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IMPACT ASSESSMENT REPORT

Accompanying the documents

Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector

Commission Regulation (EU) .../... of XXX 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

and

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

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Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
BAR	Brexit Adjustment Reserve
BRP	Better Regulation Portal
CFP	Common Fisheries Policy
CMO	Common Market Organisation
EEZ	Exclusive Economic Zone
EFF	European Fisheries Fund
EMFAF	European Maritime and Fisheries Aquaculture Fund
EMFF	European Maritime and Fisheries Fund
EMODNet	European Marine Observation and Data Network
ESIF	European Structural and Investment Funds
EU	European Union
ExAC	Ex-ante conditionalities
FIBER	Fisheries Block Exemption Regulation
FTE	Full-time Equivalent
GBER	General Block Exemption Regulation
IMP	Integrated Maritime Policy
IUU fishing	Illegal, unreported and unregulated fishing
LDCs	Least Developed Countries
MSY	Maximum Sustainable Yield
MFF	Multiannual Financial Framework
OR	Outermost Regions
RAG	Regional Aid Guidelines
SAM	State aid modernisation reform
SARI	State aid reporting interactive

SME	Small and Medium sized enterprises
SWD	Staff Working Document
TAC	Total Allowable Catch
TAM	Transparency Award Module
TFEU or Treaty	Treaty on the Functioning of the European Union
WHO	World Health Organization
WTO	World Trade Organization
UK	United Kingdom
UN	United Nations
UN SDGs	UN Sustainable Development Goals

1. 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1. 1.1. State aid control policy in the fisheries and aquaculture sector

The State aid framework in the fisheries and aquaculture sector is comprised of: i) a sector-specific block exemption Regulation, known as FIBER¹, and ii) the Guidelines for the examination of State aid in the sector of fisheries and aquaculture (the Guidelines²). In addition, public aid to the fisheries and aquaculture sector may be granted under iii) the Regulation on *de minimis* aid in the fisheries and aquaculture sector³ (the *de minimis* Regulation)⁴. State aid for the fishery and aquaculture sector is embedded in the broader Common Fisheries policy (CFP)⁵. Reformed in 2013⁶, the CFP covers four policy areas: i) fisheries management, ii) international policy, iii) market and trade policy, and iv) funding of the policy. Within that policy, the Union provides financial support through the European Maritime, Fisheries and Aquaculture Fund (EMFAF). The social and economic impact of State aid is the same, irrespective of whether it is (even partly) financed by the Union budget or by a Member State. Therefore, 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.

The present Impact Assessment has been motivated by the expiration of the FIBER and the *de minimis* Regulation on 31 December 2022. The Guidelines themselves do not include a sunset clause. However, their complementarity with the FIBER and *de minimis* Regulations dictate their revision in light of the review of the FIBER and *de minimis* Regulation and the newly adopted EMFAF for 2021-2027⁷. The Impact Assessment will cover all three instruments of the framework. The evaluation of the current State aid

¹ Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37–63.

² Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1–15.

³ 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, 28.6.2014, p. 45–54.

⁴ Aid may also be granted to the fishery and aquaculture sector (for research and development, aid for training, innovation aid for SMEs and aid for SMEs' access to finance) through 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. 1–78.

⁵ The objectives of the CFP, which include ensuring 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, are enshrined in Article 2 of the CFP Regulation (EU) No (1380/2013 OJ L 354, 28.12.2013, p. 22–61).

⁶ 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 354m 28.12.2013, p. 22–61; which took effect from 1st January 2014.

⁷ Successor of the EMFF.

framework for the fisheries and aquaculture sector has ran in a “back to back” exercise to this Impact Assessment, in line with the Commission Better Regulation Guidelines⁸.

1.1.1. 1.1.1. Relationship between the sectoral funding and state aid rules

State aid to the fishery and aquaculture sector is aligned with the framework of the CFP. In its State aid instruments, the Commission sets out the conditions and criteria under which aid to the fishery and aquaculture sector is considered to be compatible with the internal market and establishes the criteria for identifying the areas that fulfil the conditions laid down in Article 107(3) TFEU (in particular of its letter (c)). State aid rules for the fishery and aquaculture sector cannot disconnect from the CFP objectives. In fact, when designing the State aid rules, these objectives have to be taken into account and a balanced approach between State aid and the CFP needs to be established (i.e. consistency with the CFP/EMFAF rules, while ensuring efficient State aid control). Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP.

In addition to the CFP, the EU’s Integrated Maritime Policy (IMP) is a policy framework aiming to foster the sustainable development of all sea-based activities and coastal regions by improving the coordination of policies affecting these sectors and regions. Both the IMP and the CFP are funded through the EMFAF to pursue these objectives (previously the EMFF, which had an overall budget of € 6.4 billion for the programming period 2014-2020).

1.2. 1.2. Political Context

The European Green Deal (hereinafter the ‘Green Deal’)⁹, places particular importance on the fisheries and aquaculture sector and the contribution it can make towards climate objectives, protecting the environment and preserving biodiversity¹⁰.

The importance of the primary production sector in general and of fisheries and aquaculture in particular has been further accentuated in the context of the COVID-19 pandemic, which has brought challenges related to food security to the forefront. The use of State aid to support these sectors has avoided a food security crisis and proven the resilience of the EU food supply chain¹¹.

This Impact Assessment takes into account, to the extent possible, the repercussions of these Commission initiatives and events. This context sets the way forward for the State aid framework in the fisheries and aquaculture sector, highlighting the need to consider environmental, economic and social sustainability.

⁸ SWD (2017) 350 of 7.07.2017: Commission Staff Working Document Better Regulation Guidelines.

⁹ https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

¹⁰ The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal (11/12/2019, COM(2019) 640 final, “Green Deal Communication”).

¹¹ For more details, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Contingency plan for ensuring food supply and food security in times of crisis (12/11/2021, COM/2021/689 final).

1.2.1. 1.2.1. The Green Deal and its related initiatives

In line with the Green Deal, fisheries and aquaculture have a key role to play in ensuring sustainable food chains, preserving and restoring ecosystems and biodiversity, and promoting circular economy.

In this regard, the Commission adopted on 17 May 2021 a Communication¹² on a new approach for a sustainable blue economy in the EU. The aim of this initiative is to, in line with the objectives of the Green Deal, transition into a resource-efficient economic model, based on circularity and innovation, and to focus on the phasing out of greenhouse gases and the protection of the EU's natural capital.

The blue economy strategy also intends to tackle climate change and the pressure on marine resources through alternative sources of food and sustainable food systems. To this end, the Commission will, among others, promote an improved fisheries control system and support the use of selective fishing techniques through EMFAF funding.

The Farm to Fork Strategy¹³, underpins the efforts of the Green Deal through dedicated initiatives that support the transition towards sustainable and resilient food systems, such as the diversification of the fisheries and aquaculture sector to reduce the adverse impacts that fishing can have on ecosystems.

It is also important to mention the EU's biodiversity strategy for 2030¹⁴, which has among its objectives the restoration of the good environmental status of marine ecosystems.

Finally, the Commission has adopted on 15 December 2021 the Communication on Sustainable Carbon Cycles¹⁵, which set out an action plan on how to develop sustainable solutions to increase carbon removals and tackle climate change. The Communication highlights the potential of developing blue carbon initiatives in marine ecosystems, in particular coastal ecosystems, that would lead to multiple co-benefits, such as ocean regeneration and oxygen production, food security by bringing algae-based proteins to the market or new green and local job opportunities.

The Green Deal and its underlying objectives are reflected in the EMFAF for the period 2021-2027. Notably, as part of the EMFAF, the Commission has committed to step up efforts to bring fish stocks to sustainable levels where implementation gaps remain,

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new approach for a sustainable blue economy in the EU - Transforming the EU's Blue Economy for a Sustainable Future, COM/2021/240 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:240:FIN>

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system', COM/2020/381 final.

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU Biodiversity Strategy for 2030, Bringing nature back into our lives, COM/2020/380 final

¹⁵ Communication from the Commission to the European Parliament and the Council Sustainable Carbon Cycles COM/2021/800 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0800&qid=1643729626510>

strengthen fisheries management in the Mediterranean in cooperation with all coastal states and re-assess, by 2022, how the risks triggered by climate change are addressed.

1.2.2. 1.2.2. EMFAF 2021-2027

On 13 June 2018, the Commission proposed a new regulation on the European Maritime, Fisheries and Aquaculture Fund (EMFAF) as part of the next EU Multiannual Financial Framework for the 2021-2027 period. The proposal aimed to simplify the delivery of the EMFAF by allowing Member States to target support to their strategic priorities, instead of having to choose from a 'menu' of eligible actions.

On 14 July 2021, the EMFAF entered into force¹⁶. The total budget of the Fund amounts to EUR 6 108 billion¹⁷, with the objective to support innovative projects ensuring that aquatic and maritime resources are used sustainably.

The major change consists in giving greater flexibility to Member States to define and implement their objectives in their national programmes. While the EMFF prescribed in greater detail concrete measures, which have been largely mirrored in the 2014-2022 State aid rules, the EMFAF is based on a simple architecture largely without predefined measures and without detailed eligibility rules at Union level. The EMFAF defines broad specific objectives under each priority and specifies maximum aid intensities. The EMFAF – as the EMFF already did - itself exempts from State aid control support by Member States in their operational programmes falling within Article 42 TFEU (production of and trade in fisheries and aquaculture products). However, the new flexibility approach of the EMFAF constitutes a challenge for the design of State aid rules applicable to EMFAF support operations/measures falling outside of the scope of Article 42 TFEU (e.g. diversification from fishery to tourism). Moreover, State aid rules are also needed in respect of aid for the production of and trade in fisheries and aquaculture products (i.e. within the scope of Article 42 TFEU) that are financed from other sources than the EMFAF (notably exclusively from the national budgets).

On another note, the EMFAF will further foster efforts towards sustainable aquaculture. This reinforced focus is justified on both environmental and food-security grounds. As regards the former, sustainable seafood farming generates a lower carbon footprint than animal production on land. As regards the latter, investments in the sector and promoting the quality and added value of such products are seen as essential contributions towards the EU's food security and reduced dependence on third-countries. The EMFAF also includes provisions to help respond to exceptional crises that cause market disruptions e.g. temporary storage measures or compensation for additional costs.

The EMFAF, in line with the previous regulations, also contains a list of ineligible measures – i.e. measures that cannot get support - in its Article 13 (see Table 3 in Annex 5).

¹⁶ 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. 1-49.

¹⁷ For the period 2014-2020, the European Maritime and Fisheries Fund (EMFF) had an overall budget of €6400 million.

As fleet measures in the European Fisheries Fund (EFF)¹⁸ did not deliver good results because of the low level of targeting, the EMFAF has taken the initiative to improve conditionalities for fleet measures so that conservation objectives are better achieved. Permanent and temporary cessation will be supported under strict conditions to ensure that support for these fleet measures will not be at the detriment of the core priorities of the CFP and the EMFAF. Aid to start-up support for young fishermen will be tightly targeted to the conservation objectives of the CFP and sustainable exploitation of marine biological resources.

1.2.3. 1.2.3. UN Sustainable Development Goals – World Trade Organization rules

The World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures also applies to subsidies to fisheries, and the relevant WTO rules are reflected in the current State aid framework in the fisheries sector.

Setting dedicated rules for subsidies in the fisheries sector (excluding aquaculture and inland fisheries) that threaten the conservation of marine resources has been on the table of discussion of the WTO since 2001, when the Doha Development Agenda was launched. The negotiations were rekindled in 2015 with the adoption of the UN Sustainable Development Goals (SDGs), of the United Nations 2030 Agenda for Sustainable Development. SDG 14.6 sets as goals the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing; and the elimination of subsidies that contribute to illegal, unreported and unregulated fishing (IUU) fishing, while recognizing the need for an appropriate special and differential treatment for least developed countries (LDCs) and developing countries. The negotiations are based on a draft consolidated text¹⁹.

The State aid framework, which was assessed against the 2015 SDGs in the back-to-back evaluation, was deemed coherent with the principles. However, this does not ensure compatibility with a potential new instrument, and the Commission will need to follow closely the outcome of the negotiations in case adjustments are needed *ex post*.

1.2.4. 1.2.4. Recent events

Acknowledging the significant effects on the global and Member States' economies that the COVID-19 outbreak and the measures undertaken by governments to control its spread had, the Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak²⁰, based on Article 107(3)(b) TFEU. The objective of the Temporary Framework was to ensure that public support

¹⁸ The European Fisheries Fund covered the period 2007-2013 and was replaced by the EMFF.

¹⁹ https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm

²⁰ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

could be available for firms, thus facilitating their access to liquidity and finance, and preserving employment in the EU.

The full impact of the COVID-19 crisis in the fisheries and aquaculture sector is still unknown, yet two main drivers will determine its medium and longer-term effects²¹: (i) the impact of the changes in fishing effort on the sustainability of fish stocks and ecosystems, and (ii) the adequacy of the policy and industry responses to the risks posed to jobs, incomes and food security. In this regard, through their alignment with the CFP objectives and the concept of ‘good aid’, the State aid rules in fisheries and aquaculture already support measures that promote sustainability, food security and compensate the loss of income of primary producers.

With regard to Brexit, the European Commission reached on 24 December 2020 an agreement with the United Kingdom on the terms of their future cooperation. This agreement is in force from 1 January 2021, the date on which the UK left the EU Single Market and Customs Union (and all EU policies and international agreements). The Trade and Cooperation Agreement²² contains the provisions necessary for the sustainable management of fish stocks in the EU and the UK, treating them as independent coastal States. The ultimate goal is to safeguard the livelihoods of European fishing communities and to preserve natural resources, given the importance of the fisheries sector for both actors.

The final impact of Brexit and future arrangements on the fisheries (and aquaculture) sector is uncertain at this stage. A Regulation on a Brexit Adjustment Reserve (BAR)²³ was adopted, to counteract the adverse economic and social aftermath. All measures financed under the BAR will have to comply with State aid law, including those related to the fishery and aquaculture sector. Temporary and extraordinary aid measures mitigating the effects of the UK’s withdrawal from the EU should respond to actual needs that have a causal link with Brexit, facilitate the resilience and the development of the sector and should not just preserve the *status quo*. These measures are available on top of the possibilities provided for in the *de minimis* Regulation, the FIBER and the Guidelines in the fisheries and aquaculture sector.

Finally, in response to Russia’s military aggression against Ukraine, the EU and its international partners have adopted sanctions to disrupt the Russian economy, which have also taken a toll on the European economy. In order to mitigate the economic impact of this situation and to support companies in need, the Commission has adopted a Temporary Crisis Framework²⁴ based on Article 107(3)(b) TFEU. In particular, for the fisheries and aquaculture sectors, Member States will be able to set up schemes to grant up to EUR 35 000 per affected undertaking.

²¹ OECD, Fisheries, aquaculture and COVID-19: Issues and Policy Responses, June 2020

²² https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en

²³ Regulation (EU) 2021/1755 establishing the Brexit Adjustment Reserve; OJ L-357, 6 October 2021, p 1

²⁴ Communication from the Commission, Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 131I, 24.3.2022, p. 1–17

1.3. 1.3. Importance of State aid in the fisheries and aquaculture sector

During the reference period covered by the evaluation accompanying this impact assessment (2014-2019), Member States reported a total of EUR 278 million in State aid expenditure in the fisheries and aquaculture sector in the EU under the previous and the current State aid rules²⁵. Figure 1 and Figure 2 in Annex 5 present the total expenditure broken down by category and by year.

The expenditure on State aid in the sector has not remained static, varying per category between 2014 and 2019. In general, spending under block-exempted aid (FIBER) increased, while spending under notified aid (Guidelines) decreased. However, in the year 2018 there was a marked increase in State aid spending in the sector. In 2019, Member States' State Aid expenditure in the fishery and aquaculture sector also saw a nominal increase of 20% compared to 2018 expenditure. Expenditure in *de minimis* aid remained similar, although with some noticeable fluctuations over the years. Figure 2 in Annex 5 shows that the total expenditure on block exempted aid increased between 2015 (EUR 5.7 million) and 2016 (EUR 12.5 million), decreased to EUR 11.9 million in 2017 to increase again in 2018 (EUR 19.2 million). With regard to notified aid, it steadily went down during the first four years, going from EUR 29.8 million in 2014 to EUR 11.3 million in 2017, to increase again in 2018 (EUR 21.5 million). Finally, expenditure in *de minimis* aid also experienced a constant decrease in the first years, from EUR 11 million in 2014 to EUR 6.7 million in 2015 and EUR 3.7 million in 2016, just to increase again in 2017 (EUR 14.8 million) and decrease to 12 million in 2019.

In terms of number of schemes, FIBER was the legal instrument used more often, with 15 schemes corresponding to block-exempted aid under the FIBER. However, in terms of expenditure, most State aid concerned notified aid under the Guidelines. In particular, the highest amounts of State aid were granted under the measure categories "Other measures" (EUR 11 million), and 'Damage caused by natural disasters' (EUR 4.2 million). Within the category 'Other measures', aid for damage caused by protected species accounts for more than half of the total expenditure (EUR 6.9 million).

These numbers and the increasing use of block exemptions are particularly telling of the role and importance of State aid in the fisheries and aquaculture sector, and of the problems that have been identified and the scale of impacts that may result from the different options analysed in the present impact assessment.

²⁵ The data is based on the annual reporting by Member States pursuant to Article 6(1) of Commission Regulation (EC) 794/2004. Expenditure refers to all existing aid measures to fisheries and aquaculture for which the Commission adopted a formal decision under the fisheries Guidelines or received an information fiche from the Member States in relation to measures qualifying for exemption under the General Block Exemption Regulation (GBER), or the Fishery and Aquaculture Block Exemption Regulation. Cases under examination are excluded. Generally, Member States are required to report State aid expenditure in terms of actual expenditure expressed in the form of the aid element calculated for the aid measure. Where such data were not available by the deadline for submitting the annual report (i.e. 30 June), Member States were requested to provide either the corresponding commitment information or an estimate of the aid component. In the absence of that information, Member States were asked to estimate the aid element in line with the standard method applied and on the basis of information provided in the past in their reporting.

1.4. 1.4. Scope of the Impact Assessment

The present Impact Assessment does not address changes imposed by developments in EU jurisprudence (particularly, the *Hinkley Point C* judgment²⁶), which have nevertheless affected the structure of horizontal State aid instruments, including those for the fishery and aquaculture sector.

Along the same lines, it is necessary to note that the immediate economic and social difficulties arising from the recent events described in Section 1.2.4 (COVID-19 crisis, Russia's military aggression against Ukraine and the consequences of Brexit) are subject to an *ad hoc* approach²⁷ and, consequently, do not fall within the scope of analysis (options) of the present impact assessment report.

2. 2. PROBLEM DEFINITION

2.1. 2.1. What are the problems?

The evaluation of the current State aid framework for the fisheries and aquaculture sector has found that the instruments are for the most part relevant, effective, efficient and coherent, generally confirming the suitability of the framework. It has however identified a number of issues and areas where the framework could be further improved.

Furthermore, the entry into force of a new regulatory and policy context, namely the EMFAF for the period 2021-2027, necessarily dictates a reassessment of the future approach to the instruments in the sector. This is particularly true given that the current State aid framework overly relies on the structure of the previous EMFF.

As regards aid under the *de minimis* Regulation, it has to be noted that the individual ceiling and the national cap provided for in that Regulation have not been reassessed for many years.

Finally, the current regulatory set-up of the State aid instruments does not properly ensure that a sufficient number of individual awards are made transparent.

Against this background, there are four problems to be addressed:

2.1.1. 2.1.1. Unnecessary administrative burden

The evaluation has shown that the current legal set-up leads to an unnecessary administrative burden both for national authorities and for the Commission due to the fact that a number of aid categories are only provided for under the Guidelines and are not block exempted under the FIBER. Therefore, granting authorities (and consequently,

²⁶ Judgement of the Court of Justice of 22 September 2020 in case C-594/18 P.

²⁷ As described in Section 1.2.4, the effects of the COVID-19 crisis are being dealt with through the Temporary Framework and the EMFAF (which includes a measure for the “creation of a compensation scheme to respond to exceptional crises that cause market disruptions”); the new challenges to the supply chain posed by Russia's military aggression against Ukraine are being dealt with through the Temporary Crisis Framework; and Brexit and its related economic effects through the existing State aid rules and certain measures under the BAR.

potential beneficiaries and the Commission services) must use the much more burdensome procedure of notifying aid for measures that routinely get approved, even though the Commission has gained sufficient experience and could, therefore, block exempt such categories of aid. This is notably the case for certain measures currently in the Guidelines (aid to compensate damages caused by adverse climatic events and aid for the cost of control and eradication of animal diseases) as it was confirmed by most granting authorities and stakeholders that participated in the public consultation. A related problem is that posed by schemes that aim to compensate the damage caused by protected species of animals, currently addressed under the general Section 5.7 of the Guidelines for “other measures”. Due to the general nature of that section, there are no specific indications as to the conditions that need to be fulfilled for any of the measures that are based upon it. Nonetheless, the Commission has authorised several schemes aiming at compensating for such damages. Therefore, there is now sufficient experience with such schemes, so that they could now be block exempted with a clear set of conditions under the FIBER.

2.1.2. 2.1.2. De minimis ceiling and national cap are no longer adapted to market developments and inflation, differentiated treatment in the processing and marketing industry

The results of the evaluation show that the individual ceiling and national cap for *de minimis* aid (the last time these were analysed in-depth was in 2013²⁸;) might not be adequate for all Member States (the individual ceiling is too high for some and too low for others): Member States have on average used 4% of their total allocation, and none has surpassed its respective national cap. With regard to the individual ceiling, the amount granted per beneficiary has also been, on average, below it. However, responses from granting authorities in the survey conducted indicated that the expenditure in *de minimis* aid did not come close to the individual ceiling and respective national caps because these were perceived as not allowing a sufficiently wide margin of manoeuvre in order to design effective aid schemes that are suitable to support the fisheries and aquaculture sectors. The feedback regarding a too low *de minimis* individual ceiling was reiterated by an important number of the granting authorities during the Advisory Committee, and by a number of undertakings and associations operating in the processing and marketing of fisheries products sector.

Moreover, the current national caps were calculated based on economic data for the year 2011, which are now outdated as more up-to-date data is available. As regards the individual ceiling of EUR 30 000, it has to be noted that it was last fixed in 2007 and has so far not been adapted to inflation that has occurred since then.

A further problem in relation to *de minimis* aid is the fact that this sector-specific *de minimis* Regulation applies both to primary production and to fish processing and marketing, i.e. the individual ceiling of EUR 30 000 applies to both sub-sectors. Stakeholders point out that, unlike the fisheries sector, the processing and marketing of

²⁸ Impact Assessment report - accompanying the document Commission Regulation 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. Commission Staff Working Document. Brussels: European Commission (2013).

agricultural goods does not fall under the sector specific *de minimis* Regulation, but under the general *de minimis* Regulation, which allows for undertakings to receive up to EUR 200 000 as *de minimis* aid. They explain that this differentiated treatment for the sectors creates legal certainty issues (particularly, doubts on which ceiling is applicable), taking into account that some market players are active in both processing and marketing of fisheries and agriculture products.

2.1.3. 2.1.3. *Non-alignment with the EMFAF*

The current State aid framework is built upon the previous EMFF, i.e. measures that were eligible for aid under the EMFF are also eligible under the State aid rules. Meanwhile, the EMFAF has entered into force but the current State aid framework does not yet reflect these rules.

There is therefore firstly the problem of non-alignment of the State aid rules with the new Funds rules under the CFP. This would in turn lead to the problem that there could be measures under State aid rules that can be financed whilst they run against objectives set under the CFP.

However, there is an additional problem: Block exemption Regulations like the FIBER are based on the Council Enabling Regulation. In order to ensure legal certainty for aid beneficiaries, the latter requires that block exemption Regulations have to set out the exact details under which a given State aid can be granted²⁹. This has so far been possible by aligning the FIBER with the EMFF Regulation³⁰ for the period 2014-2022³¹. This limitation imposed by the Enabling Regulation is a direct effect of the Treaty itself as well as of jurisprudence of the Court of Justice of the EU ('CJEU'). While Article 108 provides for the general obligation of the Member States to notify State aid to the Commission and Article 109 empowers the Council to provide for exceptions from that rule, the CJEU decided that there is no legitimate expectation as to the lawfulness and compatibility of non-notified aid. Therefore, in order to provide certainty to beneficiaries that the aid they receive is actually compatible with the internal market, block exemption

²⁹ The Enabling Regulation (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. 1–8) requires a high level of detail for block exemption regulations because Member States are exempt from the notification requirement, and any aid therefore needs to be clearly described and unequivocal. It requires that block exemption Regulations have to specify: (a) the purpose of the aid; (b) the categories of beneficiaries; (c) thresholds expressed in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts or, for certain types of aid where it may be difficult to identify the aid intensity or amount of aid precisely, in terms of the maximum level of state support in or related to that measure; (d) the conditions governing the cumulation of aid; (e) the conditions of monitoring.

