costs is to be deemed very high and particularly likely to be distortive. In general, the greater the positive effects the aided project is likely to give rise to and the higher the likely need for aid, the higher the cap on aid intensity.

- (109) However, even where aid is necessary and proportionate, it may result in a change of the behaviour of the beneficiaries which distorts competition. This is more likely in the fishery and aquaculture sector which differs from other markets by the specific structure as it is characterized by a high number of small undertakings involved. On such markets the risk of distortion of competition is high even when only small amounts of aid are granted.
- (110) In certain situations, the negative effects manifestly outweigh any positive effects, meaning that aid cannot be found to be compatible with the internal market. In particular, according to the general principles of the TFEU, State aid cannot be considered compatible with the internal market, if the aid is discriminatory to an extent not justified by its State aid character. As explained in section Part I, Chapter 3, Section 3.1.3, the Commission will thus not declare compatible any measure where such measure or the conditions attached to it entail a violation of relevant Union law. This is particularly the case for aid where the award of aid is subject to the obligation for the beneficiary to use national products or services, as well as for aid restricting the possibility for the beneficiary to exploit the research, development and innovation results in other Member States.
- (111) The Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market in principle does not constitute export aid.

Investment aid schemes for the processing and marketing of fishery and aquaculture products

- (112) Because investment aid to undertakings active in the processing and the marketing of fishery and aquaculture products and to undertakings active in other sectors, for example in the food processing sector, tends to have similar distortive effects on competition and trade, the general competition policy considerations on the effect on competition and trade should apply equally to all those sectors. Therefore, the conditions described in points (113) to (123) must be respected as regards investment aid for the processing and marketing of fishery and aquaculture products.
- (113) Investment 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 (provided all conditions for investment aid are fulfilled), on a cumulative basis these schemes might still lead to high levels of distortion. Such distortions might concern the output markets by creating or aggravating a situation of overcapacity or creating, increasing or maintaining the substantial market power of some beneficiaries in a way that will negatively affect dynamic incentives. Aid available under investment aid schemes might also lead to a significant loss of economic activity in other areas of the internal market. In the

case of an investment aid scheme focusing on certain sectors, the risk of such distortions is even more pronounced.

- (114) Therefore, the Member State concerned must demonstrate that any negative effects 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 sectors. In order to enable the Commission to assess the likely negative effects, the Member State concerned is encouraged to submit any impact assessment at its disposal as well as *ex-post* evaluations carried out for similar schemes.

Individually notifiable investment aid for the processing and marketing of fishery and aquaculture products

- (115) In appraising the negative effects of individual investment aid, the Commission places particular emphasis on the negative effects linked with the build-up of overcapacity in declining markets, the prevention of exit, and the notion of substantial market power. These negative effects are described in points (116) to (123) and must be counterbalanced with the positive effects of the aid.
- (116) In order to identify and assess the potential distortions of competition and trade, Member States should provide evidence allowing the Commission to identify the product markets concerned (that is to say, products affected by the change in the behaviour of the aid beneficiary) and to identify the competitors and customers/consumers affected. The product concerned is typically the product covered by the investment project³⁷. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered to be such, either by the consumer (by reason of the product's characteristics, prices, or intended use) or by the producer (by reason of flexibility of production installations).
- (117) The Commission uses various criteria to assess those potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), process for selection of the aid beneficiary, entry and exit barriers, product differentiation.
- (118) A systematic reliance on State aid by an undertaking could indicate that the undertaking is unable to withstand competition on its own or that it derives undue advantages compared to its competitors.
- (119) The Commission distinguishes two main sources of potential negative effects on product markets:
- (a) cases of significant capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market; and
 - (b) cases where the aid beneficiary holds substantial market power.

³⁷ For investment projects that involve the production of several different products, each product must be assessed.

- (120) To evaluate whether the aid serves to create or maintain inefficient market structures, the Commission will take into account the additional production capacity created by the project and whether the market is underperforming.
- (121) If the market in question is growing, there is typically less cause for concern that the aid will negatively affect dynamic incentives or will unduly impede market exit or entry.
- (122) More concern is warranted when markets are in decline. The Commission distinguishes between cases for which, with a long-term outlook, the market is structurally in decline (that is to say, it is contracting), and cases for which the market is in relative decline (that is to say, it is still growing, but does not exceed a benchmark growth rate).
- (123) Underperformance of the market is typically measured against the EEA GDP over the three years before the start of the project (benchmark rate). It can also be measured on the basis of projected growth rates for the next three to five years. Indicators may include the expected future growth of the market concerned and the resulting expected capacity utilisation rates, and the likely impact of the capacity increase on competitors in terms of prices and profit margins.