³⁰ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L 149, 20.5.2014, p. 1–66.

³¹ The FIBER originally expired on 31/12/2020 but it was prolonged until 31/12/2022 by Commission Regulation (EU) 2020/2008 of 8 December 2020 amending Regulations (EU) No 702/2014, (EU) No 717/2014 and (EU) No 1388/2014, as regards their period of application and other relevant adjustments, C/2020/8567, OJ L 414, 9.12.2020, p. 15–18.

regulations have to lay down the exact conditions under which aid can be granted. If the FIBER were to be designed in the same way as the EMFAF, there would be a lack of preciseness and thus a lack of the certainty needed.

Compared to the EMFF, the EMFAF follows another legal architecture under which policy objectives have to be pursued by the Member States without giving the exact details for individual measures. When aligning the State aid framework with the new Funds rules under the EMFAF, it is therefore, for legal reasons, no longer possible to do so by way of referring in the FIBER to the EMFAF or by simply copying the EMFAF provisions into the FIBER³². A mere alignment with the EMFAF would therefore lead to the problem that State aid could not be granted under block exemptions.

In addition to the legal limitations imposed by the Enabling Regulation, there is an economic *rationale*. The general obligation to notify new State aid to the Commission gives the Commission the possibility to assess on a case-by-case basis whether there is a risk of undue distortion of competition and trade. Exemptions from the notification requirement deprive the Commission of that possibility. It is therefore necessary that the Commission assesses that risk *ex ante*, i.e. at the moment of laying down the conditions under which a Member State may make use of a block exemption.

Finally, it is necessary to note that the legal requirements under the State aid rules do not put into question the political objectives of the EMFAF. The flexibility provided for the EMFAF programming is enabled with regard to the large majority of the EMFAF operations due to the fact that the co-legislators exempted from State aid control the production of and trade in fisheries and aquaculture products (Article 42 TFEU). This means that the managing authorities will be fully able to use the flexibility foreseen under the EMFAF for these economic activities. Economic activities in the national EMFAF programmes falling outside Article 42 TFEU and which are, therefore, under State aid control (e.g. diversification) could benefit from block exemptions (FIBER or GBER). Moreover, the future Guidelines would maintain the flexible approach for “aid for other measures” under which Member States may notify any State aid that would not be covered by a block exemption, apart from being able to notify, where applicable, aid under any other horizontal State aid Guidelines. This would always take into account the commonly defined principles for a compatibility assessment of aid under 107(3)(c) TFEU, ensuring a level playing field along core criteria such as the need for State intervention, proportionality and appropriateness of the aid and fulfilling the CFP requirements.

Sub-problem: Measures in FIBER that could have potential harmful effects

Likewise, with regard to certain block exempted measures under the current FIBER, the evaluation has found that some market failures persist, particularly that the framework does not sufficiently address sustainability concerns and enabling conditions to facilitate innovation and market development in the blue economy. This is notably true in relation

³² To show a specific example, for innovation measures, the current FIBER sets out all the specific conditions that need to be fulfilled by way of referring to the corresponding provisions of the EMFF. The EMFAF, in turn, refers to innovation more broadly: “Fostering sustainable fisheries and the restoration and conservation of aquatic biological resources”.

to investments and compensation for the fleet (such as aid to start-up support for young fishermen under FIBER), which have been proven to potentially cause harmful effects – when implemented in isolation³³ –, lack sufficient targeting to the conservation objectives of the CFP, and may contribute to overcapacity or overfishing. Being provided for under a block exempted Regulation prevents the Commission from assessing such schemes, thus being able to take into account the mentioned concerns.

2.1.4. 2.1.4. *Lack of transparency in State aid control*

Under the current publication requirements for individual aid awards over EUR 500 000, only around 20-25% of the total State aid spent in the EU is made transparent on the Commission's transparency award module (TAM)³⁴. The situation is similar for the fishery and aquaculture sector, with a publication threshold of EUR 30 000. This undermines the objective of the State Aid Modernisation³⁵ (SAM) transparency requirements, namely to reduce negative effects of State aid by ensuring that competitors have access to relevant information on supported activities. Furthermore, due to the smaller aid amounts awarded in Member States with more limited spending capacity, the share of published aid may even be reduced to a fraction of the aid awarded.

2.2. 2.2. **What are the problem drivers?**

2.2.1. 2.2.1. *Problem driver 1: Gained experience and need to focus the Commission's resources to examine the measures that could cause unwanted effects*

The current framework is based on outdated data and case practice that does not take into account in certain points the most recent policy developments and in-house experience. The results of the back-to-back evaluation have shown that the framework is “fit for purpose” but needs fine-tuning due to recent developments (such as the EMFAF) and the gained in-house experience.

As explained in Section 2.1.1, the evaluation and the public consultation show that stakeholders think (see Annex 10 of the evaluation) that the need to have to go through a notification procedure for measures that routinely get approved and where the Commission has gained sufficient experience causes unnecessary delay and administrative burden which does not exist with regard to block exempted measures under the FIBER.

2.2.2. 2.2.2. *Problem driver 2: Continued market developments, stakeholder's concerns on differentiated treatment*

With regard to *de minimis* aid, the economic developments (such as inflation) translate into the need of reassessing the individual ceiling and the national cap, which were last

³³ Under the multiannual programming in the EMFAF these measures are part of an overall strategy developed by the MS along a SWOT analysis and performance monitoring framework.

³⁴ State Aid Transparency Public Search, available at: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>

³⁵ Commission Communication "EU State Aid Modernisation (SAM)", COM (2012) 0209 final, 8.5.2012.

analysed in-depth back in 2013³⁶. The answers of the granting authorities in the survey conducted indicated, that the modest use of *de minimis* aid is due to the fact that the current margins do not offer sufficient flexibility to the Member States to envisage effective schemes.

In parallel, the differentiated treatment between the individual aid ceiling for the fish processing and marketing industry (EUR 30 000) and that of the processing and marketing of agricultural goods (EUR 200 000) raises doubts among market players as to the reasoning behind.

2.2.3. 2.2.3. *Problem driver 3: Wider discretion of Member States under the EMFAF*

The architecture of the EMFAF does not set predefined measures and eligibility rules at Union level in a detailed and prescriptive manner, but focuses on establishing broad specific objectives under each of the priorities set in line with the CFP objectives (these are detailed in Figure 3 in Annex 5). This ensures a flexible approach where Member States are able to identify the most appropriate means for attaining the priorities.

However, this approach creates a problem (see Section 2.1.3) with regard to the current design of the State aid framework for the sector and particularly for the FIBER, which relies on the detailed provisions of the former EMFF.

Moreover, societal demands in line with the Green Deal (and, more specifically, reflections on these within the EMFAF revision) dictate the need to pay particular attention to any measures (such as fleet measures) that could cause unwanted effects and put in jeopardy sustainability and the CFP conservation objectives.

2.2.4. 2.2.4. *Problem driver 4: Increased Commission's ambition on transparency of State aid measures*

In order to improve the quality of the scrutiny of the use of State aid in the sector, and to increase transparency, the Commission introduced a publication requirement for individual aid awards above a certain threshold³⁷. The initial thresholds were set quite high, e.g. EUR 500 000 under the General Block Exemption Regulation (GBER)³⁸. The FIBER and the Guidelines require that individual aid awards exceeding EUR 30 000 are published on a comprehensive State aid website, at national or regional level or on the TAM.

Since it appeared that these publication thresholds were too high and did not allow for a sufficient number of individual aid awards to be made transparent (see Section 2.1.4 above), the Commission has already acted. Several recently adopted horizontal State aid

³⁶ See *supra* note 28.

³⁷ The 2014 SAM established the need for a revision of the State aid instruments in this regard, giving Member States a two-year transition period to comply with.

³⁸ 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. 1–78.

instruments (such as the Regional Aid Guidelines (RAG)³⁹ and the Guidelines on State aid for climate, environmental protection and energy (CEEAG)⁴⁰) already provide for lower publication thresholds (decrease from EUR 500 000 to EUR 100 000 for individual aid grants). Finally, both the COVID-19 Temporary Framework and the Temporary Crisis Framework for the aggression against Ukraine by Russia set the general publication threshold at EUR 100 000 and a specific threshold of EUR 10 000 for the primary agriculture and the fisheries sector.

2.3. 2.3. How will the problem evolve?

The problems identified in Section 2.1 will persist unless specifically addressed in the current revision of the rules.

In particular, with regard to *Problem 1: Unnecessary administrative burden* (Section 2.1.1), the lack of clear rules concerning certain schemes and the notification of aid measures that could otherwise be block-exempted thanks to the experience gained by the Commission will contribute to increase the administrative burden and reduce the effectiveness of the State aid framework.

In relation to *Problem 2: De minimis ceiling and national cap are no longer adapted to market developments and inflation, differentiated treatment in the processing and marketing industry* on the one hand, it is true that the current ceiling and national cap have hardly been used. On the other hand, Member States have brought forward that the current ceiling and national cap are anyway too low to envisage meaningful schemes under *de minimis* and that, therefore, a higher ceiling and national cap are needed. As explained in Section 2.1.2, the national caps were calculated based on economic data for the year 2011, and the amount of the individual ceiling (last fixed in 2007) has never been adapted to inflation. Leaving the thresholds untouched will basically leave the situation as it is today, ignoring the more recent economic data and concerns expressed by both granting authorities and stakeholders.

With regard to *Problem 3: Non-alignment of the framework with the EMFAF* (Section 2.1.3) and its underlying measures, as explained, taking no action can cause the State aid framework to become incoherent with the overall new policy framework, notably the EMFAF, and that block exempted State aid would no longer be possible. Similarly, not acting on the measures in FIBER that could have potential harmful effects may end up clashing against the general Commission's priorities and the need of addressing sustainability concerns.

In relation to *Problem 4: Lack of transparency in State aid control* (Section 2.1.4), not adapting the current rules on the publication thresholds for individual aid awards would entail not addressing the problem related to the desired SAM transparency objective⁴¹,

³⁹ Communication from the Commission - Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1–46.

⁴⁰ Communication from the Commission - Guidelines on State aid for climate, environmental protection and energy OJ C 80, 18.2.2022.

⁴¹ The SAM objectives on the modernisation of State aid control are: i. fostering sustainable, smart and inclusive growth in a competitive internal market, what is known as “good aid”; ii. focusing Commission ex ante scrutiny on cases with the biggest impact on the internal market whilst strengthening the

i.e. to allow for a sufficient number of individual aid awards to be made transparent (public). Furthermore, considering the adoption of a lower publication threshold (of EUR 100 000) in relation to other State aid instruments, the current transparency rules for State aid in the fishery and aquaculture sector would become inconsistent and incoherent with the general State aid framework.

With regard to a potential evolution of the abovementioned problems (particularly Problem 2 and Problem 3 from an economic and a sustainability perspective, respectively), a number of recent initiatives and event might have an impact on the evolution of these problems (see Section 1.2). Particularly, these are as follows:

Firstly, it is necessary to note that, at the time of writing, the Green Deal and its related initiatives (as described in Section 1.2) are still unfolding and deriving into different policy measures, which in some cases have not yet been established with a sufficient degree of certainty.

Similarly, with regard to SDGs, as explained in Section 1.2.3 above, the current State aid framework is coherent and complies with the 2015 SDGs, but the Commission will need to follow closely the outcome of the negotiations for a new instrument and, in case adjustments are needed, to do so *ex post*.

Finally, taking into account the current outlook with soaring inflation, the problem regarding the *de minimis* individual ceiling and national no longer being adapted to market developments and inflation could worsen in the future.

3. 3. WHY SHOULD THE EU ACT?

3.1. 3.1. Legal basis

According to Article 3(1)(b) of the TFEU, the Union has an exclusive competence as regards the establishment of the competition rules necessary for the functioning of the internal market. Along the same lines, Article 3 (1) (d) of the TFEU establishes that the EU has exclusive competence for the conservation of marine biological resources under the Common Fisheries Policy.

Article 108 TFEU entrusts the Commission with the review of aid schemes. The Commission may declare aid to be compatible with the internal market in the cases set out in Article 107(3) TFEU. To this end, the Commission can set out in Guidelines the conditions, which would guide its compatibility assessment. Article 109 TFEU establishes that the Council, on a proposal from the Commission and after consulting the European Parliament, may in particular determine the categories of aid exempted from the notification obligation of Member States provided for under Article 108 TFEU.

In accordance with Article 42 TFEU, competition rules apply to the production of and trade in the fishery and aquaculture sector only to the extent determined by the EU

cooperation with Member States in State aid enforcement; and iii. streamlining the rules and providing for faster decisions, thus enabling faster access to aid.

legislator (i.e. the Council and European Parliament). Article 38 TFEU further clarifies that the products in question are the ones referred to in Annex I TFEU.

The extent to which the Treaty provisions on State aid apply to aid granted to the fishery and aquaculture sector has been determined in Article 10 of the EMFAF Regulation. On that basis, the legislator has decided that State aid rules shall not apply to payments made by the EU or the Member States for fishery and aquaculture under the EMFAF, when falling within the scope of Article 42 TFEU. However, state aid rules and procedures fully apply to:

- Support for the fishery and aquaculture sector financed exclusively by national resources outside of the scope of the EMFAF (so-called “pure State aid”), and aid which goes beyond the provisions of the EMFAF Regulation.
- Operations supported by the EMFAF, which fall outside the scope of Article 42 TFEU. These are namely the ones that relate to Integrated Maritime Policy (IMP) measures financed under shared management; and, in principle, payments which relate to the sustainable development of fisheries and aquaculture areas.

3.2. 3.2. Subsidiarity: Necessity of EU action

State aid rules are part of the rules on competition law and thus fall under the exclusive competence of the EU according to Article 3(1)(b) TFEU. Hence, the only possibility to review the State aid framework is to take action at EU level. Only the European Commission has the competence to make that review. Without new or prolonged legal instruments on *de minimis* aid and block-exempted State aid, for aid to be considered compatible with the internal market, Member States would have to notify all measures for the fishery and aquaculture sectors. The proposed initiative is therefore not subject to the subsidiarity test.

3.3. 3.3. Subsidiarity: Added value of EU action

Common rules on state aid are a necessary pre-requisite for fair competition and the functioning of the internal market. Therefore, the subsidiarity principle does not apply and the EU added value is confirmed.

4. 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. 4.1. General objectives

The general objective is to have in place State aid rules for the fishery and aquaculture sector, which can contribute to achieving CFP and Green Deal objectives, while optimising the framework to bring further efficiencies in a non-distortive manner between competing undertakings across Member States.

4.2. 4.2. Specific objectives

The general objective as described above and the identified problems translate into the need of assessing the intervention through the following specific objectives, namely:

4.2.1. 4.2.1. *Specific objective 1: Ensuring administrative simplification*

The first specific objective refers to addressing the problem identified during the evaluation and detailed in Section 2.1.1 above. This refers to developing a better approach for measures that routinely get approved and currently go through the burdensome notification procedure. This specific objective is also underpinned in the objectives dictated by the SAM programme and should be taken into account for any potential intervention - ensuring effective State aid control and minimisation of effects on competition and trade, contribution to simplification, transparency and legal certainty, and reduction of the administrative burden.

More specifically, the goal of ‘administrative simplification’ refers to reducing the administrative burden for Member States (granting authorities) and for the Commission services. The reduction of the burden for granting authorities should in turn indirectly reduce the burden on undertakings operating in the sector, who are the potential beneficiaries of the measures designed by the granting authorities (the easier for these public authorities, the more straightforward and easier access to aid for beneficiaries).

4.2.2. 4.2.2. *Specific objective 2: Adapting the de minimis framework to latest market developments*

The second specific objective refers to addressing the problem detailed in Section 2.1.2 above, namely the need to adapt the *de minimis* individual ceiling and national caps to market developments. These market developments refer to the need to take into account the evolution of cost structures and rising inflation in relation to the individual *de minimis* ceiling, and more recent economic data (turnover data per Member State) with regard to the national cap.

4.2.3. 4.2.3. *Specific objective 3: Ensuring coherence of the State aid rules in the fishery and aquaculture sector with the EMFAF and CFP objectives*

This objective mainly refers to ensuring that the intervention guarantees the adherence of the State aid framework to the EMFAF, which is part of the CFP, and, more generally, that it contributes to the implementation of the CFP objectives. Currently, most articles in FIBER mirror the conditions of the former EMFF and need to be adjusted (and some requirements spelled out) to be coherent with the EMFAF.

As explained in Section 2.1.3, most measures under the previous EMFF contain a high level of detail and requirements. In contrast, the new EMFAF contains articles with certain prescriptions, but lacks the guidance of the former EMFF. Therefore, even when there are measures where the EMFAF offers guidance, it does not generally include detailed eligibility criteria that the FIBER can mirror.

This objective also intends to address measures in the FIBER that could have potential harmful effects for conservation objectives. This specifically refers to the measure under the FIBER titled “Aid to start-up support for young fishermen”.

4.2.4. 4.2.4. *Specific objective 4: Increasing transparency and market discipline*

The fourth specific objective is to address the problem identified in Section 2.1.4, namely that a considerable number of individual aid awards is made transparent to the public to facilitate clearer information for citizens and peer-review, and to increase market discipline to prevent the granting of State aid that is incompatible with the internal market.

4.3. 4.3. **Operational objectives and success criteria**

In relation to the objectives set out in Sections 4.1 and 4.2 above, there are operational objectives that should be linked to them, and criteria against which success can be measured in the future (see Section 9.5 for more details).

4.3.1. 4.3.1. *Non-distortion of competition*

An indication of success with regard to the general objective of minimising the risk of competition distortions could be the number of complaints received under the new State aid rules. Other indicators could be the nature, the number and the geographical distribution of the new measures.

4.3.2. 4.3.2. *Administrative simplification through reduction of the burden*

A success criterion for administrative simplification could be the future proportion between block exempted and notified aid, entailing a reduction in the number of notifications. In this regard, a comparison should be established between the current overall *ratio* towards the future *ratio*, taking into account the enlarged scope of the FIBER. The Commission should also monitor whether for measures already covered by the current FIBER, the number of *ad hoc* notifications is stable or increases.

5. 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1. 5.1. **What is the baseline from which options are assessed?**

The baseline for the current instruments in State aid for the fisheries and aquaculture sector, from which options will be assessed, is a “no policy change” scenario. This would mean the continuation of the current legal framework, which consists of the *de minimis* Regulation, the FIBER and the Guidelines.

For *de minimis* aid, this means that the current ceiling of EUR 30,000 per beneficiary in any 3-year period, plus the individual national caps per Member State would continue to apply in the fisheries and aquaculture sector. This would ignore the availability of more recent economic data and concerns expressed by stakeholders and granting authorities, thereby not addressing the problems identified in Section 2.1.1 (namely *Problem 2: De minimis ceiling and national cap are no longer adapted to market developments and inflation, differentiated treatment in the processing and marketing industry*).

The current **Block Exemption Regulation** follows the structure and principles of the EMFF for 2014-2020, i.e. the different categories of aid contain references to the conditions and maximum aid intensities listed in the corresponding articles of the EMFF. In the baseline scenario, the FIBER would remain unchanged. This could bring about inconsistency with the CFP, given that the EMFF has been replaced by the EMFAF. As set out above, there are to a large extent no specific measures with conditions in the EMFAF, so that references in the FIBER to the EMFAF would be insufficient for the purposes of a block exemption Regulation.

The baseline, or the continuation of the FIBER as it stands now, would ignore the problem described in Section 2.1.3 (non-alignment with the EMFAF), and bring about lack of legal certainty, with its corresponding effects for Member States and potential beneficiaries. Leaving the current transparency provisions of the FIBER unchanged will also not address the problem introduced in Section 2.1.4 and cause consistency problems with other State aid legislation. Similarly, not acting on the measures in FIBER that could have potential harmful effects (see the sub-problem in Section 2.1.3) may undermine sustainability goals.

With regard to **notified aid, the Guidelines**, which were last amended in 2018⁴², would also continue to apply with no other changes, without taking into account the experience gained by the European Commission and any relevant changes in EU policies.

As explained in Section 2.1.1 and in Section 2.3, continuing applying them as they stand today would entail a higher administrative burden and reduce the effectiveness of the State aid framework, by submitting to the notification procedure aid measures that could otherwise be block-exempted thanks to the gained experience of the Commission. Similarly, as explained above for the FIBER and in Section 2.3, continuing applying the current rules on the publication thresholds for individual aid awards would entail a risk of becoming inconsistent with the general State aid framework.

5.2. 5.2. Description of the policy options

Due to the nature of the problems described in Section 2.1, which calls for a separate assessment of each, the available policy options will address the identified problems separately, making a division into three sections: (i) *de minimis* ceiling and national cap; (ii) alignment to the EMFAF and unnecessary costs; (iii) publication thresholds. The options identified per problem are therefore self-standing, and the assessment of their impacts is separate and runs in parallel.

De minimis ceiling and national cap

Concerning the *de minimis* ceiling and national cap, the following options will be studied:

⁴² when a new category of aid measure that could be considered compatible with the Treaty was introduced (Section 5.6a. concerning aid for the renewal of the fishing fleet in outermost regions).

5.2.1. 5.2.1. Option 1 – Raising the *de minimis* ceiling and national cap

This option entails addressing the *Problem 2: De minimis ceiling and national cap are no longer adapted to market developments and inflation, differentiated treatment in the processing and marketing industry* (see Section 2.1.2) by making changes to the *de minimis* Regulation. This option explores the implications and possible effects of raising for *de minimis* aid both the EUR 30 000 individual ceiling and the national cap for Member States. This has been requested by Member States, representative organisations and businesses in the sector alike.

Past experience in the agricultural sector, where the individual ceiling was increased from EUR 15 000 to EUR 20 000 to account for market developments and inflation, has shown that a moderate increase of around 30% does not bring a high risk of distorting competition and trade (this would translate into an increase to EUR 40 000 in the fisheries and aquaculture sector).

5.2.2. 5.2.2. Option 2 - Raising the *de minimis* ceiling for processing and marketing to mirror that applicable in the agricultural sector

This option would address *Problem 2: De minimis ceiling and national cap are no longer adapted to market developments and inflation, differentiated treatment in the processing and marketing industry* (see Section 2.1.2) by making changes to the *de minimis* Regulation. In particular, it would entail applying the same ceiling for individual aid awards than the one currently applying to the processing and marketing of agricultural products, in order to address the concerns expressed by stakeholders and Member States. These refer to the fact that the ceiling for the fish processing and marketing industry is currently aligned to that of the primary production in fisheries and aquaculture sector (EUR 30 000) and greatly diverges from that of the processing and marketing of agricultural goods, where the ceiling of the GBER (EUR 200 000) applies. The *de minimis* ceiling for undertakings active in the primary production of agricultural products is in fact lower than for the primary production in fisheries and aquaculture industry (EUR 20 000)⁴³, but the general *de minimis* ceiling of EUR 200 000 applies to the processing and marketing of agricultural products due to “the similarities between the processing and marketing of agricultural products and of non-agricultural products.”⁴⁴ This point is still regularly raised by stakeholders to the Commission (granting authorities, businesses and fish producers organisations), and was explored during the 2013 Impact Assessment, which listed it as one of the options discarded at an early stage. The reasons behind this dismissal, as presented in the Impact assessment, were: (i) that there was no evidence of a “*particular problem or barriers to investment in processing*”, and that “*public support for processing is already very high*”; (ii) in relation to the high

⁴³ As part of the revision of the *de minimis* rules for the agricultural sector in 2019, the maximum aid per beneficiary over three years was increased from EUR 15,000 to EUR 20,000. Moreover, countries that do not spend more than 50% of their total national aid envelope on one particular agricultural sector may increase the *de minimis* aid per beneficiary up to €25,000. Press release available online at: [HYPERLINK https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1332](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1332)

⁴⁴ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the EU to *de minimis* aid in the agriculture sector, Recital 5

public support, that the risk of contravening the CFP objectives was high; (iii) finally, that raising the ceilings only for the processing sector would raise concerns of unequal treatment to the primary production sector, potentially bringing about discrimination claims.

While these arguments are for the most part valid and remain so at the time of writing, they do not constitute sufficient grounds for an outright exclusion of exploring the option further. Moreover, a more thorough analysis can provide more solidity to these arguments and answer or counterclaim the demands of stakeholders. The main objective of the analysis should also be to study whether raising the *de minimis* ceilings is appropriate and proportionate with regard to the specificities of the sector and the risks they might pose, and to evaluate what is the limited amount of aid that might not have an impact on competition and trade. The analysis should also explore whether the fish processing and marketing sector is comparable to the fisheries and aquaculture sector at large and should continue to be subject to the same rules, and whether the arguments raised comparing it to the processing and marketing in the agricultural sector have any grounds.