3.2.6. Weighing up the positive and the negative effects of the aid (balancing test)

- (124) The Commission assesses whether the positive effects of the aid outweigh the identified negative effects on competition and trading conditions. The Commission conclude on the compatibility of the aid with the internal market only where the positive effects outweigh the negative ones.
- (125) In cases where the proposed aid does not address a well-identified market failure in an appropriate and proportionate way, the negative distortive effects on competition will tend to outweigh the positive effects of the aid hence the Commission is likely to conclude that the proposed aid is incompatible with the internal market.
- (126) Each aid measure must identify the objectives of the CFP to the achievement of which it contributes and clearly demonstrates how it will contribute to achieving those objectives without negatively affecting other CFP objectives. The objectives of the CFP are set out in Article 2 of Regulation (EU) No 1380/2013 and include, amongst others, to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies (see point (5) of these Guidelines).
- (127) In principle, due to its positive effects on the development of the fishery and aquaculture sector, the Commission considers that for aid fulfilling the conditions laid down in Part II, Chapter 1 and Chapter 2, Section 2.2, and Part I, Chapter 2, Section 2.3, the negative effect on competition and trade between Member States is limited to the minimum.
- (128) With respect to State aid which is co-financed under the EMFAF or financed by the Union budget, the Commission will consider that the related positive effects have been established.

- (129) In addition, the Commission may also take into account, where relevant, whether the proposed aid brings about other positive effects. Where such other positive effects reflect those embodied in Union policies, such as European Green Deal, Farm to fork Strategy³⁸, Circular Economy Action Plan³⁹, Biodiversity Strategy⁴⁰, EU Action Plan: “Towards Zero Pollution for Air, Water and Soil”⁴¹, the Strategy on adaptation to climate change⁴², energy efficiency, the initiative on Shaping Europe’s Digital Future Communication⁴³, then the proposed aid aligned with such Union policies can be presumed to have such wider positive effects.
- (130) Where aid is granted in favour of investments, the Commission will pay particular attention to whether the activity qualifies as environmentally sustainable as defined under Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council⁴⁴, including its respect of the ‘Do no significant harm’ principle.

PART II

CATEGORIES OF AID

Chapter 1

AID FOR RISK AND CRISIS MANAGEMENT

1.1. Aid to make good the damage caused by natural disasters or exceptional occurrences

- (131) The Commission will consider aid to make good the damage caused by natural disasters and exceptional occurrences compatible with the internal market under Article 107(2), point (b) TFEU, if it complies with the principles set out in Part I, Chapter 3 and the specific conditions set out in this Section.
- (132) ‘Natural disaster’ and ‘exceptional occurrence’, as referred to in Article 107(2), point (b) TFEU, constitute exceptions to the general prohibition of State aid

³⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

³⁹ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM/2020/98 final).

⁴⁰ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final)

⁴¹ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (COM/2021/400 final).

⁴² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Strategy on adaptation to climate change (COM/2013/0216 final).

⁴³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Shaping Europe's digital future (COM/2020/67 final).

⁴⁴ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

within the internal market laid down in Article 107(1) TFEU. For that reason, the Commission has consistently held that those notions are to be interpreted restrictively. This has been confirmed by the Court of Justice of the European Union⁴⁵.

- (133) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that exceptionally severe storms and floods, in particular floods brought about by waters overflowing river banks or lake shores, may constitute natural disasters. Moreover, in accordance with Regulation (EU) No [NEW FIBER] it is possible to block exempt the following types of natural disasters: earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.
- (134) The following events are examples of exceptional occurrences that have been recognised by the Commission in cases outside the fishery and aquaculture sector: 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.
- (135) The Commission will continue to assess proposals to grant aid in accordance with Article 107(2), point (b) TFEU on a case-by-case basis, having regard to its previous practice in the field.
- (136) Aid 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; and
 - (b) there is a direct causal link between the natural disaster or the exceptional occurrence and the damage suffered by the undertaking.
- (137) Member States may, where appropriate, establish in advance criteria on the basis of which the formal recognition referred to in point (136)(a) is deemed to be granted.
- (138) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group and organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (139) Aid schemes must be established within three years from the date of the occurrence of the event, and the aid must be paid out within four years of that date. For a specific natural disaster or exceptional occurrence, the Commission will authorise separately notified aid that derogates from this rule in duly justified cases, for example due to the nature and/or extent of the event or delayed or continuing nature of the damage.
- (140) In order to facilitate rapid crisis management, the Commission will authorise *ex ante* framework aid schemes to compensate for the damage caused by