Therefore, this option will assess the impacts of raising the ceiling for undertakings active in processing and marketing to EUR 200 000 per beneficiary in a 3-year period. Nonetheless, this point will be studied with great caution, given the different structure of the sector when compared to its agricultural counterpart and the sustainability concerns that arise with the need of aligning the *de minimis* set up with the objectives of the EMFAF and the CFP, and the need to ensure the sustainability of fish stocks and guarantee marine conservation.

Alignment to the EMFAF and unnecessary costs

In relation to the alignment of the State aid framework in the fisheries and aquaculture sector to the EMFAF, two scenarios are possible (see also Section 5.3.2 on discarded options):

5.2.3. 5.2.3. Option 3 – Align to EMFAF but adapt to State aid control

This option, while aligning the current State aid framework to the EMFAF to tackle the Problem in Section 2.1.3, will accommodate to the specific needs of the State aid architecture (see Section 2.1.3 and footnote 29 on the requirements under the Enabling Regulation). In this regard, the FIBER will build upon the general outline set by the EMFAF, including the new list of ineligible measures provided for in the EMFAF, but will provide for more prescriptive conditions and criteria where this is legally required for the purposes of a block exemption regulation. The new FIBER will therefore spell out the aid categories that are present in the current FIBER, but reshuffled to fit the areas of support and priorities defined by the EMFAF⁴⁵.

⁴⁵ The conditions to be spelled out may partly differ from those in the EMFF 2014-2022, and each measure will need to be studied separately to establish which requirements need to be reviewed in the light of the EMFAF and overall legal context.

The current FIBER also contains a number of aid categories that are not copied from the EMFF and are neither provided for in the EMFAF⁴⁶. These existing “non-EMFAF measures” will remain unchanged as there is no need for alignment with the EMFAF.

Table 6 in Annex 5 depicts how the new FIBER might be restructured to fit the current measures into the priorities and objectives of the EMFAF, aligning it to and at the same time respecting the requirements of State aid legislation. The table offers a comparison of Option 3 against (i) what a full alignment to the EMFAF would look like and (ii) the baseline, to better illustrate how this structure might look like (the example only takes Priority 1 “fostering sustainable fisheries and the restoration and conservation of aquatic biological resources” and its related articles).

Given the legal requirements set by the Council in the Enabling Regulation, aid under the FIBER can by and large, only be granted to SMEs⁴⁷. Where a Member State intends to grant such aid to large undertakings, it has to notify the aid on the basis of the Guidelines. Therefore, the Guidelines provide for rules applicable to large undertakings for such kind of aid by way of referring to the FIBER. The Commission assesses such notifications by way of applying the granting conditions of the FIBER and by applying the general assessment criteria. Therefore, the Guidelines will automatically be aligned to the EMFAF by referring to the aid categories under the FIBER so that the changes will in principle be minimal and affect only the measures under the current Section 5.1 (aid for categories of measures covered by a block exemption regulation).

Finally, this option takes into account the feedback received in several *fora* (see Annex 2), where stakeholders argued in favour of a high degree of alignment between EMFAF and FIBER, recognising the need for a sufficient degree of clarity and legal certainty.

5.2.4. 5.2.4. Option 4 – Align to EMFAF, adapt and revise for State aid control

Option 4 is very similar to option 3 above, in that it will entail aligning the entire State aid framework to the EMFAF to tackle the problem in Section 2.1.3 and provide for prescriptive conditions and criteria in the FIBER, taking into account the Enabling Regulation.

This option considers further expanding the scope of FIBER to include new categories of aid, which would address the problem in Section 2.1.1 (*Problem 1: Unnecessary administrative burden*). These can be block-exempted bearing in mind the experience gained by the Commission, particularly with regard to the following measures:

- Aid to make good the damage caused by adverse climatic events (currently under Section 5.3 of the Guidelines)

⁴⁶ Article 44 and 45 of the FIBER, concerning respectively aid to make good the damage caused by natural disasters and aid in the form of tax exemptions or reductions adopted by the Member States pursuant to Article 15(1)(f) and Article 15(3) of Directive 2003/96/EC.

⁴⁷ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36.

- Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (currently under Section 5.4 of the Guidelines)⁴⁸
- Aid to compensate damage caused by protected animals (currently assessed under Section 5.7 of the Guidelines for “other measures”)

These new categories of aid under FIBER should incorporate the conditions already listed in the Guidelines, to safely take up the case experience of the Commission.

This option, considering the results of the evaluation, enhanced experience of the Commission and feedback from stakeholders, could contribute to alleviate the administrative burden for both Member States and the Commission, and contribute to the objective of focusing resources on cases with a big impact on competition. It also has the advantage of upgrading State aid control to make it more predictable and ensure legal certainty to Member States and aid beneficiaries.

In parallel, another important point for consideration is the deletion of the category “Aid to start-up support for young fishermen” in the FIBER (also examined in the evaluation), which would tackle *Sub-problem: Measures in FIBER that could have potential harmful effects* in Section 2.1.3. Within the framework of the EMFAF and the general Green Deal objectives, the block-exemption of this measure might not be compatible with the careful examination that is required for fleet measures, given their potential harmful effects and the need to carefully circumscribe them to avoid negative impacts and ensure that they pursue EU conservation objectives.

Publication thresholds

With regard to the publication thresholds, the IA will assess two options:

5.2.5. 5.2.5. *Option 5 – Lowering the publication thresholds for individual aid awards*

This option would address the problem presented in Section 2.1.3 *Lack of transparency in State aid control* by lowering the publication thresholds of individual aid awards. To guarantee consistency with other State aid instruments, this option will assess the possibility of bringing the publication threshold down to EUR 10 000.

5.3. 5.3. **Options discarded at an early stage**

5.3.1. 5.3.1. *Discontinuation of the State aid instruments for the fisheries and aquaculture sector*

One of the options discarded at an early stage is the discontinuation of the State aid instruments for the fisheries and aquaculture sector. This means that the Guidelines, the *de minimis* Regulation and FIBER would not be in place, and that all national compensation schemes would need to be assessed directly and on a case-by-case basis

⁴⁸ It is necessary to point out that several aid schemes addressing animal diseases have already been block-exempted through other type of measures; this is the case for the Czech Republic, Italy, and Spain, which have set up insurance schemes (under FIBER) to cover fish diseases to aquaculture businesses. Along the same line, Germany has used *de minimis aid* to cover this need.

under Article 107 TFEU. This would happen regardless of whether the aid is of a very low amount, and would in turn lead to a huge administrative burden for the Commission and national authorities (particularly taking into account that the general *de minimis* Regulation excludes the fisheries and aquaculture sector⁴⁹). More importantly, this would risk entailing negative impacts for the CFP objectives (for instance, ineligible measures under the EMFAF will not be clearly listed in any State aid legislation), contradict the objectives of the SAM and risk overlooking distortions in competition and trade. Moreover, the Commission's policy in this area of State aid would become unpredictable and thus create legal uncertainty both for beneficiaries and for the Member States.

Therefore, the Commission directly discarded this option.

5.3.2. 5.3.2. Full alignment of the State aid framework to the EMFAF

Another discarded option is that of fully aligning the State aid framework to the EMFAF.

In principle, this would mean minimum changes to the Guidelines, as it would not affect those additional measures, which are not replicated measures from the EMFF and are neither provided for under the EMFAF⁵⁰. The text of the Guidelines would only need some minor adaptations to cater for the needs of the EMFAF. The *de minimis* Regulation would remain unchanged.

This would however entail profound changes to FIBER, which would need to accommodate to the structure of the EMFAF. This means that, instead of focusing on prescriptive measures, the new FIBER should similarly refer to areas of support addressing certain priorities and objectives.

For instance, Annex II of the EMFAF lists the priorities and specific objectives from which the Member States should develop their actions under shared management plans (see Table 4 in Annex 5 of this Impact Assessment). The new FIBER, if fully aligned to the EMFAF, would list only broad areas of support for Member States to design block-exempted measures⁵¹.

The difficulty of this option lies in the lack of detailed guidance offered in the latter, as compared to the previous EMFF. Even when there are some articles where the EMFAF offers guidance, it does generally not include the detailed eligibility criteria that the FIBER can align to, which clashes with the requirements of the Enabling Regulation (see Section 2.1.3 for detailed explanations, and in particular footnote 29).

⁴⁹ Article 1(a) of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1–8.

⁵⁰ This includes sections 4.1 Aid to make good the damage caused by natural disasters and exceptional occurrences, 5.2 Aid falling within the scope of certain horizontal guidelines, 5.3 Aid to make good the damage caused by adverse climatic events, 5.4 Aid for the costs of prevention, control and eradication of animal diseases in aquaculture, 5.6 Operating aid in outermost regions and 5.6a Aid for the renewal of the fishing fleet in outermost regions.

⁵¹ As explained, this is a problem of structure, as the content of the measures currently comprised in the FIBER mostly seem to fit under the areas of support and priorities of the EMFAF. Table 5 in Annex 5 illustrates how the FIBER articles (grouped in clusters) could map out according to the priorities and different articles of the EMFAF.

In this respect, the EMFAF provides a list of eligible entities, activities and costs, but without defining eligible costs in detail for different measures. This does not meet the legal requirements of the Enabling Regulation, as explained in Section 2.1.3.

Consequently, a full alignment with the EMFAF, where the FIBER would not define clear eligibility criteria and compatibility conditions, would not be feasible from a legal point of view. The lack of any precise guidance on the eligibility rules and conditions would also come with an unprecedented and somewhat risky degree of flexibility for granting authorities, who would be able to decide more freely on measures that do not need to be notified to and approved by the Commission (block-exempted measures). This would significantly reduce the level of control that the Commission can exert on State aid, and could give rise to discriminatory situations between Member States and undertakings located in different geographical markets (and in turn bring about negative effects on competition and trade). This would add up to the concerns already expressed around equal treatment and the lack of legal certainty.

As also explained in Section 2.1.3, there are also economic reasons: exemptions from the notification requirement deprive the Commission of the possibility to assess on a case-by-case basis whether there is a risk of undue distortion of competition and trade.

This option can therefore be discarded.

5.3.3. 5.3.3. Alignment between the State aid instruments in the fisheries and the agriculture sector

The evaluation of the current State aid instruments for the sector highlighted the feedback of several stakeholders, who envisaged a potential alignment with the State aid instruments in the agriculture and forestry sector. This refers to taking up the structure of the State aid instruments in the agriculture markets, which has worked well in the past, in the experience of the Commission⁵².

Aside from the structure of the instruments and technical details, any further alignment (or even “merging”) has not been considered and will not be analysed in the present impact assessment, given the differences between the sectors (apart from the considerations with regard to whether the processing and marketing of fisheries products should be treated in the same way as this is the case in relation to processing and marketing of agricultural products, see Section 5.2.2).

While both the fisheries and agricultural sector are to a great extent characterised by the presence of micro, small and medium-sized enterprises, the existence of limited fish stocks whose management and conservation falls within the objectives of the CFP poses an additional challenge to fisheries. This means that even relatively small amounts of aid can have an influence on competition in the market and potentially lead to increased fishing pressure on fish stocks, a finite resource.

⁵² This refers, for instance, to the deletion of section 5.7 “Other measures” of the current Guidelines for the fisheries and aquaculture sector, which would then be assessed under the common provisions part of the Guidelines, as it is the case in the Guidelines for the agricultural and forestry sectors and rural areas.

Therefore, this option can be discarded.

5.3.4. 5.3.4. Enlarging the scope of the FIBER to introduce measures for temporary or permanent cessation, aid to large enterprises and to combat droughts in aquaculture

During the consultation phase of the evaluation, granting authorities expressed that they would like to introduce within the scope of the FIBER the following measures:

- aid for the temporary or permanent cessation of fishing activities. The former EMFF and now the EMFAF allow compensating for the temporary or permanent cessation of activities, but not the FIBER. This means that Member States that do not provide for this type of measure under their EMFAF operative programmes are also not able to give support through the FIBER in case of economic or other type of unforeseen difficulties.
- extending the scope of the FIBER to allow for aid to large enterprises. Some granting authorities expressed that the exclusion of large enterprises hinders investments that could allow for the use of more efficient and sustainable technologies, and that some types of aid (such as aid for the promotion of animal health and welfare and for health policy measures and aid for the protection of nature and species), which could benefit the common good, should not be limited to SMEs. NGOs expressed that it was unclear why large enterprises would be eligible to such aid, taking into account that they have the means to control and mitigate their damages to a large extent.
- specific measures for the aquaculture sector to combat droughts or other types of water shortages.

The first two measures proposed by the granting authorities do not however seem to be compatible with the general objectives pursued by State aid policy (the suggestions would not tackle clear market failures), nor coherent with other environmental policies or the CFP. With regard to aid for the temporary or permanent cessation of fishing activities, this should not be considered as a potential compensation for socio-economic difficulties and therefore as a measure that would address a market failure through State aid. Rather, in the former EMFF Regulation and now the EMFAF, these schemes are envisaged as structural measures to reduce fishing efforts and capacity, in line with the conservation objectives of the CFP. In relation to the extension of the scope of the FIBER to allow for aid to large enterprises, as also noted by some stakeholders, this could lead to market distortions and other undesirable effects, like capacity increases. Aid to large enterprises is not allowed in respect of all types of aid under Block Exemption Regulations due to the higher risk of distorting competition and trade.

Finally, the introduction of specific measures for the aquaculture sector to combat droughts or other types of water shortages could indeed help in tackling a market failure (e.g. insurance to cover the damage), however, this type of aid could potentially already be granted through the Guidelines under aid to compensate damages caused by adverse climatic events (see also Option 4 in Section 5.2.4).

Therefore, this option can be discarded.

6. 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

The present section will focus on the quantitative analysis of environmental, economic and social impacts of each of the policy options, grouped in a certain set of criteria to facilitate the assessment. These criteria, detailed in Annex 4, are: i. the contribution to the CFP objectives; ii. consistency with the EMFAF; iii. effective and efficient State aid control and minimisation of effects on competition and trade; iv. simplification, transparency and legal certainty; v. administrative burden; and vi. impact on SMEs.

6.1. 6.1. Assessment of impacts: Option 1

This option addresses the problem described in Section 2.1.2 and will explore the impacts of raising the individual ceiling for undertakings active in the fisheries and aquaculture sector per beneficiary in a 3-year period (currently EUR 30 000) and updating the national cap for Member States, to adapt them to inflation and market developments.

6.1.1. 6.1.1. Contribution to CFP objectives

According to the available data, *de minimis* aid has not been used for any measures that may give rise to negative environmental, economic or social impacts – the findings also do not suggest that a higher ceiling might lead to obvious risks that might jeopardise the CFP objectives. This is particularly true given the list of ineligible measures of Article 1 of the *de minimis* Regulation, which generally prevents unexpected negative effects.

6.1.2. 6.1.2. Consistency with the EMFAF

For this criterion, a higher *de minimis* individual ceiling and national cap for the fisheries and aquaculture sector would not make any difference, as compared to the baseline. The EMFAF does list more ineligible operations⁵³, but these are just for clarification and already could not receive support under the EMFF.

6.1.3. 6.1.3. Effective and efficient State aid control and minimisation of effects on competition and trade

The evaluation accompanying this Impact Assessment concluded that raising the individual *de minimis* ceiling of EUR 30 000 does not seem suitable given the existing risk of distorting competition in some Member States, particularly in the primary production sector. Increasing the *de minimis* ceiling could negatively impact competition and increase the risk of distortive effects by reducing the level of control, by subjecting a potentially higher volume of public aid to the very limited *de minimis* reporting requirements. In general terms, the higher the allowed volume of aid, the higher the risk of distortion. The evaluation has come across a small number of potential irregularities in the fisheries and aquaculture sector. While their magnitude might not be enough so as to consider more control at either EU or the national level, this would argue for keeping the *de minimis* ceiling at the current level.

⁵³ letters (i) to (m) of Article 13.

Despite this, there are a number of arguments to consider for raising the current individual ceiling. In particular, the individual ceiling has remained at the current level for approximately 15 years, since Regulation (EC) No 875/2007⁵⁴, and an important number of stakeholders provided valid reasons for considering a moderate increase of the individual ceiling during the second public consultation on the draft legal instruments. Amongst them, several stakeholders stressed the need to enhance the ability of the sector to react to and quickly tackle the short-term negative impacts from sudden unexpected events⁵⁵.

Moreover, if the Commission did not use this opportunity to increase the individual ceiling, the current ceiling would remain in force until December 2029, becoming too detached from the market reality (e.g. evolution of cost structures, rising inflation).

Against this background, there are strong grounds for a moderate increase of the individual ceiling. As explained, past experience in the agricultural sector, where the individual ceiling was increased from EUR 15 000 to EUR 20 000 to account for market developments and inflation, has shown that a moderate increase of around 30% does not bring a high risk of distorting competition and trade. Therefore, an increase of that magnitude, i.e. from EUR 30 000 to EUR 40 000, would be suitable to address the concerns voiced during the second public consultation and, to a large extent, future-proof the fishery *de minimis* regulation.

With regard to the national cap per Member State, its function is to avoid any negative effect on competition and trade among Member States and to keep clear of any unnecessary burden. The caps currently in force were evaluated in the last Impact Assessment carried out in 2013, which concluded that “*a 2.5% cap gives Member States quite a substantial margin to grant de minimis aid which could increase the risk of cumulative effects. However, in Commission's experience, the risk of cumulative effects at that level of the national cap is manageable*”. It also expressed concern with regard to the fact that “*an increase, particularly of the national cap, could facilitate a choice of MS to use their national resources under the more flexible de minimis framework instead of under the far more restrictive framework [...] of the EMFF*”. The impact assessment predicted that the only Member States that would significantly exceed their national caps would be Cyprus and Hungary, by 15% each. However, this concern did not materialize in the end: on average, Member States used 4% of their total allocations. None surpassed its respective caps (this is illustrated in Table 10 in Annex 5). While this supports keeping the national caps as they are, some granting authorities have argued that this is due to the narrow margin of manoeuvre to support measures under their national caps.

Moreover, the caps currently in force are based on 2011 turnover data relating to three sub-sectors: fish-catching (primary production), aquaculture and processing and marketing. Taking into account that the applicability of the fishery *de minimis* regulation would be extended until December 2029, if the Commission did not carry out a technical update, the data would risk becoming too detached from the market reality.

In this regard, instead of relying on one-single year of data, a technical update of the national caps would be based on a three-year average of the annual turnover of the three

⁵⁴ Regulation (EC) No 875/2007 of 24 July 2007 (OJ L 193, 25.7.2007, p. 6, see Article 3(2) thereof.

⁵⁵ This was recognised by the 2013 Impact Assessment (SWD(2014) 203 final).

sub-sectors in each Member State, obtained by excluding the highest and lowest entries across a five-year period, i.e. 2014-2018⁵⁶. This methodology is particularly suitable because it avoids relying on a single year, which may be statistically anomalous, and flattens upward and downward fluctuations.

It must also be noted that a higher national cap does not translate necessarily into more *de minimis* aid to the sector. This is because that amount will ultimately depend on the number of undertakings active at a given point in time in the sector at national level and the individual ceiling fixed by the fishery *de minimis* regulation.

6.1.4. 6.1.4. *Simplification, transparency and legal certainty*

While increasing the individual ceiling and national caps for *de minimis* could enhance simplicity as compared to the baseline, in the sense that it would come with a higher margin of manoeuvre to design more effective aid schemes, the lower reporting requirements for *de minimis* aid would hamper the monitoring of aid and reduce transparency.

6.1.5. 6.1.5. *Administrative burden*

Admittedly, the administrative burden for granting authorities would be reduced by increasing the individual *de minimis* ceiling and national caps, due to the lower reporting requirements. This should however be put against the potential irregularities discovered in the evaluation: the low reporting requirements could in fact further the risks of competitive distortions or other negative impacts and deteriorate this situation and, in turn, eventually increase the administrative burden for the Commission and granting authorities (through the need of more control at either EU or the national level).

6.1.6. 6.1.6. *Feasibility, acceptability or other relevant issues*

Raising the *de minimis* individual ceiling was already explored in the 2013 Impact assessment, which also addressed the arguments put forward by the Committee of the Regions, which advocated for higher support to “*overcome barriers to investments in the onshore economy*” and to contribute to “*maximise the potential added value to the local fishing communities*”. Stakeholders (mainly undertakings operating in the sector) and Member States also continue to raise the need of increasing the individual ceiling and national caps, because the current ones are too low to allow for the design of any effective measures under *de minimis*.

Moreover, the national caps have been calculated based on economic data for the year 2011, which are now outdated as more up-to-date data is available. As regards the individual ceiling, the amount of EUR 30 000 was last fixed in 2007 and has never been adapted to inflation and evolution of cost structures that has occurred since then.

⁵⁶ The data used for this technical update would be provided by the Member States under the EU Data Collection Framework (‘Regulation (EU) 2017/1004’), which are also analysed by the Scientific, Technical and Economic Committee for Fisheries of the European Union (‘STECF’), as well as Eurostat data.

Taking into account the more recent data and the new scenario as pictured in Section 2, driven by the aftermath of Brexit, the COVID-19 crisis and Russia's military aggression against Ukraine, the calculation of the national caps and individual ceiling would benefit from a reassessment exercise. This would also be coherent with the ongoing initiative concerning the general State aid *de minimis* Regulation⁵⁷, which intends to revise the rules to update the exempted amounts in light of inflation. For the abovementioned concerns explained in this Section 6.1 (see in particular Section 6.1.3), this reassessment exercise should still consider the risk of any cumulative effects (higher risk of negative impacts on competition and on environmental sustainability) and the need to comply with the CFP objectives.

While past experience in the agricultural sector has shown that a moderate increase would not bring a high risk of distorting competition and trade, the need for closer scrutiny of small amounts of aid in the fishery and aquaculture sector calls for a specific arrangement. More specifically, the increase should be coupled with an effective transparency and monitoring tool, i.e. the introduction of a national mandatory register. This would guarantee responding to the needs conveyed by stakeholders and, at the same time, not risk creating a competition problem.

Finally, this option would listen to the arguments regularly raised by stakeholders and Member States in relation to the need of increasing the individual ceiling and national caps. Nonetheless, it is also important to note that some NGOs argued that the current ceiling of EUR 30 000 is too high for the smallest companies in the fisheries and aquaculture sector. This view mainly emanates from sustainability concerns, however, the level of aid that may be granted under *de minimis* aid (be it as it is currently, or with a higher individual ceiling to account for economic developments) is unlikely to have a significant effect on competition and trade or on the environment.

6.1.7. 6.1.7. Impact on SMEs

Increasing the individual ceiling and national caps for *de minimis* aid, which would entail the possibility of a higher level of funding of the sector and facilitate the design of more effective aid schemes (by allowing Member States to grant higher amounts of aid overall without needing to design measures under the FIBER or the Guidelines, or allowing for easier combinations), could benefit and encourage more investments on SMEs. SMEs would also benefit from faster support.

6.2. 6.2. Assessment of impacts: Option 2

This option will explore the impacts of raising the *de minimis* ceiling for undertakings active in the fish processing and marketing to EUR 200 000 per beneficiary in a 3-year period.

This point has been brought forward to the Commission in numerous occasions, more recently by several stakeholders during the second public consultation on the draft legal instruments. However, as noted, the different idiosyncrasy of both sectors makes it

⁵⁷ PLAN/2022/426 Review of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid.

necessary to examine in depth the characteristics and economic data of the fish processing sector in the EU. The following factors, according to the latest economic and scientific data (in particular, two Commission reports from 2019⁵⁸ and 2020⁵⁹ and Eurostat data), should be considered:

- According to the available data, in 2017 the overall number of enterprises processing fish and fish products in the EU were 3 462 firms. Their turnover amounted to EUR 32.4 billion and they employed 130 664 persons. In 2015, there were about 3 700 firms, with a total income of around EUR 31 billion and similar employment numbers. According to Eurostat data, the degree of specialisation of the EU fish processing and marketing enterprises is around 84%, higher than what observed in the overall EU food manufacturing sector (around 78%).
- The majority of enterprises in the fish processing and marketing sector (98%) are SMEs (less than 250 employees), 85% are small-sized (less than 50 employees) and more than half are micro-enterprises.
- From 2008 to 2017, data shows a concentration of production, with a decrease in the number of enterprises (-7%) and an increase of +20% in the turnover across the sector (see in particular the difference between 2015 and 2017, pictured in the first point above). The analysis carried out on changes over the last analysed two years (2017 vs. 2016) supports this positive trend of higher efficiency, testified by a slight increase in turnover (+2%) and a decrease in operational costs (-2%). The result has been a generalised and (more than) proportional increase of all the profit indicators. In particular, the value added produced by the sector in 2017 was 18% higher than the previous year and represented 20% of total income.