⁴⁵ See Case C-73/03, *Spain v Commission*, ECLI:EU:C:2004:711, paragraph 36; and Joined Cases C-346/03 and C-529/03, *Giuseppe Atzeni and others*, ECLI:EU:C:2006:130, paragraph 79.

exceptionally severe storms, floods, earthquakes, avalanches, landslides, tornadoes, hurricanes, volcanic eruptions, and wild fires of natural origin, 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 (218).

- (141) Aid granted to compensate for the damage caused by other types of natural disasters not mentioned in point (133), and for damage caused by exceptional occurrences, must be separately notified to the Commission.
- (142) 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.
- (143) The damage may include:
 - (a) 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.
- (144) The damage must be calculated at the level of the individual beneficiary.
- (145) 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 to say the difference between the asset's value immediately before and immediately after the natural disaster or exceptional occurrence.
- (146) 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.
- (147) That amount may be increased by other costs incurred by the beneficiary due to the natural disaster or the exceptional occurrence, and it must be reduced by any costs not incurred because of the natural disaster or the exceptional occurrence which would otherwise have been incurred by the beneficiary.
- (148) The Commission may accept other methods for the calculation of damage provided that those are representative, not based on abnormally high catches or yields and do not result in the overcompensation of any beneficiary.
- (149) 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.

1.2. Aid to make good the damage caused by adverse weather conditions and adverse climatic events

- (150) The Commission will consider aid to make good the damage caused by adverse weather conditions and adverse climatic events compatible with the internal market under Article 107(3), point (c) TFEU, if it complies with the principles set out in of Part I, Chapter 3, and the specific conditions set out in this Section.
- (151) Aid to make good the damage caused by adverse weather conditions or an adverse climatic event is considered as a suitable tool to help undertakings recover from such damage and facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (152) As an exception to point (150), the Commission will assess aid of the same kind as aid falling within the category of aid to mutual funds set out in Article 20 of Regulation (EU) [NEW FIBER] in accordance with Part I, Section 2.3, of these Guidelines.
- (153) 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 weather conditions and adverse climatic events. Moreover, in accordance with Regulation (EU) [NEW FIBER] it is possible to block exempt the following types of adverse weather conditions: frost, storms, hail, ice, heavy and persistent rain and severe droughts.
- (154) The Commission will continue to assess proposals to grant aid to make good the damage caused by adverse weather conditions and adverse climatic events on a case-by-case basis, having regard to its previous practice in the field.
- (155) Aid under this Section must additionally meet the following conditions:
 - (a) the damage caused by the adverse weather conditions or 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 weather conditions or climatic event, excluding the highest and lowest entry;
 - (b) there must be a direct causal link between the adverse weather conditions or adverse climatic event and the damage suffered by the undertaking;
 - (c) in the case of losses caused by adverse weather conditions or adverse climatic events that could be covered under mutual funds financed through Regulation (EU) 2021/1139, the Member State must justify why it intends to grant aid rather than financial compensation being paid through such mutual funds.
- (156) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group or organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (157) Aid schemes related to adverse weather conditions and 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.

- (158) In order to facilitate rapid crisis management, the Commission will authorise *ex ante* framework aid schemes to compensate for the damage caused by adverse weather conditions and 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 (218).
- (159) Aid granted to compensate for the damage caused by other types of adverse weather conditions and adverse climatic events not mentioned in point (153) must be separately notified to the Commission.
- (160) The eligible costs are the costs of the damage incurred as a direct consequence of the adverse weather conditions or adverse climatic event, as assessed either by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking.
- (161) 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.
- (162) The damage must be calculated at the level of the individual beneficiary.
- (163) 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 weather conditions or adverse climatic event, excluding the highest and lowest entry.
- (164) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the adverse weather conditions or adverse climatic event. It must not exceed the repair cost or the decrease in fair market value caused by the adverse weather conditions or adverse climatic event, that is to say the difference between the asset's value immediately before and immediately after the adverse weather conditions or adverse climatic event.
- (165) 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 weather conditions or 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 weather conditions or adverse climatic event or a three year average based on the five-year period preceding the adverse weather conditions or adverse climatic event, excluding the highest and lowest entry, by the average selling price obtained.
- (166) That amount may be increased by other costs incurred by the beneficiary due to the adverse weather conditions or adverse climatic event, and it must be reduced by any costs not incurred because of the adverse weather conditions or adverse climatic event which would otherwise have been incurred by the beneficiary.

- (167) The Commission may accept other methods for the calculation of damage provided that those are representative, not based on abnormally high catches or yields and do not result in the overcompensation of any beneficiary.
- (168) 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.

1.3. Aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern

- (169) The Commission will consider aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern compatible with the internal market under Article 107(3), point (c) TFEU, if it complies with Part I, Chapter 3, and the specific conditions set out in this Section.
- (170) Aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern is considered as a suitable tool to help undertakings address the risks posed by those threats and facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (171) As an exception to point (169), the Commission will assess aid of the same kind as aid falling within the category of aid for animal health and welfare measures set out in Article 39 of Regulation (EU) No [NEW FIBER] in accordance with Part I, Section 2.3, of these Guidelines.
- (172) Aid under this Section may only be granted:
 - (a) in respect of diseases and infestations by invasive alien species of Union concern and by invasive alien species of Member State concern for which Union or national rules exist, whether laid down by law, regulation or administrative action; and
 - (b) as part of:
 - (i) a public programme at Union, national, or regional level for the prevention, control or eradication of animal diseases or infestation by alien invasive species; or
 - (ii) emergency measures imposed by the competent national authority; or
 - (iii) measures to eradicate or contain an invasive alien species (of Union concern) implemented in accordance with Regulation (EU) No 1143/2014.
- (173) The programmes and measures referred to in point (172)(b) must contain a description of the prevention, control and eradication of measures concerned.
- (174) The aid must not relate to measures in respect of which Union legislation provides that the cost of such measures is to be borne by the beneficiary, unless the cost of such aid measures is entirely offset by compulsory charges on the beneficiaries.

- (175) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group or organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (176) No individual aid should be granted where it is established that the disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern was caused deliberately or by the negligence of the beneficiary.
- (177) As regards animal diseases, the aid may be granted in respect of aquatic animal diseases listed in Article 5(1) of Regulation (EU) 2016/429 of the European Parliament and of the Council⁴⁶ or included in the list of animal diseases of the Aquatic Animal Health Code of the World Organization for Animal Health⁴⁷, or zoonoses of aquatic animals listed in Annex III, Point 2, to Regulation (EU) 2021/690 of the European Parliament and of the Council⁴⁸.
- (178) Aid may also be granted in respect of emerging diseases, which meet the conditions listed to in Article 6(2) of Regulation (EU) 2016/429, if the following applies:
- (a) the animal disease has caused damage exceeding a threshold of at least 30% of the average annual production or income in the preceding three-year period or a three-year average based on the preceding five-year periods excluding the highest and lowest entry; and
 - (b) beneficiaries have taken out insurance or pay financial contributions to mutual funds accredited in the Member State covering at least 50% of their average annual production or production-related income and the statistically most frequent animal disease in the Member State or region concerned for which insurance coverage is provided.
- (179) Aid schemes must be established within three years from the date of the occurrence of the costs or damage caused by the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern. Aid must be paid out within four years from that date. These conditions do not apply to costs incurred for preventive purposes as indicated in point (181).
- (180) In order to facilitate rapid crisis management, 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 (218).
- (181) The aid may cover the following eligible costs, including for preventive purposes:

⁴⁶ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

⁴⁷ See <https://www.oie.int/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/>.

⁴⁸ Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (OJ L 153, 3.5.2021, p. 1).