Once the main characteristics of the fish processing and marketing sector have been set out, the next step in the analysis is necessarily the comparison with others sector in the food industry⁶⁰, to which the EUR 200 000 *de minimis* ceiling applies. As depicted in Figure 4 in Annex 5 below, there are no major differences in terms of the size of businesses. According to the data for 2017 (average annual turnover of around EUR 8.5 million), undertakings active in the fish processing and marketing sector are on the median of the food industry sector as a whole: slightly smaller than those producing grain mill products and starches (EUR 8.9 million), and slightly larger than those processing meat (EUR 7.2 million). Another interesting point, in relation to the size of enterprises as depicted in Figure 5 in Annex 5, is that the proportion of micro enterprises (with up to 9 employees) in the fish processing and marketing sector in 2017 (60% according to Eurostat) is significantly lower than in the food industry as a whole (79%), as well as in

⁵⁸ European Commission, The EU fish processing industry: An economic analysis. Maritime Economic Papers No 04/2019, February 2019. Available online at: <https://op.europa.eu/en/publication-detail/-/publication/a503b2a6-3b0c-11e9-8d04-01aa75ed71a1>

⁵⁹ Joint Research Centre, Scientific, Technical and Economic Committee for Fisheries (European Commission), The EU fish processing sector - Economic report (STECF-19-15), January 2020. Available online at: <https://op.europa.eu/en/publication-detail/-/publication/782537d7-36a5-11ea-ba6e-01aa75ed71a1>

⁶⁰ The analysis of the present Impact Assessment mainly focuses on the data coming from NACE sectors C10 – Manufacture of food products (except C10.2).

all other sub-sectors, including processing of meat (67%) and of fruit and vegetables (77%).

Considering this data, the following subsections will explore the impacts for each of the criteria and whether the application of a lower *de minimis* ceiling to fish processing and marketing businesses is still justified.

6.2.1. 6.2.1. *Contribution to CFP objectives*

The evaluation already concluded that raising the individual ceiling does not seem suitable given the already existing high risk of distorting competition in some Member States, particularly in the primary production sector. Nonetheless, according to the available data, *de minimis* aid has not been used in the processing and marketing sector for any measures that may give rise to negative environmental, economic or social impacts – the findings also do not suggest that a higher ceiling might lead to obvious risks of aid to fish processing or marketing businesses that might jeopardise the CFP objectives. This is particularly true given the list of ineligible measures of Article 1 of the *de minimis* Regulation, which generally prevents unexpected negative effects.

However, this data does not consider the specific characteristics of the fish processing and marketing industry. The main difference with the agricultural processing and marketing sector is that, unlike agricultural products, the fish processing and marketing industry relies on fish stocks, which are finite resources. Further subsidisation through a higher *de minimis* ceiling could increase demand, lead to higher prices and to the increase of supply, which would in turn put more pressure on fish stocks. This could foster unsustainable fishing practices and run counter to the CFP objectives of ensuring the sustainable management of fish stocks.

6.2.2. 6.2.2. *Consistency with the EMFAF*

For this criterion, a higher *de minimis* ceiling for the fish processing and marketing sector would not make any difference. While the new EMFAF lists more ineligible operations (letters (i) to (m) of Article 13) that the new *de minimis* Regulation should take up, this would merely be a technical change, as these measures were already not eligible under the former EMFF.

6.2.3. 6.2.3. *Effective and efficient State aid control and minimisation of effects on competition and trade*

The application of the same *de minimis* ceiling for the fish and agricultural processing and marketing sector would level the playing field and yield some efficiencies, particularly taking into account the similarities of both sectors with regard to the number and size of their enterprises (see Figure 4 and Figure 5). However, no general conclusions can be drawn from this point, as the possible effects on competition from the prism of effectiveness and efficiency would have to be analysed within the fish processing and marketing sector, encompassing an assessment of fish processing firms and sites in different Member States. An economic analysis of this extent exceeds the scope of the present document. Nonetheless, some elements, which will be explored in this section, can already point out to the direction to take.

In the first place, according to the currently available data, it is important to note that the primary production and the fish processing and marketing sectors are closely intertwined, including a significant amount of on-board processing in some fleet segments. This is not the case for the agricultural sector, and necessarily needs to be taken into account when making the choice whether to keep the ceiling for the primary production and processing and marketing in the fishery and aquaculture sector at the same level.

Furthermore, increasing the *de minimis* ceiling could negatively impact competition and increase the risk of distortive effects by reducing the level of control, by subjecting a potentially higher volume of public aid to the very limited *de minimis* reporting requirements. Nonetheless, in general terms, this could also be true for the agricultural processing and marketing sector: the higher the allowed volume of aid, the higher the risk of distortion. In this regard, the evaluation, which results are presented in the accompanying SWD, has come across a small number of potential irregularities in the fisheries and aquaculture sector. While their magnitude might not be enough so as to consider more control at either EU or the national level, this would argue against increasing the *de minimis* ceiling or, at least, against increasing it without any safeguard.

Another important point is the level of investment in the sector. The abovementioned Commission reports from 2019⁶¹ and 2020⁶², explain that several countries report ongoing outsourcing of activities to other Member States (referring to the example of Germany Denmark - the Danish fish processing and marketing industry pays the highest gross salaries on average, EUR 65 000) where personnel costs are substantially lower (e.g. Poland, Bulgaria), or increasing investments in third countries where processing and marketing is carried out locally (e.g. in Spain). This increment in the production capacity of some Member States in order to supply other EU markets where labour cost is comparatively high “may have had negative impact on some national industries” that have not received investments, and may not receive enough net investment to modernize the industry and facilities in the future.

This suggests that there is an element of intra-EU competition between fish processors, which is confirmed by the latest available data for the sector (see Commission report from 2020⁶³ and Table 8 in Annex 5 below extracted from that report).

The fish processing and marketing sector accounted for approximately EUR 7 billion of Gross Value Added (GVA) in 2017 (this data only refers to the 19 countries involved in the data collection for the fish processing and marketing industry and contains certain gaps on depreciation and financial costs for some countries). The highest share of GVA was produced by Spain (17% of the EU total), followed by Poland with more than 10% of EU total GVA⁶⁴. This is better pictured in Table 9 in Annex 5 below, which shows the

⁶¹ *Ibid.* 58.

⁶² *Ibid.* 59.

⁶³ *Ibid.* 59

⁶⁴ Data for the UK was collected before Brexit took place and it is presented in the report, but it is not taken into account for the purposes of this Impact Assessment.

differences between MSs (Bulgaria accounts for the highest GVA margin with over 43%).

Intra-EU competition between fish processors could also be aggravated by the possibilities to grant larger amounts of public aid via *de minimis*, given the high levels of already existing public support through the EMFF (now EMFAF) and State aid (large amounts for fish processing are already granted through the FIBER). The indirect subsidisation of the local fishing sectors is also a risk to take into account, given their strong links with the processing and marketing sector (processing facilities can reportedly have a significant positive effect on fishing activities by attracting more landings).

6.2.4. 6.2.4. *Simplification, transparency and legal certainty*

The impacts of this criterion can be described as a “double-edged sword”. On the one hand, aligning the *de minimis* ceilings for fish processing and marketing with those applied to the agricultural processing and marketing sector could bring about transparency and enhance legal certainty (by removing any doubts on which ceiling is applicable), particularly taking into account that some market players are active in both sectors.

On the other hand, one of the main concerns against bringing up to par the *de minimis* ceilings, as already expressed in the 2013 Impact Assessment, is that this might discriminate between firms in the fisheries sector at large, with firms in the primary production sector possibly demanding equal treatment. This argument alone might however not be solid enough, given the specificities of the primary production sector and the dire need to avoid any pressure on fish stocks that would run counter to the CFP objectives and marine conservation: a better perspective is to reiterate the interweaving of both sub-sectors and the potential indirect effects in terms of demand for fish (and resulting pressure on supply) that the subsidies on fish-processing could have on fish-catching (primary production). In this regard, any action should consider the specific structure of the sector and be conditioned to the respect for marine conservation objectives.

6.2.5. 6.2.5. *Administrative burden*

Admittedly, the administrative burden for granting authorities would be reduced by increasing the *de minimis* ceiling, due to the lower reporting requirements. This should however be put against the concerns expressed in Section 6.2.3 above, which refers to potential irregularities discovered in the evaluation: the low reporting requirements could in fact further deteriorate this situation and, in turn, eventually increase the administrative burden for the Commission and granting authorities (through the need of more control at either EU or the national level).

6.2.6. 6.2.6. *Feasibility, acceptability or other relevant issues*

A number of stakeholders brought up this point on the *de minimis* ceiling for the processing and marketing sector during the evaluation, advisory committees and the public consultation on the draft legal instruments (see Annex 2 and particularly Section 3), including undertakings operating in the sector and some granting authorities, who expressed that the fisheries processing and marketing sector shares important similarities

with the processing of agricultural products sector, and should therefore be treated equally.

As explained, this was already explored in the 2013 Impact assessment, which also addressed the arguments put forward by the Committee of the Regions, which advocated for higher support to “overcome barriers to investments in the onshore economy” and to contribute to “maximise the potential added value to the local fishing communities”. The 2013 Impact Assessment dismissed these arguments and reiterated the high level of public support to the sector: public commitments under the EFF for the processing and marketing industry amounted to a rather significant share of the total available support⁶⁵ (16 %, corresponding to EUR 890 million⁶⁶). This is still true for the support granted under the EMFF: by the end of 2020, EUR 4.07 billion of EMFF funding had been committed (71.6% of the total EMFF envelope of EUR 5.69 billion available under shared management), out of which EUR 715.5 million were committed for 9 613 operations (of which 4873 are for compensation) for the marketing and processing of fish products, being amongst the most popular implemented measures⁶⁷.

Another risk is the indirect subsidisation of the local fishing sector, given its strong links with the processing and marketing sector (processing facilities can reportedly have a significant positive effect on fishing activities by attracting more landings). Therefore, further increasing this public support by just modifying the *de minimis* ceiling could have a negative impact on competition and trade, and on the achievement of the CFP objectives. Any modification of the *de minimis* ceiling should as such be conditioned to the respect of a number of strict requirements to account for the specific characteristics of the sector (going beyond the list of ineligible measures of Article 1 of the *de minimis* Regulation, which already generally prevents unexpected negative effects), as it is the case for *de minimis* aid to the processing and marketing of agricultural products sector.

The practicality of this option also needs to be assessed with regard to the benefits it could provide: this, since it would only directly affect the approximately 3 500 fish processing and marketing firms in the EU, would be very limited and differ marginally from the baseline.

In this scenario, Member States directly benefit from the simplification of the rules because in order to implement their policy options (i.e. State aid policy), they may in many more cases get State aid clearance through block exemptions (i.e. semi-automatic

⁶⁵ European Commission, The European Fisheries Fund and the EU fish processing industry - An economic analysis, Economic papers 02/2016, April 2016. Available online at: <https://op.europa.eu/en/publication-detail/-/publication/027fb11c-fd4d-11e5-b713-01aa75ed71a1/language-en>

⁶⁶ EFF support, just like EMFAF support, is based on the principle of cofinancing, meaning that EU aid is granted complementary to other public subsidies, at a rate varying from one type of project to another. From 1 January 2007 to 31 May 2014, EUR 3.438.000.000 of the EU budget (80 % of the total EFF resources) and EUR 2.120.000.000 of national resources was committed (see Table 5). Public commitments for Measure 2.3 (fish processing) amounted to 16 % of the total.

⁶⁷ European Commission, FAME Support unit, EMFF implementation report 2020, September 2021. Available online at: https://ec.europa.eu/oceans-and-fisheries/system/files/2021-09/emff-implementation-report-2020_en.pdf

clearance) rather than through an authorisation from the Commission, following a notification procedure in which all the features of the measure are scrutinised. Undertakings benefit from the simplification because the approval (and subsequent payment) of their support goes faster and is easier (i.e. in many occasions, the block exemption regulations accept presumptions, which must be proven in notified cases).

6.2.7. 6.2.7. *Impact on SMEs*

Same as for Option 1 above, increasing the individual ceiling (in this Option 2, up to EUR 200 000), would enable a higher level of funding of the processing and marketing of fisheries sector, which could benefit and encourage more investments on SMEs. SMEs (particularly those that operate in both sectors: processing and marketing of agricultural and of fisheries products) would benefit from a more straightforward and faster support, and this option would level the playing field to address the differentiated treatment concerns.

6.3. 6.3. **Assessment of impacts: Option 3**

While the scope of the Guidelines and *de minimis* aid would remain unchanged, Option 3 implies that the new FIBER would have a very similar structure to that of the current FIBER, with a list of prescriptive measures that can receive support. This does not mean that the current framework would be continued, however, as this prescriptive list would be “aligned and adapted” to the EMFAF priorities and areas of support – which, in practice, means that the essence of the measures would be mirrored and its specific conditions detailed in the new FIBER. Depending on each specific case, the conditions attached to each measure might even be simpler than those defined in the EMFAF, in order to respect the core idea of increased flexibility and to ensure a straightforward and consistent interpretation.

As it will be explored and demonstrated in the following subsections, this option ensures alignment with EMFAF, while guaranteeing compliance with the requirements of the Enabling Regulation. Moreover, the “prescriptive” details under each measure provide legal certainty for granting authorities and for the potential beneficiaries, and greater assurance for the Commission that the aid will not have a negative impact on marine conservation or threaten to distort competition (in the sense that State aid under FIBER is granted without following the more detailed notification process).

At the same time, the less detailed conditions compared with the baseline are likely to be simpler to manage and understand for both granting authorities and beneficiaries.

6.3.1. 6.3.1. *Contribution to CFP objectives*

As explained, under this option, the scope of State aid under the Guidelines would remain unchanged. At the same time, the type of measures that are currently block-exempted would be the same, which also implies the familiarity of granting authorities with them and the ease of awarding procedures. More importantly, this entails that the contribution to the CFP objectives would be at the same level as that of the current framework: in this regard, the evaluation confirmed the high consistency of the current framework with the CFP objectives, with the majority of measures carrying a low risk of having any negative environmental effects.

Nonetheless, the conditions of the FIBER, in order to accommodate to the higher flexibility of the EMFAF, should -in principle- be less detailed than those under the current FIBER. The same reasoning does however not apply to the prescriptive nature of the measures, which should be carefully studied for each one in order to comply with the Enabling Regulation. For those measures where a less detailed set of conditions can indeed apply, this can benefit granting authorities, who would be able to design block-exempted schemes more quickly (and thus respond to unforeseen events or other market challenges more effectively).

On the other hand, less strict conditions could be regarded as a threat to the alignment of measures with the CFP objectives. This risk does however appear to be negligible, given that the list of measures is a *numerus clausus*, and that the objectives and main conditions of the EMFAF (which would be taken over by FIBER) provide sufficient guarantees against the inappropriate use of block exemptions. This also takes into account that the EMFAF (and thus also the FIBER) sets out a list of ineligible operations so as to avoid detrimental impacts for the CFP (e.g. a general prohibition of investments enhancing fishing capacity), and subjects all investments and compensations for the fishing fleet (permanent cessation of fishing activities, extraordinary cessation of fishing activities, acquisition of a vessel, engine replacement) to the respect of the conservation objectives of the CFP.

6.3.2. 6.3.2. Consistency with EMFAF Regulation

The alignment of the structure of FIBER with EMFAF, *i.e.* the “clustering” of the measures under EMFAF objectives and updating of the eligibility rules and conditions, would ensure a consistent approach.

However, the need from a State aid perspective to define measures eligible for aid in greater detail in FIBER than in the EMFAF could have further implications. It can be the case that certain operations could be eligible for EMFAF funding in the operational program of a Member State, but would not fulfil the detailed conditions of FIBER: a similar measure would thus not be eligible for block exemption due to the more specific requirements of FIBER. Nonetheless, this does not mean that State aid for such measures would not be possible, only that it would have to be notified to and approved by the Commission. Point (86) and (87) of the current Guidelines already provide for the possibility to assess categories of aid covered by a block exemption regulation, including FIBER; and also provide for the possibility to notify to the Commission aid for “*other measures*” under Section 5.7 of the Guidelines. Point (9) of the Guidelines establishes the requirement to ensure consistency and coherence between State Aid rules and the CFP. The Guidelines would directly follow the EMFAF related conditions included by FIBER under its current Section 5.1.

It is necessary to point out that (both for this Option 3 and Option 4 in Section 6.4 below) there are operations that are eligible for EMFAF funding but would still need to be notified, as they are excluded from the scope of the FIBER. Operations that fall under State aid control may for example concern those related to diversification into economic activities other than fisheries (e.g. tourism, catering, hospitality, leisure and other non-fishery products or services), development of coastal regions under the sustainable blue economy, such as infrastructural investments (e.g. ports) and development projects (e.g.

renewable energy). Other examples may concern aid that can be authorised under other specific State aid instruments, such as the new Guidelines on State aid for climate, environmental protection and energy 2022.

6.3.3. 6.3.3. *Effective and efficient State aid control and minimisation of effects on competition and trade*

This option would ensure that all Member States interpret FIBER consistently. This would mean avoiding that certain Member States grant aid via block exempting measures that other Member States do not consider eligible. In this regard, a common understanding of legal instruments is paramount to grant that businesses across Europe are treated equally. The detailed conditions of the block exemption regulation support achieving this objective.

In relation to the baseline, the less detailed conditions attached to the measures brought about by the alignment to EMFAF would still ensure some degree of flexibility. Nonetheless, the information available does not suggest that this flexibility might end up increasing the risks of distorting competition.

6.3.4. 6.3.4. *Simplification, transparency and legal certainty*

With regard to aid measures under FIBER and their attached conditions, the high degree of coherence with the EMFAF would ensure a correspondingly high degree of transparency and legal certainty, as well as a level playing field for businesses across Member States when it comes to the possibility of granting State aid (even when the amounts granted by Member States would continue to differ),

Nonetheless, since a “complete” alignment between FIBER and the EMFAF is not entirely possible in the light of the Enabling Regulation, it could be argued that the framework resulting from this option would be more cumbersome (mainly because it means that stricter conditions would apply under FIBER than under the EMFAF). In any case, as already noted in Section 2.1.3, the more simple approach of fully mirroring the EMFAF provisions in FIBER would threaten legal certainty, bring about ambiguity and not comply with the Enabling Regulation.

Compared to the baseline, and provided granting authorities decide to use this flexibility to design simpler schemes, the less detailed conditions could also simplify procedures for beneficiaries.

6.3.5. 6.3.5. *Administrative burden*

The greater flexibility and less detailed conditions foreseen in the FIBER, as determined by the alignment to the nature of the EMFAF, could in certain instances decrease the burden for granting authorities compared to the baseline (this would simplify the reporting, registration, monitoring and/or assessment of block exempted State aid schemes).

At the same time, granting authorities would have to be familiar with and apply two slightly different sets of rules and conditions (across EMFAF for granting aid under a program and FIBER for granting aid without co-financing from the EU budget), which may result in a slight increase in the administrative burden for them.

This option means a careful balancing exercise for the Commission, which will need to consider the best options to align FIBER with EMFAF with regard to each specific measure and the conditions attached to it, in order to ensure legal certainty and to maximise simplicity and flexibility.

In any case, the largest part of EMFAF funding is not concerned because the production of and trade in fisheries and aquaculture products (falling within Article 42 TFEU, see Sections 2.1.3 and 3.1) is exempt from State aid control. Where, for example, aid supports fishers to diversify their activities into tourism, as described in Section 6.3.2, such EMFAF support can be cleared under the FIBER.

Only in case a project exceeds the notification thresholds set out in the FIBER, or if the beneficiary is a large undertaking, the project would have to be notified under the fisheries Guidelines, which would provide for the necessary rules to allow an authorisation. The notification is required in these cases, despite the administrative burden, due to a higher risk of distorting competition and trade, and the need to find the right balance between the flexibility for Member States and the protection of competition in the internal market.

6.3.6. 6.3.6. Feasibility, acceptability or other relevant issues

In principle, this option should be feasible. With regard to its legality, the exact specific rules and conditions would still need to be defined, based on a careful balancing exercise between flexibility and legal certainty.

In relation to the acceptance of this option by stakeholders, most did not express their views on its legal intricacies. Still, stakeholders identified as key problems to be tackled, during the first public consultation, seeking external coherence between State aid rules and CFP objectives (and with the EMFAF), identifying the environmental sustainability of fishing and aquaculture activities (identified as one of the most important objectives), useful spending of taxpayers' money, guaranteeing the competitiveness and economic viability of enterprises and the avoidance of harmful impacts on the environment. In the second public consultation, many public authorities expressed views on consistency between State aid rules and EMFAF and requested including certain additional EMFAF measures in the new rules, or to adjust certain aid conditions. An international NGO highlighted the importance of the environmental impact of aid and compliance with environmental laws.

6.3.7. 6.3.7. Impact on SMEs

In comparison to the baseline, the less detailed conditions are likely to be simpler to manage and understand for beneficiaries, which will for the most part be SMEs. This option would also come with the benefit of equal treatment across Member States, in the sense that it would ensure a level playing field through a framework that guarantees legal certainty and a straightforward interpretation of measures.

6.4. 6.4. Assessment of impacts: Option 4

Option 4, which intends to align, adapt and revise the framework in the sector, can be considered an alteration of option 3. The only difference is the addition of three new categories of aid to the FIBER (as described in Section 5.2.4), that is, aid to make good

the damage caused by adverse climatic events, aid for the cost of prevention, control and eradication of animal diseases in aquaculture (both of which are currently included in the Guidelines), and aid to compensate the damage caused by protected animals; plus the deletion of “Aid to start-up support for young fishermen” (Article 18 FIBER). This option takes into account the results of the evaluation that has run back-to-back to this Impact Assessment and the experience gained by the Commission with regard to these measures.

The following subsections will try to elucidate the specific impact that the inclusion of these three measures and the deletion of aid to start-up support for young fishermen would have.

6.4.1. 6.4.1. Contribution to CFP objectives

In the first place, aid to make good the damage caused by adverse climatic events safeguards the continued existence of undertakings affected by these events. The block-exemption of this type of aid would also mean that the notification of *ex ante* schemes would no longer be necessary, which may also act in favour of the need for immediate reactions in this type of situation. While this measure has not been used in practice to date, even though they were authorised *ex ante* by the Commission following a notification procedure under the Guidelines (i.e. schemes were set up, but no aid was granted in 2014-2018), the evaluation found negative environmental impacts were unlikely.

In relation to aid for the cost of prevention, control and eradication of animal diseases in aquaculture, the evaluation did not identify any potential unintended effects that could compromise the consecution of the CFP objectives, but only came to this conclusion for inland aquaculture. The conclusions of the evaluation are more cautious for marine aquaculture as, to date, no measure has been set up in this regard. The evaluation only concluded that, to respect the CFP objectives, the use of vaccines should be preferred to that of antibiotics: the Farm to Fork Strategy and the new strategic guidelines on EU aquaculture⁶⁸ found that antimicrobials could lead to antimicrobial resilience, and decided to promote their reduction (including via preventive measures and alternative treatments).

The evaluation results have also confirmed that aid to compensate damage caused by protected animals does in fact generate positive environmental effects. This type of aid supports the co-existence of primary producers and protected species of animals, and thus promotes biodiversity. In particular, the case practice confirmed that it contributes to sustainable and economically viable inland aquaculture, by ensuring the maintenance of fishponds that provide a habitat for large numbers of species (including the predators that might cause damages).

Finally, the deletion of “Aid to start-up support for young fishermen” from the FIBER could enhance the link between funding and the policy objective of achieving the

⁶⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Strategic guidelines for a more sustainable and competitive EU aquaculture for the period 2021 to 2030, COM/2021/236 final.

sustainable exploitation of fisheries. In this regard, the ex post evaluation of the EFF⁶⁹ found that fleet measures did not deliver good results because of the low level of targeting to conservation objectives (with the consequential risks of overcapacity and overfishing), and that the associated conditionalities had to be improved in order to better achieve the protection of the environment and natural resources. Along the same lines, the Impact Assessment for the EMFAF⁷⁰ concluded that, given the challenges to sustainably exploit marine biological resources, the need for fleet measures in certain segments should be weighed against the necessity to target this support to the conservation objectives of the CFP. These measures should, therefore, be carefully circumscribed to avoid negative impacts, and require a more effective fleet management by Member States. The deletion of “Aid to start-up support for young fishermen” from the FIBER, in favour of a more careful analysis that would still be possible under the Guidelines, would be coherent with this conclusion.

6.4.2. 6.4.2. *Consistency with EMFAF Regulation*

The same conclusions reached in option 3 with regard to the consistency with the EMFAF (see 6.3.2 above) apply to Option 4. The inclusion of the three new measures is consistent with the text of the EMFAF.

With regard to “Aid to start-up support for young fishermen”, the deletion of this measure would ensure a better alignment with the EMFAF, as introduced by the findings presented above in 6.4.1. To further these arguments, in the EMFAF, the added value of fleet measures is ensured through the political commitments made by the Member States in their programmes (which are then approved by the Commission). Concretely, the actions supported by the EMFAF are part of an overall strategy based on needs (that go through a SWOT analysis) and whose performance is continuously monitored through indicators, with the possibility to take corrective actions. However, this careful analysis is not carried out for FIBER measures (because they are block exempted, i.e. the Commission does not check and approve them), which translates into the reasons that justify the possibility of support for this measure under the EMFAF not being equally valid for the FIBER. Therefore, the deletion of “Aid to start-up support for young fishermen” from FIBER, and thus the need for Member States to have to notify this measure under the Guidelines, is the course of action that would guarantee consistency with the EMFAF.

6.4.3. 6.4.3. *Effective and efficient State aid control and minimisation of effects on competition and trade*

The deletion of aid to start-up support for young fishermen from the FIBER would grant the Commission the possibility to exercise an *ex ante* control through the notification procedure, which seems proportionate and a justifiable administrative burden in the light

⁶⁹ Ex-post evaluation of the European Fisheries Fund (2007-2013), Final report, November 2016. Full report: <https://publications.europa.eu/en/publication-detail/-/publication/f0ab224df34c-11e6-8a35-01aa75ed71a1>

⁷⁰ SWD(2018) 295 final of 12.6.2018: Impact Assessment on the European Maritime and Fisheries Fund and repealing Regulation (EU) No 508/2014 of the European Parliament and of the Council

of the reasons stated above in Section 6.4.2. With regard to effective State aid control, aside from the contribution to the CFP objectives described in section 6.4.1 above, the deletion of this measure could help minimise the distortions of competition and effects on trade. In this regard, under the EMFAF Regulation, the new financial cap for fleet measures covers start-up support, which was not included in the previous EMFF. The extension of the scope to include start-up support is meant to guarantee that these measures do not create an artificial offer of subsidies, which would generate its own demand and consequently distort the market. This financial cap and *ex ante* control does not apply to FIBER, making an assessment under the Guidelines for the fishery and aquaculture sector a more preferable approach.

With regard to the inclusion of the three new measures in the FIBER, in contrast to the abovementioned conclusion of enhanced simplicity and legal certainty in Section 6.4.2 above, the fact that these measures would be exempted from the notification procedure would also entail a lower level of control. The intrinsic nature of these measures (prevention of or compensation for damages) means that, in principle, negative effects on competition or trade are unlikely. Nonetheless, this section will assess the likelihood of such effects for each of the proposed measures:

- Aid to make good the damage caused by adverse climatic events (currently under Section 5.3 of the Guidelines)

The goal of schemes designed under this measure is to restore the market situation before the adverse climatic event took place, therefore, it should not entail negative effects on competition and trade by its very nature. Article 44 FIBER already block-exempts similar measures for damage caused by natural disasters, while Section 4 of the Guidelines refers to damage caused by exceptional occurrences.

The only risk that the evaluation considered was that posed by the *ex ante* approval of schemes, which could somehow reduce investment risks in certain areas, thereby putting areas with similar natural risks at a disadvantage and posing a potential threat to competition and trade. However, the evaluation concluded that, taking notice of the case data of the Commission, the negative effects on competition and trade are unlikely, as no aid has ever been granted to cover natural disasters, adverse climatic events or exceptional occurrences only in certain regions (in cases where the occurrence has taken place in several regions).

The views expressed by granting authorities, for which the main reason to set up this type of *ex ante* schemes is that these catastrophic events need immediate reactions, which would not be possible if they were not already in place and a Member States had to go through a notification process first, provide for a further reason in favour of considering block-exempting such measures.

- Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (currently under Section 5.4 of the Guidelines)

As pointed out in Section 5.2.4 above, several aid schemes addressing animal diseases have already been block-exempted. In addition to this comparable experience of the Commission, the conditions spelled out in the Guidelines for this type of measures,

which could potentially be replicated in the new FIBER, guaranteeing that there is no threat to competition and trade (namely, that no aid should be granted if it is established that the beneficiary caused the disease deliberately or by negligence, that these schemes need to be a part of programmes at Union, national, or regional level, and that they can only be granted in respect of a concrete list of diseases⁷¹.)

- Aid to compensate damage caused by protected animals (currently assessed under Section 5.7 of the Guidelines for “other measures”)

The results of the evaluation have shown that the damage caused by protected animals is a widespread problem in most Member States for both the fisheries and aquaculture sector. Section 5.7 of the Guidelines has been used for the aquaculture sector by several Member States (particularly in Germany, Croatia, Lithuania and Sweden for the damages caused by birds, otters and seals), and, to complete the picture, *de minimis* aid has been used to support both fisheries and aquaculture undertakings (for damages caused by dolphins in Cyprus, seals in Sweden, Estonia and Finland, migratory birds in Germany and Latvia, and other animals in Poland).

The case practice of the Commission confirms that most of the undertakings benefiting from these schemes are of a size and profile that is unlikely to be able to distort competition. Moreover, the schemes cover damages for beneficiaries that are not able to benefit from EMFF-funded programmes to support the aquaculture sector, nor from private insurance schemes (given the high likelihood of this risk). The schemes also pursue the CFP objective of guaranteeing operations in an environmentally friendly manner, and prevent that businesses resort to illegal measures to combat predators.

Finally, a general conclusion that can be drawn from the three measures is that their inclusion in the FIBER could level the playing field between Member States. By removing the need to notify schemes (and relieving granting authorities from this economic and administrative cost) and the need to respect the specific *de minimis* ceiling, these measures could be more easily used by granting authorities and be more accessible to undertakings in different Member States.

6.4.4. 6.4.4. *Simplification, transparency and legal certainty*

This option will have similar effects as option 3 in relation to simplification, transparency and legal certainty, however, the inclusion of three new measures in the FIBER would enhance these aspects. The fact that these measures would be exempted from the general prohibition of State aid, without the need to follow the cumbersome notification procedure, could provide greater legal certainty and clarity. This is particularly the case for aid to compensate the damage caused by protected species, currently not even included explicitly in the Guidelines, and would benefit from its inclusion in FIBER and the definition of clear conditions.

⁷¹ included in the list of aquatic diseases which are included in the Aquatic Animal Health Code of the World Organization for Animal Health, Annex III to Regulation (EU) No 2021/690 of the European Parliament and of the Council, or listed in Article 5(1) of Regulation (EU) 2016/429.

While the deletion of the measure “Aid to start-up support for young fishermen” from the FIBER would not encourage the simplification and transparency of the rules, in the sense that it would require an ex ante control for each notified measure, considering the need for this measure to be coherent with the CFP and the EMFAF (see Sections 6.4.1 and 6.4.2) it would certainly contribute to the legal certainty of the whole framework.

6.4.5. 6.4.5. *Administrative burden*

The administrative burden both for granting authorities and the Commission would be considerably reduced if these three measures were block-exempted, by relieving the said services from the notification procedure. The deletion of “Aid to start-up support for young fishermen” would entail a higher administrative burden, but the balance would still be on the positive side, given the inclusion of the abovementioned three measures in the FIBER.

6.4.6. 6.4.6. *Feasibility, acceptability or other relevant issues*

The majority of stakeholders who took part in the public consultation (63% of respondents, and up to 80% amongst granting authorities) expressed their preference for expanding the scope of FIBER to include new measures. This was confirmed in interviews, where most stakeholders supported the inclusion in FIBER of the abovementioned three specific measures. Particularly, those granting authorities who already use *de minimis* aid (or notified State aid: see example in Section 5.2.5 for insurance schemes) for these purposes, emphasised the importance of including these measures in the FIBER to the viability of aquaculture businesses.

While the three measures under consideration for inclusion in the FIBER seem to contribute to the CPF objectives, as pointed above in Section 6.4.1, the measure “Aid for the cost of prevention, control and eradication of animal diseases in aquaculture” would need further scientific analysis⁷². Nonetheless, the inclusion of this measure would not give rise to distortions of competition and trade.

With regard to the deletion of “Aid to start-up support for young fishermen”, during the second public consultation and the Advisory Committee and multilateral meetings on the draft new rules, a number of Member States and other regional authorities advocated for keeping the measure in FIBER, instead of leaving it for notification under the Guidelines. In this regard, some of the arguments presented in the latest CFP reform⁷³ can be echoed here, where, in light of the conclusions presented therein, most of the direct fleet subsidies were discontinued. The analysis of the Commission found that these measures actually do not eliminate overcapacity, which coincided with the critic views raised by stakeholders (mainly NGOs) and some Member States.

⁷² The potential use of antibiotics could have effects on the marine population (such as antimicrobial resilience), and further scientific analysis might be needed in this regard.

⁷³ And recapped in SEC(2011) 1416 final of 2.12.2011, Impact Assessment on the European Maritime and Fisheries Fund.

6.4.7. 6.4.7. *Impact on SMEs*

Aside from the positive impacts for SMEs already detailed for Option 3 (Section 6.3.7), which include less complexity for beneficiaries, the inclusion of three new measures in the FIBER would benefit legal certainty and potentially reduce the need for expensive expert advice. On the other hand, the deletion of the measure ‘aid for start-up support for young fishermen’ from the FIBER would mean that Member States should design schemes in this regard under the Guidelines and go through the notification procedure, which could in turn entail a higher burden for SMEs and a more time-consuming process.

6.5. 6.5. **Assessment of impacts: Option 5**

This option will explore the possible impacts of bringing the publication threshold for individual aid awards down to EUR 10 000.

6.5.1. 6.5.1. *Contribution to the CFP objectives and consistency with the EMFAF*

Lowering the publication threshold to EUR 10 000 for the fisheries and aquaculture sector seems like an adequate choice, in particular, when comparing this publication threshold with the transparency requirement for the EMFAF. Under Article 49(3) of the Common Provisions Regulation⁷⁴, applicable to the EMFAF, managing authorities must publish the specified information relating to all EMFAF support recipients (legal and natural persons), without establishing any minimum thresholds.

6.5.2. 6.5.2. *Effective and efficient State aid control and minimisation of effects on competition and trade*

Lowering the publication threshold for individual aid awards to EUR 10 000 would ensure coherence with other State aid instruments, which have followed the same path. This refers to the new RAG, the new CEEAG, the new Risk Finance Guidelines, and the new IPCEI Communication, which set the publication threshold for individual aid awards at EUR 100 000; this threshold is also proposed for the GBER in the on-going targeted revision to enhance the green and digital transition.

The threshold of EUR 10 000 is a proportional number taking into account the amount chosen for the other sectors. In particular, this entails a reduction to a third, while the approach taken for the abovementioned other instruments and sectors (CEEAG, RAG, GBER, etc.) has been a reduction to a fifth: from EUR 500 000 to 100 000. A reduction of a fifth in the fisheries sector would leave us with a threshold of EUR 6 000, which

⁷⁴ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the 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, PE/47/2021/INIT, OJ L 231, 30.6.2021, p. 159–706.

might result in proportionality issues due to the relationship between administrative burden, data protection and the publication of information on State aid.

The issue of data protection was analysed by the Court of Justice⁷⁵, which concluded that any method of publishing information on the beneficiaries concerned should be consistent with the objective of such publication while at the same time causing as less interference as possible with those beneficiaries' right to respect for their private life in general and to protection of their personal data in particular (limiting the publication of data on the basis of the amount of aid received was among the suggested methods).

In this regard, a threshold of EUR 6 000 might be too low, while a threshold of EUR 10 000 would cover a big portion of the data on individual awards and still ensure proportionality. The choice of EUR 10 000 also follows the experience of the Temporary Framework for the COVID crisis, which used the same threshold for the sector.

6.5.3. 6.5.3. *Simplification, transparency and legal certainty*

The lower publication threshold would also increase transparency by allowing for a larger number of aid grants to be reported. The (proportional) alignment to the publication thresholds of other State aid instruments would further ensure legal certainty for market players.

6.5.4. 6.5.4. *Administrative burden*

Under this option, the administrative burden for granting authorities as compared to the baseline would increase slightly, due to the need to report a higher number of individual aid awards. However, the burden increase would be rather limited because, assuming that the publication is fed directly from national IT systems, the only cost is a one-off cost in re-programming the respective IT applications. Once this has been done, there should not be any further additional burden.

6.5.5. 6.5.5. *Feasibility, acceptability or other relevant issues*

While this option was reported as more burdensome by Member States, it is necessary to do a balancing test and take into account the need to ensure coherence with the rest of the State aid instruments and with the EMFAF. Moreover, the Commission is committed to guaranteeing the effective application of the SAM transparency objectives.

⁷⁵ In cases such as *Schecke* (Joined Cases C 92/09 and C 93/09), which concerned the publication of information on beneficiaries of agricultural aid. The Court confirmed that legal persons can claim the protection of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union in relation to the identification only in so far as the official title of the legal person identifies one or more natural persons, acknowledging that: “Because the information becomes available to third parties, publication on a website of data naming those beneficiaries and indicating the precise amounts received by them thus constitutes an interference with their private life within the meaning of Article 7 of the Charter.” This is for instance the case of farmers that are self-employed (private) entrepreneurs, which name usually shows the name of the individual. The same usually occurs in the fisheries and aquaculture sector, which has a similar composition (SMEs dominate the sector).

6.5.6. 6.5.6. Impact on SMEs

Under this option, more information on individual aid awards would be made available to the public, and SMEs would likely benefit from the more transparent market information (e.g., they would have the possibility of checking the aid awards granted to other SMEs or large undertakings, and under which particular aid schemes these took place).

7. 7. HOW DO THE OPTIONS COMPARE?

This chapter provides a summary of the Commission's assessment of the various options available, focusing on the effectiveness and impacts of each of them. The effectiveness of the options can be determined by assessing their potential contribution towards the objectives pursued by the intervention.

Following the categories established in Section 6 above and the detailed analysis carried out for each of them, the table below depicts how each of the options compare.

Table 1 - Comparison of policy options

	Problem 1: <i>de minimis</i>		Problems 3 and 4: Alignment to EMFAF and unnecessary administrative costs		Problem 2: Publication thresholds
	Option 1: Adapt the individual ceiling and national cap to inflation and new economic data	Option 2: Individual ceiling as in the processing and marketing for agricultural products	Option 3: Align but adapt	Option 4: Align, adapt & revise	Option 5: Lower the publication threshold
1. Contribution to CFP objectives	0	--	+	+	+
2. Consistency with EMFAF Regulation	0	0	+	+	+
3. Effective and efficient State aid control and minimise effect on competition and trade	-	-	0	+	+

	Problem 1: <i>de minimis</i>		Problems 3 and 4: Alignment to EMFAF and unnecessary administrative costs		Problem 2: Publication thresholds
	Option 1: Adapt the individual ceiling and national cap to inflation and new economic data	Option 2: Individual ceiling as in the processing and marketing for agricultural products	Option 3: Align but adapt	Option 4: Align, adapt & revise	Option 5: Lower the publication threshold
4. Simplification, transparency and legal certainty	0	0	+	+	+
5. Administrative burden	+	+	0	+	-
6. Impact on SMEs	+	+	+	+	+
++ / -- Major positive / negative impact	+ / - Positive / negative impact		0 No or negligible impact		

Scale ranging from (--) for very negative impacts to (++) for major positive impacts. Options which are likely to have no or negligible impact have not been assigned a score ("0")

Options 3 and 4 could improve matters in comparison to the current situation, and result in a more efficient and effective State aid framework.

Option 3 comes with a significant level of alignment with the EMFAF, while ensuring compliance with the requirements of the Enabling Regulation. The presence of some “prescriptive” details under each measure in FIBER would also provide legal certainty for granting authorities and for the potential beneficiaries, and greater assurance for the Commission that the aid will not have a negative impact on marine conservation or threaten to distort competition. At the same time, the less detailed conditions compared to the baseline are likely to be simpler to manage and understand for both granting authorities and beneficiaries, which may decrease the administrative burden.

With regard to Option 4, the same considerations as for Option 3 apply, to which we need to add the inclusion of three new categories of aid to the FIBER and the deletion of the measure “Aid to start-up support for young fishermen” (Article 18 of the FIBER). The inclusion of the three new measures in the FIBER could make a positive contribution towards the attainment of the CFP objectives, while the deletion of the measure “Aid to

start-up support for young fishermen” is also likely to have a positive impact, given the need for conditionalities to better achieve the protection of the environment and natural resources. Moreover, incorporating these three new measures in the FIBER could enhance transparency and legal certainty, and reduce the administrative burden for both Member States authorities and the Commission. It would also ease the burdens and entail fewer expenses and faster aid for SMEs. On the other hand, the deletion of the measure “Aid to start-up support for young fishermen” would increase this administrative burden for granting authorities and for the Commission, but it is necessary to align the State aid framework to the EMFAF and to respect the CFP objectives, given the background described above in 6.4.

With regard to the *de minimis* individual ceiling a national cap, Option 1 seems like the best way to tackle the problems described. Taking into account that the *de minimis* national cap per Member State currently in force were last assessed in the Impact Assessment carried out in 2013 (with 2011 data), and that the individual ceiling was fixed back in 2007, it is clear that these are based on outdated data, particularly if the fishery *de minimis* regulation is extended until December 2029.

A recalculation of the national cap and adjustment of the individual ceiling to inflation and the evolution of cost structures is the sensible path to take, as this exercise will consider the risk of any cumulative effects and the need to comply with the CFP objectives. In essence, the higher the possible maximum amount of *de minimis* aid, the higher the risk of negative impacts on competition, as well as on environmental sustainability and, ultimately, on the goals of the CFP. However, an adjustment of the *de minimis* individual ceiling and national cap would not create a significant risk for competition and trade.

Firstly, because the increase of the individual ceiling to EUR 40 000 would be moderate, i.e. EUR 10 000 (+33%). Experience in the agricultural sector has shown that an increase of this magnitude after a longer period of keeping the ceiling stable, is not problematic. In the second place, the fishery *de minimis* regulation already sets out cumulation rules governing to what extent *de minimis* can be cumulated with other forms of support. Moreover, the co-existence of a *de minimis* regime alongside a European Fund is not a sector-specific feature and does not raise as such significant issues.

The compounded effects of higher *de minimis* thresholds do not lead to significant risks for the CFP. The *de minimis* regulation will continue to exclude from its scope certain operations that are problematic under the CFP. Moreover, a moderate increase of the individual ceiling, even alongside higher national caps, is neutral from this point of view, i.e. any additional amount of *de minimis* aid would continue to fall outside the fishery *de minimis* regulation, if spent for those operations. In addition to this, the introduction of a higher individual ceiling would be coupled with the introduction of a national mandatory register at national level. This would also enhance transparency by allowing the Commission to exercise a closer scrutiny and ultimately avoid and deter irregularities.

Along the same lines, Option 5 can tackle the problem regarding the lack of transparency. The lower publication thresholds for individual aid awards can help increase transparency by making more information publicly available, and guarantee a level playing field for different market operators (particularly SMEs in this case).

Moreover, the implementation of this option would ensure consistency with the transparency requirements of other State aid instruments and of the EMFAF.

8. 8. PREFERRED OPTION

In light of the above, the following options can be identified as the preferred option:

Option 4, which entails aligning the entire State aid framework to the EMFAF, while respecting the requirements of the Enabling Regulation and the general regime that State aid legislation has to follow, and taking stock of the results of the evaluation, would be **the most favourable option overall**. In particular, this option would provide for prescriptive conditions and criteria for measures that can be block exempted, which would be simplified to align to the logic of the EMFAF priorities and areas of support. It is preferable to Option 3 in that the results of the evaluation would be taken into account by further expanding the scope of FIBER to include three new categories of aid (aid to make good the damage caused by adverse climatic events; aid to compensate damage caused by protected animals; and aid for the cost of prevention, control and eradication of animal diseases in aquaculture), and deleting the category “Aid to start-up support for young fishermen” to guarantee the fulfilment of the CFP objectives.

Option 4 would make the best contribution to the CFP objectives and is also the most effective course of action, as it will allow for simplification of the legal framework and enhanced transparency and legal certainty, which will particularly benefit SMEs by enabling cost savings.

Option 1 could be implemented alongside Option 4. Considering any potential risks in terms of negative effects on competition and trade and the need to guarantee the consecution of the CFP objectives, the implementation of this option should be limited to review the national caps in the light of the new economic data and adjust the individual ceiling to inflation and the evolution of cost structures. In this regard, raising the *de minimis* individual ceiling and national cap moderately, would not seem to pose risks to the CFP objectives, as it would have limited substantive impact by only accounting for the reduced purchase power.

Option 5 could also be implemented alongside Option 4 and Option 1, which seems like the preferable path to take, given the need to be coherent with the rest of State aid instruments for other sectors, and the transparency requirements stemming from both the EMFAF and the SAM.

Therefore, the preferred option is Option 4, combined with options 1 and 5.

The following table offers a combined assessment of the preferred set of measures, following the structure of Table 1 in the previous section:

Table 2 - Combined impacts of the preferred policy options

	Option 1 + Option 4 + Option 5
1. Contribution to CFP objectives	++

	Option 1 + Option 4 + Option 5
2. Consistency with EMFAF Regulation	++
3. Effective and efficient State aid control and minimise effect on competition and trade	+
4. Simplification, transparency and legal certainty	++
5. Administrative burden	+
6. Impact on SMEs	+++

The scale used in the present table is the same as the one described in Table 1. The impacts of the preferred (combined) options have been added. The scale of the present table goes up to (+++) for major positive impacts.

8.1. 8.1. REFIT (simplification and improved efficiency)

The revision of the Guidelines on State aid for the fishery and aquaculture sector, Block Exemption Regulation (FIBER) and Regulation on *de minimis* is part of the Commission's Work Programme for 2021⁷⁶.

The implementation of the preferred Option 4, which entails the inclusion of three new measures under the FIBER (and therefore avoids that a number of schemes are assessed on a case-by-case basis via the notification process, cumbersome both for Member States and the Commission), would simplify and reduce unnecessary regulatory costs, while achieving the underlying policy objectives. The results of the evaluation have shown that Member States favour the use of FIBER over the Guidelines, which means a lower administrative burden and facilitates a faster and efficient intervention. The update of the national *de minimis* aid individual ceiling and national cap under Option 1 (which can be combined with Option 4) on the basis of more recent sectoral data would also afford Member States a higher margin of manoeuvre.

Moreover, the alignment to the EMFAF would also contribute to the simplification of the framework, as the evaluation confirmed that the mirroring of the eligibility rules of the EMFF (under the previous framework, now EMFAF) facilitated the implementation of measures under FIBER.

The exact quantification of the simplification and burden reduction potential in monetary value is not possible in this case. As identified in the evaluation, the main source of information for the estimation of the administrative burden of State aid procedures is the data provided by granting authorities in the public consultation and targeted survey. Many granting authorities reported that they had difficulties providing an estimate of the administrative cost, given the internal structure for State aid competences in each Member State, which normally includes inter-departmental collaborations, and the

⁷⁶ Annex II to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Commission Work Programme 2021: A Union of vitality in a world of fragility, COM(2020) 690 final, p. 9.

difficulty to differentiate between tasks related to EU procedures and tasks deriving from national processes.

Nonetheless, the estimates of current costs presented in the evaluation can be regarded as confirmation of the reduction of the administrative burden that a wider use of FIBER and *de minimis* would bring. These estimates of current costs were obtained using average time and cost data provided by granting authorities (the time was costed using labour costs from Eurostat for the year 2016 as the average for the period) and are presented in Table 11 in Annex 5.

The estimates of current costs as presented in Table 11 of Annex 5, can be combined with the expected reduction in the number of notifications (See Annex 3 - Section 2 “*Summary of costs and benefits*”), which, based on the data for the period 2014-2019 on the three measures that would come under the scope of the FIBER, would result in a reduction of around ~10–14 notifications. Given that the cost per notification is of around EUR 22 289 and 10.59 days of work, against EUR 12 498 and 7.51 day per block exempted measure, the administrative costs would be reduced by around EUR 97 910 – 137 074 and to 30.8 – 43.12 days of work.

This would also have an indirect impact on State aid beneficiaries, by fast tracking their access to aid and requiring less expert advice. Even though there are no estimates for the burden incurred by beneficiaries, interviews carried out during the evaluation process with producer organisations highlighted that *de minimis* aid is much simpler and less burdensome to access compared to notified or block exempted aid.