- (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 purchase, storage, deployment and distribution of protection products or equipment to address infestations by invasive alien species of Union concern and by invasive alien species of Member State concern;
 - (d) the slaughtering, culling, and destruction of animals;
 - (e) the destruction of animal products and of products linked to them;
 - (f) the cleaning and disinfection of the holding and equipment;
 - (g) the damage incurred due to the slaughtering, culling or destruction of animals, animal products, and products linked to them.
- (182) The aid in relation to eligible costs referred to in point (181)(a) must be granted in kind and must be paid to the provider of health checks, analyses, tests, and other screening measures.
- (183) In the case of aid to make good the damage caused by animal diseases or by infestation by invasive alien species of Union concern or by invasive alien species of Member State concern referred to in point (181)(g), compensation must be calculated only in relation to the following:
- (a) the market value of animals slaughtered or culled, or that have died, or the products destroyed:
 - (i) as a result of the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member States concern;
 - (ii) as if they had not been affected by the disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern;
 - (iii) on the basis of their market value immediately before any suspicion of the animal disease or infestation arose or was confirmed;
 - (b) loss of income due to quarantine obligations and difficulties in restocking.
- (184) That amount must be reduced by any costs not directly incurred due to the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern which would otherwise have been incurred by the beneficiary, and by any revenue made by the sale of products linked to the animals slaughtered, culled or destroyed for preventive or eradication purposes.
- (185) In exceptional and duly justified cases, the Commission may accept other costs incurred due to animal diseases in aquaculture or infestation by invasive alien species of Union concern and by invasive alien species of Member State concern.
- (186) The aid and any other payments received by the beneficiary, including payments under other national or Union measures or insurance policies or mutual funds for the same eligible costs, must be limited to 100% of the eligible costs.

Chapter 2

AID IN OUTERMOST REGIONS

2.1. Operating aid in outermost regions

- (187) Operating aid in the outermost regions is compatible with the internal market under Article 107(3), point (a) TFEU, if it complies with Part I, Chapter 3, the conditions set out in this Section and the specific provisions applying to those regions.
- (188) This Section applies to operating aid in the outermost regions referred to in Article 349 TFEU that, pursuant to Article 10(4) of Regulation (EU) 2021/1139, aims at alleviating the specific constraints in those regions as a result of their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development. In applying this Section, the Commission has regard to the coherence of the operating aid with measures under the EMFAF for the region concerned, if applicable, and its effects on competition and trade both in the regions concerned and in other parts of the Union.
- (189) Aid under this Section 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.
- (190) The eligible costs resulting from those specific constraints must be calculated in accordance with the criteria laid down in Commission Delegated Regulation (EU) 2021/1972⁴⁹.
- (191) To avoid overcompensation, the Member State concerned 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 paid pursuant to Articles 24 and 35 to 37 of Regulation (EU) 2021/1139.
- (192) The aid, and any other payments received by the beneficiary for the same eligible costs, must be limited to 100% of the eligible costs.

2.2. Aid for the renewal of the fishing fleet in outermost regions

- (193) The Commission will consider aid for the renewal of the fishing fleet in outermost regions compatible with the internal market under Article 107(3), point (a) TFEU, if it complies with the principles set out in Part I, Chapter 3, the conditions set out in this Section and the specific provisions applying to those regions.
- (194) This Section applies to aid for the renewal of the fishing fleet in the outermost regions referred to in Article 349 TFEU that aims at supporting the costs relating

⁴⁹ Commission Delegated Regulation (EU) 2021/1972 of 11 August 2021 supplementing 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 by laying down the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions (OJ L 402, 15.11.2021, p. 1).

to the acquisition of a new fishing vessel that will be registered in an outermost region.

- (195) Aid under this Section may only be granted if:
- (a) the new fishing vessel complies with Union and national rules on hygiene, health, safety, and working conditions for work on board of fishing vessels and characteristics of fishing vessels; and
 - (b) at the date of applying for the aid the beneficiary has its main place of registration in the outermost region where the new vessel will be registered.
- (196) At the date of granting the aid, the most recent report prepared in accordance with Article 22(2) and (3) of Regulation (EU) No 1380/2013 before that date must demonstrate that there is a balance between the fishing capacity and fishing opportunities in the fleet segment of the outermost region to which the new vessel will belong (the ‘national report’).
- (197) No aid may be granted if the national report, and in particular the assessment of the balance contained therein, has not been prepared on the basis of the biological, economic and vessel use indicators set out in the common guidelines⁵⁰ referred to in Article 22(2) of Regulation (EU) No 1380/2013.
- (198) Therefore, the following conditions must be fulfilled for aid under this Section to be granted:
- (a) the Member State concerned must have submitted to the Commission the national report by 31 May of year N;
 - (b) the national report must demonstrate that there is a balance between fishing capacity and fishing opportunities in the fleet segment to which the new vessel will belong;
 - (c) aid applications lodged with national authorities between 1 June of year N and 31 May of year N+1 must be examined against the national report of year N; and
 - (d) the conclusion of the national report of year N, and in particular the assessment of the balance contained therein, must not have been called into question by the Commission.
- (199) For the purpose of point (198)(d), the assessment of the balance contained in the national report shall be deemed to be called into question, if the Commission sends a letter to that effect to the Member State concerned on the basis of Article 22(4) of Regulation (EU) No 1380/2013 by 31 March of year N+1. If no such letter is issued by that term, or the letter does not contest the assessment of the balance contained in the national report, the Member State concerned may proceed with the granting of aid.
- (200) The Member State concerned may grant aid on the basis of the national report of year N only until the submission of the next national report by 31 May of year N+1.