8.2. 8.2. Application of the ‘one in, one out’ approach

The present initiative is out of scope of the ‘one in, one out’ approach, as administrative obligations related to applications for subsidies are not subject to that approach.

9. 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The new FIBER and *de minimis* Regulation would have a validity until 2029. Therefore, an evaluation of the FIBER (and also the Guidelines) would be carried out before the end of 2028.

The State aid framework for the fisheries and aquaculture sector, as part of the bigger State aid architecture, follows the rules of the Treaty, that is, article 108 TFEU. In this regard, Chapter IX of Regulation No 2015/1589⁷⁷ sets the monitoring obligations for Member States, and Article 26 establishes that Member States shall submit to the Commission annual reports on all existing aid schemes with regard to which no specific reporting obligations have been imposed.

The State aid instruments for the fishery and aquaculture sector do contain specific provisions in this regard. Article 11 of the FIBER obliges Member States to transmit to the Commission summary information about each aid exempted measure and an annual

⁷⁷ 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. 9–29.

report, and Article 12 states the obligation to maintain, for 10 years, detailed records with the information and supporting documentation necessary to establish that all conditions are fulfilled. The same provision is present in the Guidelines, in Section 6.4. Finally, the *de minimis* Regulation sets out in its Article 6 a similar requirement - on written request from the Commission, Member States shall provide all the information deemed necessary for assessing whether the conditions of the *de minimis* Regulation have been complied with.

In particular, DG COMP implements a State aid control system based on three main elements: transparency, monitoring, and ex post evaluation.

9.1. 9.1. Transparency

With regard to the transparency requirements, this refers to the fact that Member States have to ensure the publication on a comprehensive State aid website of all individual aid awards exceeding the specific threshold (in this case, exceeding EUR 10 000 after the lowering of the publication thresholds under Option 5). The publication of the information under the transparency requirements ensures public control and greater accountability, to which the planned lowering of publication thresholds should have a positive impact, as many more individual aid awards will be made public and accessible to competitors.

9.2. 9.2. Monitoring

As introduced above, *ex-post* monitoring is required under Article 108(1) TFEU. DG COMP initiated this practice in 2006. It has aimed to ensure the proper enforcement of State aid rules in approved and block-exempted aid schemes. For this reason, it selects yearly a sample of existing aid schemes (covering notified and block-exempted schemes) based on Member State coverage and important aid objectives and types of aid. The scope of classical monitoring consists of a complete assessment of a scheme's legal basis and the examination of individual aid awards granted to a sample of beneficiaries. This enables to detect and correct irregularities in the implementation of schemes by Member States.

It has to be noted in this respect that the responsibility for State aid in fisheries and aquaculture was only moved from DG MARE to DG COMP at the beginning of 2020. The evaluation, which kicked-off in 2018, could therefore not yet resort to data from this structural monitoring exercise. Since State aid in the fishery and aquaculture sector will now also be subject to a detailed *ex-post* monitoring, more accurate information at beneficiary level can thus be expected from that exercise.

With regard to *de minimis* aid, the introduction of a national mandatory register at national level (this tool has already been introduced into the agricultural *de minimis* Regulation in 2019) will enhance transparency, allow the Commission to exercise a closer scrutiny and ultimately avoid and deter irregularities. In other words, those Member States that elect to grant EUR 40 000 per undertaking will be asked to enact a closer monitoring of *de minimis* aid in the sector through a dedicated *de minimis* register.

9.3. 9.3. Ex post evaluation of certain State aid measures

To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to an *ex post* evaluation, which will be carried out for schemes in the case of which the potential distortions of competition are particularly high (e.g. large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen). *Ex post* evaluations are carried out by an expert independent from the aid granting authority based on 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.

The Commission has so far not requested Member States to carry out *ex post* evaluations in relation to State aid in the fisheries and aquaculture sector. The Commission endeavours to make more use of this tool in the future.

9.4. 9.4. The State aid Scoreboard

Finally, DG COMP extracts information from the analysis of State aid statistics on the basis of the annual reports submitted by Member States. With this information, DG COMP publishes annually the State aid Scoreboard. This encompasses all active aid measures for which the Commission has adopted a formal decision, or, in the case of block exempted measures, received an information sheet. However, it does not include funding granted under the *de minimis* rules (as it does not amount to State aid). The Scoreboard provides information on the trends and patterns of State aid expenditure per sector, per Member State and per type of aid measure, which contributes to the monitoring and evaluation exercises of the Commission.

9.5. 9.5. Operational objectives against which the success of the initiative can be measured in the future

As explained, the new FIBER and *de minimis* Regulation will be valid until 2029, which means that an evaluation of the FIBER (and also the Guidelines) should be carried out before the end of 2028.

This future evaluation should assess the success of the initiative in relation to the operational objectives as defined in Section 4.3 above.

As noted, an indication of success with regard to the objective of minimising the risk of competition distortions could be the number of complaints received under the new State aid rules, as well as the nature, number and geographical distribution of the new measures. To this effect, aid schemes are less distortive than *ad hoc* measures since potentially all undertakings within the same economic sector are eligible for aid. Similarly, aid schemes available within all - or most - of the Member States are less distortive by ensuring a common level playing field.

With regard to assessing whether administrative simplification has been ensured, the Commission should monitor the future proportion between block exempted and notified aid. In relation to measures already covered by the current FIBER, the Commission

should assess whether the number of *ad hoc* notifications is stable or increases. If the number of *ad hoc* notifications were to increase substantially, that could justify the modification of the notification thresholds established in the FIBER. If many State aid measures fall outside the set thresholds, one could conclude that the general cost of the projects, and thus the size of non-problematic projects, has not been correctly estimated, without this meaning that the distortion of competition of those measures is sufficiently high to justify an individual assessment. The Commission should only individually assess those measures that, in comparison to similar projects, provide for a high expenditure and therefore are likely to distort competition and trade beyond the minimum which is inherent to the notion of State aid (see Article 107(1) TFEU).

Finally, as explained in Sections 9.1 and 9.2, the lowering of the transparency thresholds as well as the introduction of a *de minimis* register will lead to the availability of substantially more data, from where information on the uptake of the State aid measures provided for in the new instruments can be expected and conclusions be drawn as to their success.

Annex 1: Procedural information

10. 1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

Lead DG: Directorate-General for Competition (DG COMP)

Decide planning references: PLAN/2020/9715 for the Block-exempted aid in the fishery and aquaculture sector; PLAN/2020/9720 for the *de minimis* aid in the fishery and aquaculture sector; and PLAN/2020/9729 for the State aid Guidelines for fisheries and aquaculture.

11. 2. ORGANISATION AND TIMING

The European Commission formally started the review of the State aid rules in the fisheries and aquaculture sector in 2018. The evaluation of the current State aid framework for the fisheries and aquaculture sector has ran back-to-back to this Impact Assessment in a “back to back” exercise, in line with the Commission Better Regulation Guidelines⁷⁸.

The main steps of the review were as follows:

- a. The Commission published a combined evaluation roadmap for the Guidelines, *de minimis* aid in and block exempted aid in the fishery and aquaculture sector on 2 May 2019. The roadmap received 4 contributions, which were later fed into the results of the Public Consultation.
- b. A Public Consultation for the review of the State aid instruments in the fisheries and aquaculture sector, which ran from 28 June 2019 to 31 October 2019.
- c. A dedicated study⁷⁹ on the State aid instruments in the fisheries and aquaculture sector conducted by an external contractor on behalf of the European Commission, published on 4 July 2020.
- d. In-depth interviews with a number of stakeholders conducted in the context of the above-mentioned study.

The review of the State aid framework in the fisheries and aquaculture sector was launched by the Directorate-General for Maritime affairs and fisheries⁸⁰. Subsequently, following the transfer of competence for the application of State aid rules in the sector to the Directorate-General for Competition on 1 January 2020, the latter has led the initiative. Other Commission services were involved in the review, including the evaluation of the existing framework and the preparation of this report through an Inter-

⁷⁸ SWD (2017) 350 of 7.07.2017: Commission Staff Working Document Better Regulation Guidelines.

⁷⁹ Coffey, IPSOS, POSEIDON (2020) Evaluation and impact assessment of the state aid framework in the fisheries and aquaculture sector, available online at: <https://op.europa.eu/fr/publication-detail/-/publication/2760263c-4f07-11eb-b59f-01aa75ed71a1>

⁸⁰ DG MARE set up an Inter-service Steering Group (ISSG) in Spring 2019 (19/02/2019), and the first meeting took place on 20 March 2019. This constituted a single group for both better-regulation processes and the outsourced study. The exercise was launched for the 3 instruments in the fisheries and aquaculture sector, covering both evaluation and impact assessment, back-to-back.

service Steering Group (ISSG) composed of representatives of 14 services⁸¹. The ISSG was set up in February 2021. Meetings were held on 25 March 2021, 21 May 2021, 7 July 2021, 27 October 2021, 17 February 2022, 8 April and 15 June.

12. 3. CONSULTATION OF THE RSB

The RSB scrutinized the present Impact Assessment in the meeting held on 24th May 2022. In summary, the Board stated that the report contained significant shortcomings, and gave a positive opinion with reservations and expected the following aspects to be rectified:

(1) The report did not clearly demonstrate how full coherence between the EMFAF and the revised State aid framework will be ensured. It did not explain well the trade-off between translating the increased flexibility that the EMFAF gives to Member States into the State aid rules and the risk that this could dilute the latter.

(2) The report did not bring out clearly the available policy choices. It did not present genuine alternatives to the proposed policy options, leaving no space for truly alternative approaches.

(3) The impacts of the policy options were not sufficiently assessed, in particular on competition in the internal market. The report did not explain well how private businesses and citizens would benefit from the administrative simplification.

RSB comment	Action taken
(1) The report should better explain the greater level of Member State responsibility and flexibility given by the EMFAF and its practical implications for State aid and the internal market. It should better demonstrate how full policy coherence between the EMFAF and the revised State aid framework will be ensured. It should clarify why consistency between fisheries policy and State aid policy cannot be achieved by a very close alignment of the State aid rules with the conditions of the EMFAF. This explanation should go beyond the legal constraints and present the underlying economic rationale against a full alignment.	The report now provides more information in relation to the economic reasons (rationale behind State aid, i.e. to guarantee that there is no risk of undue distortions of competition and trade) that make a full alignment with the EMFAF an unfeasible approach, aside from the legal reasons emanating from the Enabling Regulation (see Section 2.1.3). It also further explains that legal requirements under the State aid rules do not put into question the political objectives of the EMFAF.
(2) The report should present clearly the	The options presented in the draft IA report

⁸¹ DG Climate Action, DG Economic and Financial Affairs, DG Environment, DG Internal Market, Industry, Entrepreneurship and SMEs, Joint Research Center, DG Health and Food Safety, European Anti-Fraud Office, DG Trade, DG Regional and Urban Policy, DG Agriculture and Rural Development, DG Taxation and Customs Union, DG Maritime Affairs and Fisheries, the Legal Service and the Secretariat-General.

<p>available policy choices. It should define genuine alternatives to the proposed policy options, including sub-options for the various issues (e.g. different publication thresholds or <i>de minimis</i> ceilings). It should pay particular attention to policy options that stakeholders suggested and, in case they are discarded from further analysis, clearly explain why. It should clearly explain the content and rationale of the refined policy options and how they have been selected.</p>	<p>have been restructured to address the identified problems separately, making a division into three sections: (i) <i>de minimis</i> ceilings; (ii) publication thresholds; (iii) alignment to the EMFAF and unnecessary costs. For each these problems, the report offers several policy alternatives.</p> <p>The option to bring the <i>de minimis</i> ceiling for the processing and marketing of fisheries products to the same level as that applying to the processing and marketing of agricultural products (Section 5.2.2), which was suggested by stakeholders, is now listed as a policy option in the revised draft IA report.</p> <p>With regard to the rationale behind the policy options, the specific objectives have been better defined (see Section 4.2), and the report now includes operational objectives and success criteria following the suggestions of the Board (Section 4.3).</p>
<p>(3) The report should thoroughly assess and compare the redefined policy options (and sub-options). It should provide a more detailed analysis and present evidence on the impacts of the policy options on effective competition. It should attempt to quantify the impact on administrative costs of enlarging the scope of FIBER, of raising the <i>de minimis</i> ceiling and of lowering the publication threshold.</p>	<p>The report now provides a more thorough analysis on the impacts of the policy options on effective competition, by providing more concrete data and fine-tuned estimations.</p> <p>With regard to <i>de minimis</i>, it refers to the methodology to calculate updated national caps (three-year average of the annual turnover of the three sub-sectors in each Member State, obtained by excluding the highest and lowest entries across a five-year period, i.e. 2014-2018), and to the figure of EUR 40 000 for the increase of the individual ceiling and the reasons for this specific number. This is all detailed in Section 6.1, which adds to the specific analysis carried out in Section 6.2 with regard to the impacts of raising the <i>de minimis</i> ceiling for undertakings active in the fish processing and marketing to EUR 200,000 per beneficiary in a 3-year period.</p> <p>In relation to the publication thresholds, the report explains the rationale behind the choice of EUR 10 000 for the new publication threshold for individual aid awards (Section 6.5).</p>

	<p>Finally, regarding the impact on administrative costs of enlarging the scope of FIBER, the report now offers more fine-tuned estimations, taking into account the expected reduction in the number of notifications (see also Section 8.2).</p>
<p>(4) The views of stakeholders should be systematically reflected throughout the report, including the feedback received from the latest consultation rounds. The annexes summarising the consultation activities should clarify the views of the various stakeholder groups/categories. In particular, the views of other stakeholders than the public authorities should be better reflected.</p>	<p>The report now includes the views of stakeholders throughout the main text, mainly in the section for “feasibility, acceptability or other relevant issues” in the assessment of impacts. It also includes the views of several stakeholder groups (granting authorities, NGOs, undertakings, etc.).</p> <p>The report also includes the feedback received in the latest consultation rounds (second public consultation, advisory committee and multilateral meeting, see Annex 2).</p>
<p>(5) The evaluation should be a backward looking exercise with operational conclusions that serve as direct input for the problems analysis of the impact assessment. The report should clearly identify the lessons learned. The conclusions should be consistent with the findings of the evaluation report.</p>	<p>The evaluation report now includes a section for “lessons learned”. The conclusions have been redrafted to provide a direct link to the problems identified in the impact assessment.</p> <p>The language used in the draft evaluation and impact assessment are now consistent and coherent. The evaluation does not recommend concrete amendments to the legal framework or make interpretations of the feedback received by stakeholders: these have been moved to the impact assessment (see, for instance, Section 5.3.4).</p>
<p>(6) The report should indicate when the revised instruments will be evaluated and how the information needed for the evaluation will be collected and aggregated.</p>	<p>The report now includes this information: the new FIBER and <i>de minimis</i> Regulation will have a validity until 2029. Therefore, an evaluation of the FIBER (and also the Guidelines) would be carried out before the end of 2028.</p> <p>The report has a new section (4.3) with “operational objectives” and success criteria.</p> <p>How these indications of success would work in practice for each of the objectives the intervention is trying to achieve, and how the information for a future evaluation will be collected and aggregated, are now</p>

In addition to the abovementioned points, the Board also provided other comments of a more technical nature to DG COMP.

13. 4. EVIDENCE, SOURCES AND QUALITY

The Commission has conducted the evaluation of the State aid instruments for the fishery and aquaculture sector in relation to their relevance, effectiveness, efficiency, coherence and EU added value. The Impact Assessment was carried out in a back-to-back exercise. Both the evaluation and the Impact Assessment draw from a specific study⁸² on the State aid instruments for the fisheries and aquaculture sector conducted by an external contractor. The purpose of the study was to obtain an independent evidence-based assessment on the State aid instruments for fisheries and aquaculture. In that context the contractor also carried out in-depth interviews with a number of stakeholders, and a comprehensive literature review. Other notable studies include the “Ex post Evaluation of the European Fisheries Fund (EFF) 2007-2013”, which concluded that funding should be directed to the objectives of sustainability, protection of the environment and conservation of natural resources⁸³. In addition, the evaluation and present Impact Assessment draw from the Impact Assessment accompanying the Commission proposal for a Regulation on the European Maritime and Fisheries Fund and repealing Regulation (EU) No 508/2014 of the European Parliament and of the Council⁸⁴.

Concerning the external sources, these primarily refer to the evaluation roadmap and the public consultation launched by the Commission, as well as a specific survey and the in-depth interviews conducted by the contractor.

The Commission published a combined evaluation roadmap⁸⁵ on the whole State aid regime in the fishery and aquaculture sector, open for feedback from 02 May 2019 to 30 May 2019. The responses submitted to the roadmap were analysed and then added to those of the public consultation.

The public consultation was launched by the Commission and was open for feedback from 28 June 2019 until 31 October 2019. The results are summarised in Annex 10 of the evaluation.

⁸² Coffey, IPSOS, POSEIDON (2020) Evaluation and impact assessment of the state aid framework in the fisheries and aquaculture sector, available online at: <https://op.europa.eu/fr/publication-detail/-/publication/2760263c-4f07-11eb-b59f-01aa75ed71a1>

⁸³ AND International, Coffey, et al. (2017) Ex-post evaluation of the European Fisheries Fund (2007-2013), available at: <https://publications.europa.eu/en/publication-detail/-/publication/f0ab224d-f34c-11e6-8a35-01aa75ed71a1>

⁸⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0295>

⁸⁵ “De minimis aid in the fishery and aquaculture sector, block exempted aid in the fishery and aquaculture sector, Amendment to the State aid Guidelines for fisheries”, available online at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11544>

ANNEX 2: STAKEHOLDER CONSULTATION

1. Back-to-back public consultation

The public consultation was launched by the Commission and was open for feedback from 28 June 2019 until 31 October 2019. The approach of the questionnaire was to conduct a single consultation for both the evaluation of the existing State aid framework and the impact assessment on the future framework. It was structured into three sections: Section I addressed the evaluation of the existing framework; Section II addressed the impact assessment on the future framework; and Section III specifically targeted public authorities dealing with State aid.

The answers to the questions of Section II and their analysis are presented in the evaluation report (and its Annex 10), which is annexed to the present Impact Assessment. In particular, the table below presents the questions that were part of Section II of the questionnaire and addressed the impact assessment on the future framework, and where to find the answers in the evaluation report and recap of the analysis:

<i>Section II questions on the impact assessment on the future framework, and their correspondence in the evaluation report. Recap of the analysis.</i>	
II.1. Based on your experience, please rank the problems that State aid rules should address. Please rate from 1 to 4, 1 being 'unimportant', 2 – 'of little importance', 3 – 'important', and 4 - 'very important'.	<p>Figure 10 - Problems that State aid rules should address, page 97 of the evaluation report.</p> <p>The feedback received corroborates the relevance of the CFP and the SAM objectives pursued by the State aid instruments. Overall, it emerges that environmental, economic and social sustainability are among the main considerations that stakeholders believe the State aid rules should factor in. Notably, environmental sustainability of fishing and aquaculture activities features as the most important priority that State aid rules in the sector should address (viewed as very important or important by 91% of the respondents). Furthermore, 86% of the respondents attach great importance to the objective of 'useful spending of taxpayers' money', while 75% consider the reduction of administrative costs and burdens as very important or important for the coming period.</p>
II.2. To limit undue distortive effects of aid on the internal market, how important are the following elements in the State aid rules? Please rate from 1 to	<p>Figure 20 - Views on importance of elements to limit undue distortive effects of aid, page 107 of the evaluation report.</p> <p>A majority of the respondents considered</p>

<p>4, 1 being 'unimportant', 2 – 'of little importance', 3 – 'important', and 4 - 'very important'.</p>	<p>that it is especially important to impose stricter conditions for granting aid to large enterprises as opposed to SMEs (77% expressed this to be very important or important). A marginally smaller percentage viewed the inclusion of maximum aid intensities and maximum aid amounts (75%) as the most important element. Finally, providing detailed description of the different types of aid measures (72%) was viewed as the third most important element among the stakeholders.</p>
<p>II.3. To what extent could the following measures simplify State aid rules, while still limiting the distortions of competition and trade to a minimum? Please rate from 1 to 4, 1 being 'not at all', 2 – 'very little', 3 – 'to some extent', and 4 - 'to a large extent'</p>	<p>Figure 27 - Views on measures that would simplify State aid rules, page 113 of the evaluation report.</p> <p>Most respondents (70%) considered that clearer rules and definitions could contribute to simpler State aid rules, while 38% believed that State aid rules would be simplified to a large extent by extending the scope of the Block Exemption Regulation to new types of aid measures, and 34% by increasing the notification thresholds under the Block Exemption Regulation.</p>
<p>II.4. Do you have any suggestions for simplification?</p>	<p>Page 62 of the evaluation report.</p> <p>Stakeholders, in addition to expressing their preference for enlarging categories of measures that are expressly addressed by the future Guidelines for fisheries and aquaculture, and noting that the text of the revised Guidelines should not be more constraining than that of the revised EMFAF, articulated the necessity to bring in line the said Guidelines with those for the agricultural sector. These are more detailed and more general in scope. For instance, the agricultural guidelines contemplate specific provisions for aid to compensate for damage caused by protected species, whereas in the fisheries and aquaculture guidelines aid to compensate for damage caused by protected species can only be granted on the basis of an individual assessment in accordance with point 5.7 of the Guidelines</p>

	<p>“aid for other measures”. The agricultural guidelines are also more flexible in the case of aid to compensate for damage caused by natural disasters (and include a specific section for aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster) – some stakeholders specifically asked to include severe droughts as an adverse climatic event eligible under the guidelines (and FIBER).</p> <p>Other suggestions included the extension of the list of eligible animal diseases, and specific requests from the granting authorities in outermost regions to continue covering the renewal of fishing fleets.</p>
II.5. What are your views on the possible design of the future State aid rules for the fishery and aquaculture sector?	<p>Figure 28 - Views on the possible design of the future State aid rules, page 114 of the evaluation report.</p> <p>The views on the possible future design of the State aid framework were less clear, with a general slight preference for more detailed rules (particularly with regard to more detailed eligible costs, with 45% of respondents choosing this option).</p>
II.6 Based on your experience, is there a type of aid measure not covered by the current Block Exemption Regulation that should be included in a revised regulation?	<p>Figure 29 - Is there a type of aid measure not covered by the current Fishery State aid Guidelines that should be included in the revised guidelines, page 114 of the evaluation report.</p> <p>The results of the survey and the public consultation show that a good number of granting authorities and stakeholders believe that the Guidelines are not adequate in the sense of completeness. Around 44% of granting authorities expressed that there are types of aid measures that are not explicitly included in the current State aid Guidelines for the fisheries and aquaculture sector, but should be in the future. 47% of the stakeholders in the public consultation agreed to this stance.</p>
II.7. Based on your experience, is there a type of aid measure in the current Block Exemption Regulation that did not function well and should be amended?	<p>Page 112 of the evaluation report.</p> <p>When asked about State aid measures that are included in the current FIBER which do not function well and should be amended or removed, 21% of the granting</p>

	<p>authorities agreed that certain State aid measures should be amended or removed, whilst 26% did not agree, and more than half (53%) could not answer this question.</p>
<p>II.8 Based on your experience, are there any types of State aid measures that are not covered by the current Block Exemption Regulation (FIBER), but should be included in a revised regulation?</p>	<p>Figure 26 - Are there State aid measures that should be included in a revised Block Exemption Regulation, page 112 of the evaluation report.</p> <p>When asked if there were State aid measures that should be included in a revised Block Exemption Regulation, 32% of granting authorities answered “Yes”, 26% answered “No”, and 41% answered “Don’t know”. When asked more specifically about the possibility of extending the scope of the FIBER to include new types of aid measures, most granting authorities agreed to the block exemption of some measures that are currently under the Guidelines.</p> <p>Granting authorities also expressed that they would like to introduce within the scope of the FIBER: (i) aid for the temporary or permanent cessation of fishing activities; (ii) aid to large enterprises ; and (iii) specific measures for the aquaculture sector to combat droughts or other types of water shortages.</p>
<p>II.9. Do you agree with the following statements?</p>	<p>Figure 30 - Compensation for damages caused by protected animals and animal diseases, page 115 of the evaluation report.</p> <p>It emerged that one of the clearest shortcomings to address in the Guidelines is the lack of guidance on schemes that aim to compensate the damage caused by protected animals. In the public consultation, around 70% of respondents strongly agreed or agreed with the compensation for damages caused by protected animals covering indirect costs for damage (such as treatments costs and additional labour costs), and a majority of respondents further agreed with the compensation covering direct and indirect income loss due to damages caused by protected animals and animal diseases.</p>

2. First Advisory Committee and Multilateral meeting

In addition to the results of the back-to-back public consultation, the discussions held during the 1st Advisory Committee and Multilateral meeting with the Member States on the draft State aid instruments for the sector are particularly relevant for the purposes of the Impact Assessment. The meetings took place on 11th March 2022, and discussed the draft three aid instruments under the revision (which runs in parallel to the Impact Assessment) for the fisheries and aquaculture sector: the FIBER, the *de minimis* Regulation and the Guidelines.

Overall, the feedback received by Member States during this meeting was positive. They particularly welcomed the enlarged scope of the FIBER (representing an important simplification tool in the State Aid procedure) with the block exemption of two new measures: (i) aid to make good the damage caused by adverse weather conditions and (ii) aid to compensate for the damage caused by protected animals. Several Member States also praised the broadening of the Guidelines to include emerging diseases, but expressed that the conditions attached to this measure are unnecessarily complex.

On the other hand, many Member States voiced their concerns against lowering the thresholds for the publication of individual aid awards (from EUR 30 000 to EUR 10 000), arguing that this would increase their administrative burden.

A few Member States also requested to continue block-exempting aid to start up support for young fishermen, to address the generational problem of the sector. Some others argued in favour of introducing temporary or permanent cessation support in the Guidelines, even if under the EMFAF these are only allowed subject to very strict conditions. In particular, it was argued that permanent cessation may also be used to respond to needs beyond the EMFAF and management of stocks (e.g. reduction of fishing spaces due to energy infrastructure development).

With regard to *de minimis* aid, several Member States requested an increase of the *de minimis* individual aid ceiling of EUR 30 000, which was introduced approximately 15 years ago, to at least take into account the inflation that has occurred since then. Several Member States also asked to exclude the fish processing sector from the scope of the sectoral *de minimis* Regulation, to apply the same approach as for the processing of agricultural products and, thereby, have it fall under the general *de minimis* Regulation (so that the ceiling of up to EUR 200 000 applies). As concerns the recalculation of the national caps, most Member States welcomed the technical update.

Finally, a few Member States raised the question of whether the Commission would introduce measures to counteract the economic consequences of the war in Ukraine (and related fuel price increases). The Commission drew the attention to the specific consultation for a Temporary Crisis Framework ('TCF') due to the war in Ukraine.

3. Second Advisory Committee

The second consultation of the Advisory Committee revealed that Member States strongly advocated for the separation, in relation to the application of the individual *de minimis* ceiling, of the processing and marketing sector from the primary sector in fisheries (which would result in the application of the general *de minimis* ceiling of EUR 200 000 per beneficiary in a 3-year period to undertakings active in the fish processing and marketing, as it is currently the case for the processing and marketing of agricultural products). Member States opposed the argument by which both sectors are intertwined to the point that a higher funding of the processing and marketing sector would compromise the conservation objectives in the primary production sector. Member States also indicated that it could be considered to include safeguards, as it is the case with regard to the agricultural processing and marketing sector, that would prevent the spill over of any potential negative effects from processing and marketing to primary production.

Finally, Member States insisted that there is clearly a discriminatory treatment of the processing and marketing of fisheries products sector compared to undertakings operating in the processing and marketing of agriculture products who benefit from the general *de minimis* individual ceiling of EUR 200 000.

Following these observations, there is a need to analyse this question further and to re-consult the Advisory Committee.

4. Public consultation on the draft instruments

The drafts of the three instruments (FIBER, *de minimis* Regulation and the Guidelines) were published for public consultation from 11 January 2022 until 13 March 2022. During the public consultation, the Commission received a total of 36 contributions. 21 contributions were submitted by national or regional authorities (including 18 from Member States), while the others originated from (i) organizations in the food supply chain (in particular, processors); (ii) an international environmental organisation (i.e. ClientEarth); and (iii) citizens. The Commission also received a joint submission from the conference of the Presidents of the Outermost Regions.

Overall, Member States and stakeholders provided positive feedback on the drafts during the consultation process. They welcomed the direction towards alignment with EMFAF/CFP, the European Green Deal and further simplification. Nevertheless, a number of issues were raised:

- Similarly to the concerns raised during the Advisory Committee, during the consultation process, at least 9 Member States and 3 other public authorities expressed opposition to **lowering the current individual aid publication thresholds**, arguing mostly with an increased administrative burden for them.

- With regard to the **fisheries *de minimis* regulation**, in the context of the public consultation, many stakeholders, including undertakings and 7 Member States, urged the Commission to increase the EUR 30 000 individual ceiling. They argued that the

individual ceiling has remained the same since 2007, while the economy and cost structures have changed over time and may suffer dramatic changes in the near future (e.g. in the aftermath of COVID and the war in Ukraine). Similarly, a number of stakeholders, including 5 Member States, 3 regional fisheries associations and an association for fish producers organisations, requested that the *de minimis* aid for processing and marketing be moved under the general *de minimis* regulation (i.e. up to EUR 200 000), as it is the case in the agriculture sector.

- Similarly, in relation to the **processing and marketing sector in fisheries**, feedback received from citizens and businesses flagged that, while undertakings processing or marketing agricultural products are eligible for all aid covered by GBER, undertakings processing or marketing fishery products can only benefit from the aid to which the fisheries sector is entitled: in particular, the provisions concerning investment aid and environmental aid are not applicable to them. Consequently, industrial undertakings that process fish or commercial undertakings limited to the sale of fish are not eligible for investment aid intended in general for production or commercial enterprises.

- In relation to **fleet measures** (permanent and temporary cessation, aid to start up support for young fishermen for the first acquisition of a fishing vessel and other fleet measures), in reply to the consultation process, at least 5 Member States and public authorities requested to include in the new rules some of them, and at least 6 Member States and public authorities requested re-introducing in the draft FIBER aid to start up support for young fishermen.

- With regard to permanent and temporary cessation, such measures are currently possible under the strict conditions set out in Articles 20 and 21 of the EMFAF Regulation, as part of EMFAF operational programs. Some stakeholders requested to include these two measures, at least in the draft Guidelines, designing them – to the extent possible – along the core conditions of those provisions. They argued that such measures are necessary to cater for needs unanswered by the EMFAF and to respond to environmental or energy policy objectives (e.g. marine protected areas and power-generating windmills are reducing fishing space). An NGO, however, strongly opposed any aid measures for permanent and definitive cessation of activities and for full conversion, stating that aid should be limited, under strict conditions, to temporary cessation or diversification of activities.
- With regard to the re-introduction of aid to start up support for young fishermen in the draft FIBER, this aid category supports generational renewal in the fishing sector, a major concern for Member States and other regional authorities. Moreover, these stakeholders argue that keeping the possibility to block exempt such aid would contribute to the achievement of administrative simplification.
- With regard to other fleet measures, i.e. replacement or modernisation of a main or ancillary engine and increase in the gross tonnage of a fishing vessel, some stakeholders essentially asked for more flexibility to enable such measures under State aid rules.

- Finally, in relation to **Outermost Regions (OR)**, the conference of the Presidents of the Outermost Regions requested the inclusion of new categories of investment aid for those

regions and reviewing certain requirements for the fleet renewal aid⁸⁶, taking into account their specific TFEU based status. Other stakeholders (namely an NGO) spoke against the possibility to grant aid for the purchase of new fishing vessels in the ORs, which they deem inconsistent with the EMFAF objectives.

⁸⁶ The suggested measures include: (i) investments in anchored fish aggregating devices; (ii) investments in safety equipment enabling vessels to extend their fishing zones for small-scale coastal fishing, even where such equipment is mandatory; (iii) investments on board, including engine replacement due to their importance for ship operability and crew safety; (iv) support for the acquisition of a second-hand vessel for young fishers without fulfilling the applicable EMFAF conditionalities; and (v) aid for renewing the engine of less than five years old vessels.

ANNEX 3: WHO IS AFFECTED AND HOW?

14. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The costs and benefits of the preferred option (a combination of Option 4 with Options 1 and 6) are expected to affect a number of actors (undertakings operating in the sector, Member States and citizens). These impacts, of which the exact costs and benefits are uncertain but based on the best estimates under the available evidence, are explained in the sub-sections below.

It is necessary to note, with regard to the question on how will the different actors benefit from the administrative simplification, that State aid control aims to perform a balancing exercise between the inherent distortions of competition and trade of a State aid measure and the potential of the measure in terms of achieving the Union's policy objectives. However, the focus is to ensure a common level playing field for all undertakings for the end benefit of citizens and consumers. State aid rules therefore control the manner in which Member States provide economic support to undertakings to ensure that the distortions of competition and trade are reduced to a minimum. Because of this *rationale*, citizens and consumers only benefit in an indirect manner from State aid control.

In this scenario, Member States directly benefit from the simplification of the rules because in order to implement their policy options (i.e. State aid policy), they may in many more cases get State aid clearance through block exemptions (i.e. semi-automatic clearance) rather than through an authorisation from the Commission, following a notification procedure in which all the features of the measure are scrutinised. Undertakings benefit from the simplification because the approval (and subsequent payment) of their support goes faster and is easier (i.e. in many occasions, the block exemption regulations accept presumptions, which must be proven in notified cases).

It can therefore be established that since State aid rules are addressed to Member States, they are the direct beneficiaries of the simplification proposals and that undertakings benefit indirectly by getting access to public funds in a faster and easier manner. Citizens will also benefit indirectly from the simplification.

1.1 Undertakings in the fishery and aquaculture sector (including SMEs)

Undertakings in the fishery and aquaculture sector will benefit from the implementation of the preferred option (combination of options), which entails legal certainty through the alignment with the EMFAF. The high degree of coherence with the EMFAF, by avoiding that Member States are given too much leeway and ensuring a consistent interpretation of FIBER, would ensure a level playing field for businesses across Member States when it comes to the possibility of granting State aid. This level playing field guarantees equal treatment by minimising the risks of distorting competition.

The inclusion of new measures under the FIBER also means, as potential beneficiaries, faster access to aid and a reduction in expensive expert advice.

Moreover, the lower publication thresholds for individual aid awards guarantees transparency and facilitates peer-review.

1.2 Member States

Member States (in particular, granting authorities) would benefit from a State aid framework that is aligned with EMFAF and the CFP, in terms of clarity and legal certainty. The implementation of the preferred option (combination of options would guarantee that all Member States interpret FIBER consistently and avoid that some grant aid via block exempting measures that other Member States would not consider eligible.

The alignment of FIBER to EMFAF could in certain instances (less detailed conditions) decrease the burden for granting authorities in comparison to the baseline (this would simplify the reporting, registration, monitoring and/or assessment of block exempted State aid schemes). The inclusion of new measures under the scope would further the reduction of the administrative burden.

The deletion of aid to start up support for young fishermen from the FIBER, which means that any measure in this regard would need to go under the Guidelines and the notification procedure, would entail a higher administrative burden for granting authorities. In the same vein, the higher transparency requirements through lower publication thresholds for individual aid awards would be burdensome for granting authorities, compared to the baseline.

Both of these higher administrative costs are not mandatory, in the sense that Member States may choose whether or not to introduce a support scheme and its aid amounts. Moreover, this needs to be balanced against the inclusion of three measures under the FIBER. In this sense, the cumulative administrative burden remains stable in comparison to the baseline.

1.3 European citizens

European citizens and consumers will be indirectly impacted. In particular, the initiative will have a positive impact on avoiding competition distortions in the markets for fishery and aquaculture products.

In addition, the initiative will have a positive impact on the environment, through the alignment with EMFAF and the CFP, relevant for reaching the EU objectives (Green Deal).

15. SUMMARY OF COSTS AND BENEFITS

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Increased policy coherence	No quantification available	The fisheries and aquaculture State aid framework and its relationship with the EMFAF is easier to understand: Benefit for undertakings and administrations.

		Framework is easy to understand, in particular it reduces complexity for SMEs.
Better support for the sector	No quantification available	The adaptation of <i>de minimis</i> individual ceiling and national caps to account for inflation and the evolution of cost structures -in the light of the latest developments- would guarantee a better support for the sector and higher investments in SMEs.
Improved market surveillance through lower publication thresholds	No quantification available	Increased transparency, more available market information on individual aid granted to other undertakings. Benefit for undertakings and citizens.
Better targeting of measures to CFP conservation objectives	No quantification available	Benefits for the environment: “aid to start-up support for young fishermen” will be submitted to an <i>ex ante</i> control through the notification procedure.
Administrative simplification, reduction of the administrative burden	Administrative simplification: ~ 10 - 14 notifications less up to 2027 thanks to block exemptions of three new measures*; *based on the number of notifications under these measures for the period 2014-2019, see data in the accompanying evaluation.	Three new measures will be added to FIBER, which will significantly reduce the administrative burden for granting authorities and, in turn, for the Commission.
Indirect benefits		
Reduction of the administrative burden		The revision of the <i>de minimis</i> national caps and adjustment of the individual ceiling for inflation and the evolution of cost structures under Option 1 would have a compensatory effect, in the sense that it would allow Member States to grant higher amounts of aid overall without needing to design measures under the FIBER or the Guidelines. This could benefit and encourage more investments on SMEs.
Reduction of compliance costs		Potential beneficiaries will also benefit from the inclusion of three new measures under FIBER, through a faster and simpler procedure to design aid schemes. Moreover, the inclusion of new measures in the FIBER would also benefit legal certainty and cut back the need for expensive expert advice. Similarly, the alignment of the framework to the EMFAF while respecting the requirements of the Enabling Regulation under Option 4 would ensure legal certainty. This lower degree of legal complexity would

		particularly benefit SMEs as potential beneficiaries.
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II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Preferred Option (5 + 1 + 6)	Direct costs	N/A	N/A	N/A	N/A	- Increase of the reporting obligations because of the lower publication thresholds for individual aid awards (from EUR 30 000 to EUR 10 000); (re-programming the respective IT applications).	- Increase of administrative burden for granting authorities because of the need to go through the notification procedure for “Aid to start-up support for young fishermen”
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A

16. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

The United Nations 2030 Agenda for Sustainable Development identified conservation and sustainable use of oceans as one of the 17 SDGs (namely SDG 14). The immediate consequence of this is the promotion of a sustainable blue economy, which aims at developing our economic model towards one that is resource-efficient, to reduce human impact in marine environments and to promote biodiversity conservation, and to tackle climate change and the pressure on marine resources through alternative sources of food and sustainable food systems. This also translates in the call to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, to eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and to refrain from introducing new such subsidies. As introduced in Section 1.2.3 above, the current State aid framework is coherent and complies with the 2015 SDGs (in particular SDG 14.6), but the Commission will need to follow closely the outcome of the negotiations for a new instrument in case adjustments are needed *ex post*.

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	Expected progress towards the Goal	Comments
SDG 14 Conserve and sustainably use the oceans, seas and marine resources In particular, SDG 14.6: By 2020, prohibit certain forms of fisheries subsidies	The current State aid framework, which was assessed against the 2015 SDGs (in particular SDG 14.6) in the back-to-back evaluation to this Impact Assessment, was deemed coherent with the principles set by the UN SDGs (the SWD analysed FIBER, the Guidelines and de minimis Regulation). The changes introduced by the	Nonetheless, this does not ensure compatibility with a potential new instrument after the UN negotiations are concluded, and the Commission will need to follow closely the outcome of the negotiations in case adjustments are needed <i>ex post</i> .

<p>which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation</p>	<p>options discussed in the present IA would not change this conclusion, particularly given the need to respect the principles of the CFP for block exempted and notified measures and the list of ineligible measures for <i>de minimis</i> aid.</p>	
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ANNEX 4: ANALYTICAL METHODS

The Impact assessment groups in a certain set of criteria the quantitative analysis of environmental, economic and social impacts of each of the policy options, in order to facilitate the assessment. More specifically, where possible, the analysis focuses on the impacts of the different types of aid on income, profitability, volume and value of the production chain the fisheries and aquaculture sector and, linked to the increased importance of environmental impacts, on the status of fish stocks.

These criteria, derived from the evaluation and results of the consultation process with stakeholders, and against which the impacts of each option are assessed, are presented in the list below (and summarised in Table 7 in Annex 5):

1. Contribution to the CFP objectives

Given that the compatibility of State aid in the fishery and aquaculture sector is assessed by the Commission on the basis of the objectives of both Competition Policy and the overarching principles of the CFP, the environmental, economic and social impacts of the policy options will focus on the contribution to these objectives. Thus, the impacts are assessed according to their sustainability in the long-term (e.g. biodiversity conservation) and contribution to the availability of food supplies (sustainable consumption). The impacts also focus on consistency with the objectives of achieving economic, social and employment benefits.

2. Consistency with the EMFAF

The analysis carried out for this criterion mainly refers to the alignment with the logic and structure of the EMFAF, and to any possible legal loopholes that might arise. As explained, State aid to the fishery and aquaculture sector is embedded within the broader framework of the CFP, and the environmental, economic and social impacts of the policy options will be assessed through the prism of the contribution to the CFP objectives. Within the CFP, the EU provides financial support to the sector through the EMFAF. Taking this into account, the granting of State aid should be consistent with the support granted through the EMFAF, and it is important to assess the impacts of any intervention in this regard.

3. Effective and efficient State aid control and minimisation of effects on competition and trade

The economic impacts for this point relate to the proper functioning of the internal market. The analysis of this criterion explores for each of the options whether any risk of distorting competition and trade might arise, referring to the results of the back-to-back evaluation to try and predict possible scenarios.

4. Simplification, transparency and legal certainty

This criterion mainly addresses the impacts of each option from the perspective of the granting authorities and final beneficiaries, studying whether the potential measures as designed under each option will fulfil the inherent requirements of legal certainty and transparency. Moreover, the potential simplification costs are assessed for all options.

5. Administrative burden

In order to assess the economic impact of each option through the prism of the potential administrative burden, this criterion investigates the costs and workload for both national administrations and for the Commission.

This particularly concentrates on estimations of the practicality of the national cap and individual ceiling (and any change therein) with regard to *de minimis* aid, always keeping in mind the need to pursue and adhere to the CFP objectives. The quantification and impact of management costs are also considered in the analysis of certain measures under the Guidelines and the possibility to include them in FIBER, put against the experience of the Commission and plausible risks of internal market distortions.

6. Impact on SMEs

The SME-test needs to be performed in order to screen the potential impact on SMEs and to minimise the burden imposed on them. This test is particularly relevant in the present case, given the structure of the market in the fisheries and aquaculture sector: as mentioned in Section 5.3.2 above, the most recent data (2017) confirms that 98% of enterprises in the sector are SMEs. The analysis of this criterion will focus on how would the specific option positively or negatively impact the position of SMEs (taking into account that undertakings benefit indirectly from State aid by getting access to public funds in a faster and easier manner, see Annex 3 for more details).

ANNEX 5: TABLES AND FIGURES

Figure 1 - Expenditure on State aid and de minimis aid in the EU in the period 2014-2019, by category (million EUR)

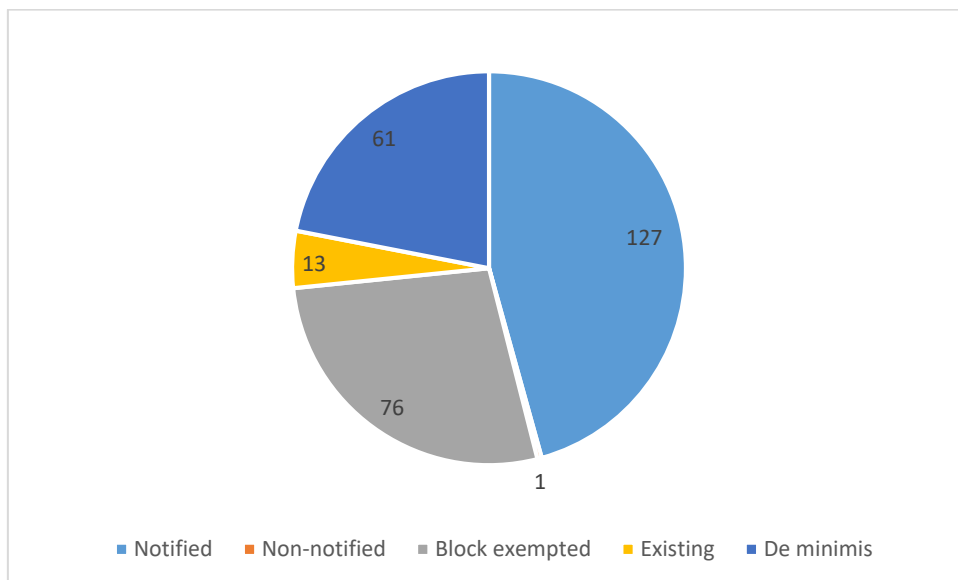


Figure 2 - Expenditure on public aid in the EU by year and category (million EUR)

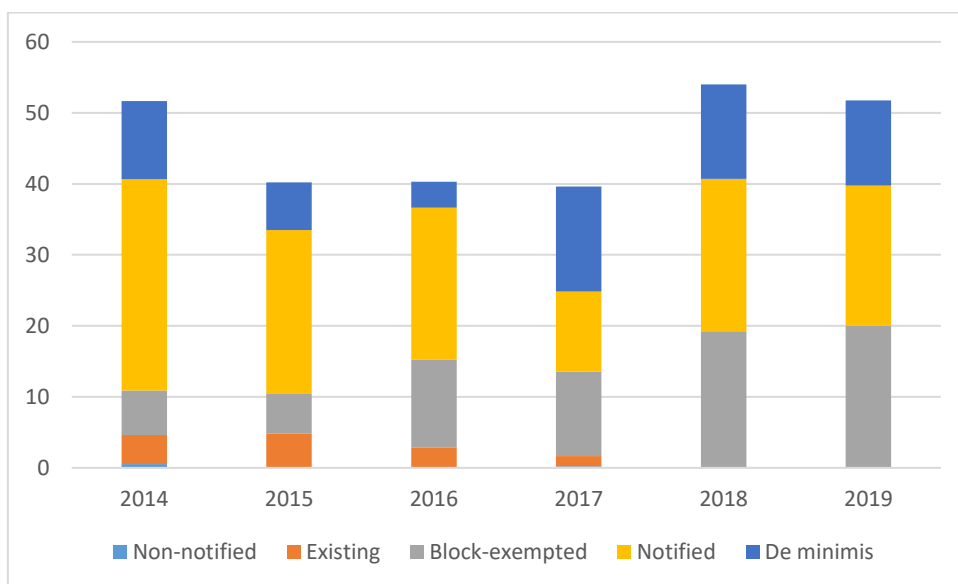


Table 3 - Ineligible operations or expenditure under EMFAF

The following operations or expenditure shall not be eligible for support from the EMFAF:

- (a) operations that increase the fishing capacity of a fishing vessel, unless otherwise provided for in Article 19;
- (b) the acquisition of equipment that increases the ability of a fishing vessel to find fish;

- (c) the construction, acquisition or importation of fishing vessels, unless otherwise provided for in Article 17;
- (d) the transfer or reflagging of fishing vessels to third countries, including through the creation of joint ventures with partners of third countries;**
- (e) the temporary or permanent cessation of fishing activities, unless otherwise provided for in Articles 20 and 21;
- (f) exploratory fishing;
- (g) the transfer of ownership of a business;
- (h) direct restocking, except explicitly provided for as a reintroduction measure or other conservation measures in a Union legal act or in the case of experimental restocking;
- (i) the construction of new ports or new auction halls, with the exception of new landing sites;**
- (j) market intervention mechanisms aiming to temporarily or permanently withdraw fishery or aquaculture products from the market with a view to reducing supply in order to prevent price decline or to drive prices up, unless otherwise provided for in Article 26(2);**
- (k) investments on board fishing vessels necessary to comply with the requirements under Union law in force at the time of submission of the application for support, including requirements under the Union's obligations in the context of RFMOs, unless otherwise provided for in Article 22;**
- (l) investments on board fishing vessels that have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for support;**
- (m) the replacement or modernisation of a main or ancillary engine of a fishing vessel, unless otherwise provided for in Article 18.**

** the measures signalled in bold were not part of the previous list of ineligible operations under the EMFF. These were also not eligible for funding under the EMFF (the conditions for each measure prevented this), but are now included in the list of ineligible operations for clarification, as EMFAF is no longer measure-based and has fewer conditions.*