⁵⁰

Communication from the Commission to the European Parliament and the Council — Guidelines for the analysis of the balance between fishing capacity and fishing opportunities according to Art 22 of Regulation (EU) No 1380/2013 of the European Parliament and the Council on the Common Fisheries Policy (COM(2014) 545 final).

- (201) The fishing capacity ceilings of each Member State and of each fleet segment of the outermost regions set out in Annex II to Regulation (EU) No 1380/2013, taking into account any possible reduction of those ceilings under Article 22(6) of that Regulation, must not be exceeded at any time. The entry into the fleet of new capacity acquired with aid must be carried out in full respect of these capacity ceilings and must not lead to a situation in which these ceiling are exceeded.
- (202) The aid must not be made conditional on the acquisition of the new vessel from a specific shipyard.
- (203) The maximum intensity of the aid must not be more than 60 % of the total eligible costs in the case of vessels with an overall length of less than 12 metres, must not be more than 50 % of the total eligible costs in the case of vessels with an overall length of 12 metres or more and less than 24 metres, and must not be more than 25 % of the total eligible costs in the case of vessels with an overall length of 24 metres and more.
- (204) The vessel acquired with aid must remain registered in the outermost region for at least 15 years from the date of granting the aid and must during that time land all of its catches in an outermost region. If that condition is not complied with, the aid must be reimbursed in an amount that is proportionate to the period or extent of non-compliance.

PART III

PROCEDURAL MATTERS

1. Maximum duration of aid schemes and evaluation

- (205) The Commission will only authorise aid schemes of a limited duration. Aid schemes must in principle not apply for a period exceeding seven years.
- (206) To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to a time limitation of normally four years or less and to the *ex post* evaluation referred to in point (36). *Ex post* evaluations will be carried out for schemes in the case of which the potential distortions of competition are particularly high, that is to say, that may risk to significantly restrict or distort competition, if their implementation is not reviewed in due time.
- (207) 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.
- (208) 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.

- (209) In the case of aid schemes being excluded from the scope of a Regulation on block exemption exclusively on the grounds of their large budget, the Commission will assess their compatibility with the internal market solely on the basis of the evaluation plan.

2. Application of the Guidelines

- (210) The Commission will apply these Guidelines for the assessment of all aid to be granted on and after 1 January 2023, irrespective of the date of notification.
- (211) 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.
- (212) Aid granted unlawfully will be assessed on the basis of the Guidelines in force at the time of granting the aid. Individual aid granted under an unlawful aid scheme will be assessed under the Guidelines that apply to the unlawful aid scheme at the time the individual aid was granted.
- (213) The Guidelines for the examination of State aid to the fisheries and aquaculture sector⁵¹ adopted in 2015 are repealed and will no longer apply after 31 December 2022, with the exception of the cases referred to in points (211) and (212).

3. Proposals for appropriate measures

- (214) In accordance with Article 108(1) TFEU, the Commission proposes that each Member State amends its existing aid schemes to conform them with these Guidelines by 30 June 2023 at the latest.
- (215) 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*.
- (216) 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 23(2) of Council Regulation (EU) 2015/1589.

4. Reporting and monitoring

- (217) The Commission reminds each Member State of its duty to submit annual reports to the Commission, as set out in Article 26 of Council Regulation (EU) 2015/1589 and Articles 5, 6, and 7 of Commission Regulation (EC) No 794/2004⁵².

⁵¹ Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector (OJ C 217 2.7.2015, p. 1).

- (218) The annual report must also include meteorological information about the type, timing, relative magnitude, and location of the events under Part II, Sections 1.1 and 1.2 and animal disease and infestation of alien invasive species under Section 1.3 of Part II, Chapter 1. The reporting obligation set out in this point only relates to *ex ante* framework schemes.
- (219) The Commission reserves the right to seek additional information on existing aid schemes on a case-by-case basis, where this is necessary to enable it to fulfil its responsibilities under Article 108(1) TFEU.
- (220) 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.

5. Revision

- (221) 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.