Figure 3 - Priorities and areas of support under the EMFAF 2021-2027

<p>Priority 1: fostering sustainable fisheries and the restoration and conservation of aquatic biological resources;</p> <ul style="list-style-type: none"> •Article 14: Scope of support - Specific objectives •Article 15: Transferring or reflagging of fishing vessels •Article 16: Inland fishing •Article 17: First acquisition of a fishing vessel •Article 18: Replacement or modernisation of a main or ancillary engine •Article 19: Increase in the gross tonnage of a fishing vessel to improve safety, working conditions or energy efficiency •Article 20: Permanent cessation of fishing activities •Article 21: Temporary cessation of fishing activities •Article 22: Control and enforcement •Article 23: Collection, management, use and processing of data in the fisheries sector, and research and innovation programmes •Article 24: Promoting a level-playing field for fishery and aquaculture products from the outermost regions •Article 25: Protection and restoration of aquatic biodiversity and ecosystems 	<p>Priority 2: fostering sustainable aquaculture activities, and processing and marketing of fishery and aquaculture products, thus contributing to food security in the Union;</p> <ul style="list-style-type: none"> •Article 26: Scope of support - Specific objectives •Article 27: Aquaculture •Article 28: Processing of fishery and aquaculture products 	<p>Priority 3: enabling a sustainable blue economy in coastal, island and inland areas, and fostering the development of fishing and aquaculture communities</p> <ul style="list-style-type: none"> •Article 29: Scope of support - Specific objectives •Article 30: Community-led local development <hr/> <ul style="list-style-type: none"> •Article 35: Action plan for the outermost regions •Article 36: Compensation for additional costs for fishery and aquaculture products (outermost regions). 	<p>Priority 4: strengthening international ocean governance and enabling seas and oceans to be safe, secure, clean and sustainably managed.</p> <ul style="list-style-type: none"> •Article 31: Scope of support - Specific objectives •Article 32: Marine knowledge •Article 33: Maritime surveillance •Article 34: Coast guard cooperation
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Source: Regulation (EU) 2021/1139, EMFAF

Table 4 - Organisation of Support under Shared Management

POLICY OBJECTIVE Article 5 of Regulation (EU) 2021/1060	EMFAF PRIORITY	EMFAF SPECIFIC OBJECTIVE	NOMENCLATURE TO BE USED IN THE FINANCING PLAN Table 11A of Annex V to Regulation (EU) 2021/1060
A greener, low-carbon transitioning towards a net zero carbon economy and resilient Europe by promoting clean and fair energy transition, green and blue investment, the circular economy, climate change mitigation and adaptation, risk prevention and management, and sustainable urban mobility	Fostering sustainable fisheries and the restoration and conservation of aquatic biological resources	Strengthening economically, socially and environmentally sustainable fishing activities	1.1.1 all operations except those supported under Articles 17 and 19
			1.1.2 operations supported under Articles 17 and 19
		Increasing energy efficiency and reducing CO ₂ emissions through the replacement or modernisation of engines of fishing vessels	1.2
		Promoting the adjustment of fishing capacity to fishing	1.3

		opportunities in cases of permanent cessation of fishing activities and contributing to a fair standard of living in cases of temporary cessation of fishing activities	
		Fostering efficient fisheries control and enforcement, including fighting against IUU fishing, as well as reliable data for knowledge-based decision-making	1.4
		Promoting a level-playing field for fishery and aquaculture products from the outermost regions	1.5
		Contributing to the protection and restoration of aquatic biodiversity and ecosystems	1.6
	Fostering sustainable aquaculture activities, and processing and marketing of fishery and aquaculture products, thus contributing to food security in the Union	Promoting sustainable aquaculture activities, especially strengthening the competitiveness of aquaculture production, while ensuring that the activities are environmentally sustainable in the long term	2.1
		Promoting marketing, quality and added value of fishery and aquaculture products, as well as processing of those products	2.2
	Strengthening international ocean governance and enabling seas and oceans to be safe, secure, clean and sustainably managed	Strengthening sustainable sea and ocean management through the promotion of marine knowledge, maritime surveillance or coast guard cooperation	4.1
A Europe closer to citizens by fostering the sustainable and integrated development of all types of territories and local initiatives	Enabling a sustainable blue economy in coastal, island and inland areas, and fostering the development of fishing and aquaculture communities	Enabling a sustainable blue economy in coastal, island and inland areas, and fostering the sustainable development of fishing and aquaculture communities	3.1
	Technical assistance		5.1
			5.2

Source: Regulation 2021/1139, Annex II - Organisation of Support under Shared Management

Table 5 - FIBER articles against EMFAF priorities

FIBER	EMFAF
EMFAF TYPE	
CLUSTER A: R&D, Consultancy, Partnerships Art 13: Aid for innovation Art 14: Aid for advisory services Art 15: Aid for partnerships between scientists and fishermen Art 30: Aid for innovation in aquaculture Art 32: Aid to management, relief and advisory services for aquaculture farms Art 43: Aid for data collection	Priority 1: fostering sustainable fisheries and the restoration and conservation of aquatic biological resources; Priority 4: Strengthening international ocean governance and enabling seas and oceans to be safe, secure, clean and sustainably managed
CLUSTER B: Aquaculture Art 31: Aid to productive investments in aquaculture Art 33: Aid to promote human capital and networking in aquaculture Art 34: Aid to increase the potential of aquaculture sites Art 35: Aid to encourage new aquaculture farmers practicing sustainable aquaculture Art 36: Aid for the conversion to eco-management and audit schemes and organic aquaculture Art 37: Aid to aquaculture providing environmental services Art 40: Aid for aquaculture stock insurance	Priority 2: fostering sustainable aquaculture activities, and processing and marketing of fishery and aquaculture products, thus contributing to food security in the Union;
CLUSTER C: Employment, Job Creation, Health & Safety at Work Art 16: Aid to promote human capital, job creation and social dialogue Art 17: Aid to facilitate diversification and new forms of income Art 18: Aid to start up support for young fishermen Art 19: Aid to improve health and safety	Priority 3: Enabling a sustainable blue economy in coastal, island and inland areas, and fostering the development of fishing and aquaculture communities
CLUSTER D: Climate, Environment and Biodiversity Art 21: Aid to support systems of allocation of fishing opportunities Art 22: Aid to support the design and implementation of conservation measures and regional cooperation Art 23: Aid to limit the impact of fishing on the marine environment and adapt fishing to the protection of species Art 24: Aid to innovation linked to the conservation of marine biological resources Art 25: Aid for the protection/restoration of marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities Art 26: Aid to improve energy efficiency and to mitigate the effects of climate change Art 27: Aid to added value, product quality and use of unwanted catches Art 29: Aid to inland fishing and inland aquatic fauna and flora Art 20: Aid to mutual funds for adverse climatic events and environmental incidents	Priority 1: fostering sustainable fisheries and the restoration and conservation of aquatic biological resources; Priority 4: Strengthening international ocean governance and enabling seas and oceans to be safe, secure, clean and sustainably managed
CLUSTER E: Health measures Art 38: Aid for public health measures Art 39: Aid for animal health and welfare measures	Priority 1: fostering sustainable fisheries and the restoration and conservation of aquatic biological resources

CLUSTER F: Productivity-building measures Art 28: Aid to fishing ports, landing sites, auction halls and shelters	This refers to operations improving the infrastructure of fishing ports, auction halls, landing sites and shelters in order to facilitate the landing and storage of unwanted catches (Article 13 of the EMFAF does however specify that the construction of new ports or new auction halls, with the exception of new landing sites, is an ineligible operation). Priority 1: fostering sustainable fisheries and the restoration and conservation of aquatic biological resources;
CLUSTER G: Processing and Marketing Art 41: Aid for marketing measures Art 42: Aid for the processing of fishery and aquaculture products	Priority 2: fostering sustainable aquaculture activities, and processing and marketing of fishery and aquaculture products, thus contributing to food security in the Union;
NON-EMFAF TYPE OF MEASURES	
CLUSTER H: Risk management Article 44 - Aid to make good the damage caused by natural disasters CLUSTER I: Fiscal & Parafiscal measures Article 45 - Tax exemptions and reductions in accordance with Directive 2003/96/EC ("Restructuring the Community framework for the taxation of energy products and electricity")	

Table 6 - Hypothetical (partial) section 1 of future FIBER

Baseline (#Art as per current FIBER)	Full alignment to EMFAF	Option 3 (hypothetical conditions/measures)
Section 1 – Sustainable development of fisheries Art 13: Aid for innovation Art 14: Aid for advisory services Art 15: Aid for partnerships between scientists and fishermen Art 16: Aid to promote human capital, job creation and social dialogue Art 17: Aid to facilitate diversification and new forms of income Art 19: Aid to improve health and safety Art 23: Aid to limit the impact of fishing on the marine	Art. 14 EMFAF: Support under this Chapter (Priority 1) shall contribute to the achievement of the environmental, economic, social and employment objectives of the CFP [...] <p>Priority 1: Fostering sustainable fisheries and the conservation of marine biological resources</p> (No specific articles to limit what types of measures within this priority can be block exempted)	Section 1 - Aid to foster sustainable fisheries and the conservation of marine biological resources Aid for innovation in fisheries Aid for advisory services Aid for partnership between scientists and fishermen Aid to promote human capital, job creation and social dialogue Aid to facilitate diversification and new forms of income Aid to improve health and safety Aid for innovation linked to the conservation of marine biological

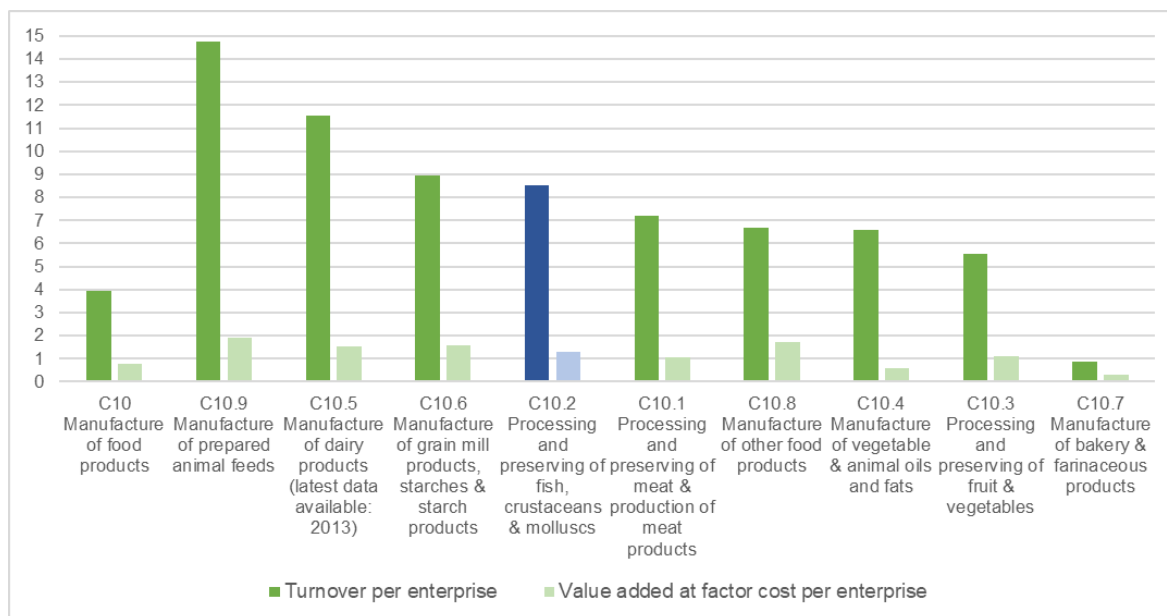
Baseline (#Art as per current FIBER)	Full alignment to EMFAF	Option 3 (hypothetical conditions/measures)
<p>environment and adapt fishing to the protection of species</p> <p>Art 24: Aid to innovation linked to the conservation of marine biological resources</p> <p>Art 26: Aid to improve energy efficiency and to mitigate the effects of climate change (measures not related to engine replacement)</p> <p>Art 27: Aid to added value, product quality and use of unwanted catches</p> <p>Art 28: Aid to fishing ports, landing sites, auction halls and shelters</p>		<p>resources</p> <p>Aid for energy efficiency and mitigation of climate change (excluding engine replacement)</p> <p>Aid for added value, product quality and use of unwanted catches</p> <p>Aid for fishing ports, landing sites, auction halls and shelters.</p>

Table 7 - Overall approach to assessing the impacts

Assessment of effectiveness	Assessment of impacts	Key assessment questions
1. Contribution to CFP objectives	Environmental: <ul style="list-style-type: none"> • Sustainable production and consumption • Biodiversity, flora, fauna Economic: <ul style="list-style-type: none"> • Competitiveness of businesses • Position of SMEs • Specific regions or sectors Social: <ul style="list-style-type: none"> • Employment • Working conditions • Public health 	Would the option make it more or less likely that MS use State aid for measures that generate positive impacts (or negative unintended impacts) in one or more of these areas? If so, how and to what extent?
2. Consistency with the EMFAF	N/A	To what extent is the option aligned with the logic and structure of the Regulation? Where there are inconsistencies, what are their likely effects?
3. Effective and efficient state aid control and minimise effect on competition and trade	Economic: <ul style="list-style-type: none"> • Functioning of the internal market and competition 	Would the option make it more or less likely that: <ul style="list-style-type: none"> • MS use State aid in ways that distort competition and/or trade; • Cases of State aid that give rise to risks and concerns in this respect are identified and effectively controlled? If so, how and to what extent?
4. Simplification, transparency and legal certainty	Economic: <ul style="list-style-type: none"> • Operating costs and conduct of business 	Would the option generate uncertainty, ambiguity, and/or adjustment, compliance or transaction costs? If so, how and to what extent?
5. Administrative burden	Economic: <ul style="list-style-type: none"> • Public authorities (governmental administrative burden) 	Would the option affect the cost of notification (where required), reporting, registration, monitoring and/or assessment of State aid schemes for competent authorities? If so, how and to what extent?
6. Impact on SMEs	Economic: <ul style="list-style-type: none"> • Position of SMEs 	How would the option positively or negatively impact the position of SMEs?

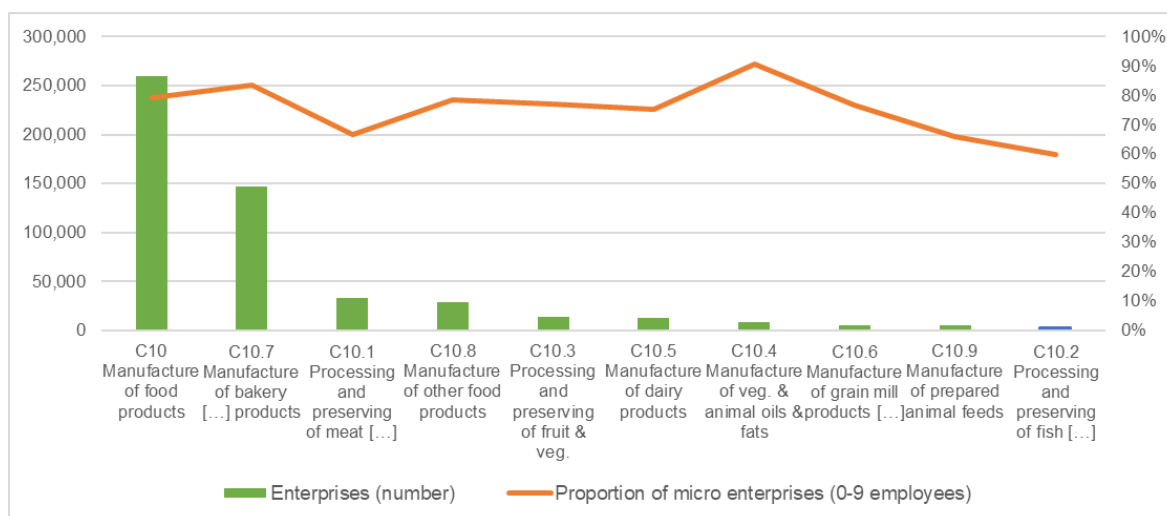
Source: Coffey, Ipsos, Poseidon study, as agreed with and updated by the Commission

Figure 4 - EU-28 food industry, turnover and value added per enterprise (EUR million, 2017)



Source: Eurostat structural business statistics (SBS), 2020

Figure 5 - EU-28 food industry, number and size of enterprises (2017)



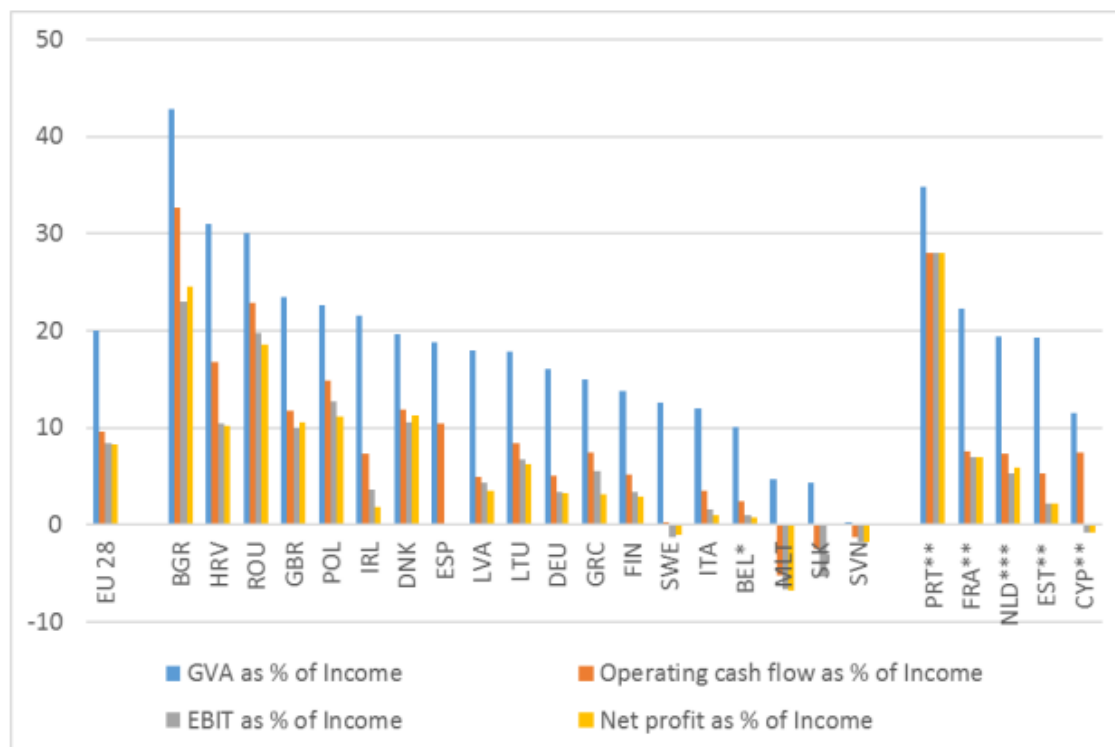
Source: Eurostat, Industry by employment size class, 2020

Table 8 - Economic performance of the EU fish processing industry sector by country, 2017

country	Gross Value Added	% of total EU	Operating Cash Flow	% of total EU	Earning before interest and tax	% of total EU	Net Profit	% of total EU
Belgium	76.9	1.1	18.3	0.6	7.5	0.3	5.4	0.2
Bulgaria	36.9	0.5	28.2	0.9	19.8	0.7	21.2	0.8
Croatia	38.4	0.6	20.8	0.6	12.9	0.5	12.6	0.5
Denmark	517.7	7.6	312.6	9.6	278.1	9.7	297.7	10.6
Denmark	48.9	0.7	18.3	0.6	12.1	0.4	10.2	0.4
Finland	351.2	5.2	111.2	3.4	75.3	2.6	71.3	2.5
Greece	67.2	1.0	33.3	1.0	25.1	0.9	14.2	0.5
Ireland	148.2	2.2	50.7	1.6	25.0	0.9	12.6	0.5
Italy	316.5	4.7	93.6	2.9	43.2	1.5	25.3	0.9
Latvia	34.2	0.5	9.3	0.3	8.3	0.3	6.7	0.2
Lithuania	98.1	1.4	46.0	1.4	37.2	1.3	34.1	1.2
Malta	1.1	0.0	1.2	0.0	1.6	-0.1	1.6	-0.1
Poland	693.7	10.2	453.6	13.9	389.0	13.6	340.7	12.2
Romania	30.2	0.4	23.1	0.7	19.9	0.7	18.7	0.7
Slovakia	4.1	0.1	2.3	-0.1	5.0	-0.2	5.0	-0.2
Slovenia	0.5	0.0	2.8	-0.1	3.9	-0.1	3.8	-0.1
Spain	1,150.1	17.0	635.6	19.5	635.6	22.3	635.6	22.7
Sweden	75.5	1.1	2.0	0.1	7.6	-0.3	5.9	-0.2
United Kingdom	927.8	13.7	461.7	14.1	392.4	13.8	415.6	14.8
Sub-total EU 19	4,617.4	68.1	2,311.8	70.8	1,963.1	68.8	1,905.5	68.0
Other DCF MSs	2,165.7	31.9	955.3	29.2	890.2	31.2	895.1	32.0
Total EU 24	6,783.1	100.0	3,267.1	100.0	2,853.3	100.0	2,800.7	100.0

Source: MS data submissions under the 2019 Fish processing data call and elaboration by the EWG.

Table 9 - Economic performance of the EU fish processing industry sector by country (indicators in relation to income), 2017



Source: MS data submissions under the 2019 Fish processing data call, as presented in the 2020 report (The EU fish processing sector - Economic report, see footnote 59).

Table 10 - De minimis aid granted compared to national cap, per MS

MS	Total <i>de minimis</i> granted 2014-2019 EUR	Average <i>de minimis</i> granted per year EUR	Max national cap 3 ys EUR	Max cap 1y (average) EUR	Aid granted / cap
Austria	147,629	24,605	1,510,000	503,333	5%
Belgium	0	0	11,240,000	3,746,667	0%
Bulgaria	0	0	1,270,000	423,333	0%
Croatia	6,269,537	1,044,923	6,260,000	2,086,667	50%
Cyprus	442,700	73,783	1,090,000	363,333	20%
Czech Republic	263,967	43,994	3,020,000	1,006,667	4%
Denmark	4,178,818	696,469	51,720,000	17,240,000	4%
Estonia	486,820	81,137	3,930,000	1,310,000	6%
Finland	1,128,659	188,110	7,450,000	2,483,333	8%
France	4,892,356	815,393	112,550,000	37,516,667	2%
Germany	6,767,770	1,127,961	55,520,000	18,506,667	6%
Greece	130,000	21,667	27,270,000	9,090,000	0%
Hungary	1,189,268	198,211	975,000	325,000	61%
Ireland	3,697,290	616,215	20,820,000	6,940,000	9%
Italy	5,586,185	931,030	96,310,000	32,103,333	3%
Latvia	865,387	144,231	4,450,000	1,483,333	10%
Lithuania	144,834	24,139	8,320,000	2,773,333	1%
Luxembourg	0	0	0	0	N/A
Malta	591,627	98,604	2,500,000	833,333	12%
Netherlands	0	0	22,960,000	7,653,333	0%
Poland	7,143,926	1,190,654	41,330,000	13,776,667	9%
Portugal	1,556,039	259,339	29,200,000	9,733,333	3%
Romania	0	0	2,460,000	820,000	0%
Slovenia	655,116	109186	990,000	330,000	33%
Slovakia	0	0	860,000	286,667	0%
Spain	4,142,817	690,469	165,840,000	55,280,000	1%
Sweden	3,106,201	517,700	18,860,000	6,286,667	8%
UK	5,349,036	891,506	114,780,000	38,260,000	2%
EU28	58,735,982	9,789,330	813,485,000	271,161,667	4%

Source: Monitoring data of the European Commission for total de minimis aid.

Table 11 - Estimated (current) administrative cost per procedure and category of aid

	Time (DAYS)	Labour costs (EUR)	Other costs (EUR)	Total Cost (EUR)
De minimis				
Design	1.29	1,964	428	2,392

	Time (DAYS)	Labour costs (EUR)	Other costs (EUR)	Total Cost (EUR)
Monitoring (per undertaking)	2.46	3,287	142	3,429
Central reporting	1.90	2,489	132	2,621
EC reporting	0.50	722	20	742
<i>Total</i>	6.15	8,462	722	9,184
Block exempted				
Design	2.21	4,675	40	4,715
Submission of info sheet	0.30	968	38	1,006
Monitoring (per undertaking)	1.89	2,040	132	2,172
Central reporting	1.96	1,848	132	1,980
EC reporting	1.15	2,576	49	2,625
<i>Total</i>	7.51	12,107	391	12,498
Notified				
Design	3.61	8,818	469	9,287
Submission of notification	1.17	30,093	38	3,131
Responding to Commission request for clarifications	1.73	5,165	111	5,276
Monitoring (per undertaking)	1.86	1,962	132	2,094
Central reporting	1.79	1,734	132	1,866
EC reporting	0.43	579	56	635
<i>Total</i>	10.59	21,351	938	22,289

Source: Survey of granting authorities and Eurostat (2016) series LCSTRUCT, calculations by Coffey, Ipsos, Poseidon

