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## **COMMISSION STAFF WORKING DOCUMENT**

### **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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## 1. 1. INTRODUCTION

### 1.1. 1.1. Purpose of the evaluation

The present Staff Working Document (“SWD”) on the evaluation of the State aid framework in the fisheries and aquaculture sector is conducted with a view to the revision of the relevant instruments. Namely, the framework consists of three instruments: i) a sector-specific block exemption Regulation, known as FIBER, ii) the Guidelines for the examination of State aid in the sector of fisheries and aquaculture on State aid (the Guidelines) and iii) a regulation on *de minimis* aid in the fisheries and aquaculture sector (the *de minimis* Regulation). The State aid rules in the fisheries and aquaculture sector are closely related to the Common Fisheries Policy (CFP), and the rules on support measures financed by the European Maritime and Fisheries Fund (EMFF).

The evaluation is 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 the *de minimis* Regulations and their link to the EMFF dictate their revision in light of the review of these Regulations and the adoption of EMFF’s successor, the European Maritime Aquaculture and Fisheries Fund (EMFAF) for 2021-2027.

A particular dimension of this SWD concerns the stated objectives of the 2012 State aid modernisation reform (SAM)<sup>1</sup>. Against this background, the SWD will assess whether the current State aid rules are still “fit for purpose”, taking into account the general SAM objectives, the specific objectives of the sector-specific legal framework and the Common Fisheries Policy in particular.

The SWD will also assess the extent to which the current State aid rules are still relevant in view of new policy priorities and emerging challenges, as identified in the political Guidelines of the Commission<sup>2</sup>. This includes, among others, the priorities set out in the European Green Deal<sup>3</sup>, while acknowledging that the information available and part of the analysis predates these more recent policy initiatives and priorities. It should be noted in that regard that the impact of the COVID-19 outbreak is analysed only to the extent possible. As the crisis is still ongoing, it is not possible to properly evaluate the full impact of the outbreak on the real economy and the fisheries and aquaculture sector. With regard to the economic consequences for the sector following the aggression against Ukraine by Russia, the lack of data prevents from conducting any in-depth analysis at this stage.

In line with the Commission Better Regulation Guidelines<sup>4</sup>, the SWD will examine the performance of the State aid rulebook on fisheries and aquaculture against five criteria: (i)

<sup>1</sup> [https://ec.europa.eu/competition/State\\_aid/modernisation/index\\_en.html](https://ec.europa.eu/competition/State_aid/modernisation/index_en.html). SAM was a wide-ranging review of the State aid rules launched by the Commission. It was based on three objectives: (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances; (ii) to focus Commission ex ante scrutiny on cases with the biggest impact on the internal market, while strengthening Member State cooperation in State aid enforcement; and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations (see in detail in Section 2.3.2). An additional dimension of SAM was the further simplification of State aid rules, taking into account the experience gained in the implementation of the State aid framework.

<sup>2</sup> [https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf)

<sup>3</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>4</sup> Commission Staff Working Document Better Regulation Guidelines, 7 July 2017, SWD (2017) 350.

effectiveness, (ii) efficiency, (iii) relevance, (iv) coherence and (v) EU added value. This exercise aims to establish the strengths of the existing framework but also to identify possible shortcomings and gaps compared to the stated objectives.

This SWD reflects the findings and views of the Commission's staff and does not reflect a formal position of the Commission itself. It does not prejudice the final nature of any act or the content of any delegated or implementing acts that may be prepared by the Commission.

## **1.2. 1.2. Scope of the evaluation**

The scope of the evaluation is the public aid sought and/or granted for the fishery and aquaculture sector in the EU Member States, under the following three instruments, since their adoption in 2014-2015 and until the end of 2019<sup>56</sup>:

i) **Commission Regulation (EU) No 717/2014** on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fisheries and aquaculture sector. This *de minimis* Regulation allows Member States to grant small amounts of aid to undertakings in the sector without prior notification to the Commission.

ii) **Commission Regulation (EU) 1388/2014** 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 (FIBER). The FIBER allows Member States to grant State aid to the fisheries and aquaculture sector without prior notification to the Commission. The current block-exemption Regulation mirrors to a great extent the measures and conditions established under the EMFF Regulation 508/2014.

iii) **Guidelines for the examination of State aid to the fishery and aquaculture sector**, setting out the conditions and criteria under which the Commission will consider aid in this sector to be compatible with the internal market. As the economic effects of State aid do not change depending on whether it is (even partly) financed by the Union, or whether it is financed by a Member State alone, the Commission considers that there should in principle be consistency and coherence between its policy in respect of the control of State aid and the support which is granted under the Union's CFP (EMFF). The use of State aid is only allowed according to the Guidelines for measures which are not expressly prohibited under the EMFF Regulation 508/2014 and which respect certain conditions set therein and the general CFP objectives. The Guidelines include categories of aid not covered by the above Regulations (e.g., aid to make good the damage caused by adverse climatic events or to control animal diseases) and set the principles and rules that the Commission applies when assessing individual aid or aid schemes (competition principles and coherence with CFP objectives).

The evaluation covers all State aid in the fisheries and aquaculture sector (for an overview of all measures, please consult Annex 12) as well as *de minimis* aid. There are two main ways of categorisation of the State aid measures. The first one is on the basis of their

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<sup>5</sup> Only State aid granted via regulations approved in or after 2014 is within the scope of the evaluation. Schemes approved via previous regulations have not been evaluated.

<sup>6</sup> The scope of the evaluation covers the aid granted until the end of 2019, reflecting the data availability (State aid Scoreboard 2020) at the time of the drafting of the SWD.

nature and broader objectives they serve<sup>7</sup>. The second one is on the basis of whether their scope corresponds to measures eligible for co-financing under the EMFF (now EMFAF).

It should be noted that the Guidelines are conclusive and all-encompassing with regard to the notification of State aid in the fisheries and aquaculture sector. Therefore, all State aid in this sector that is not covered by a block exemption regulation, such as the FIBER<sup>8</sup>, but also the General Block Exemption Regulation (GBER)<sup>9</sup> has to be notified under the Guidelines. To a great extent the Guidelines mirror the FIBER, as categories of measures covered by the FIBER may be considered compatible with the internal market in line with section 5.1 of the Guidelines. However, the scope of the FIBER is not as extensive as that of the Guidelines. For instance, measures in support of the outermost regions as well as parafiscal charges are not included in the scope of the current FIBER. Moreover, the Guidelines offer more comprehensive coverage in terms of risk management measures (see Annex 12). This includes the measure category “Aid for other measures” (Section 5.7 Guidelines), as these provisions have been mostly used as the legal basis of schemes for compensation of damage caused by protected animals.

As regards measures which would be eligible for co-financing under the EMFF, aid can be distinguished in three categories: i) EMFF type covered by FIBER and the Guidelines, ii) non-EMFF type covered by FIBER, and iii) non-EMFF type covered by the Guidelines. It should be noted that, while the scope of the report includes the evaluation of the performance of the sectoral *de minimis* rules, *de minimis* aid is not considered State aid as defined by Article 107 TFEU. Therefore the Commission does not exert control on it. For this reason, *de minimis* aid cannot be strictly classified in its relation to the EMFF, as Member States can use *de minimis* aid for any purpose, with a number of pre-defined exceptions (Article 1 of the current *de minimis* Regulation).

Moreover, as the EMFF type measures have been thoroughly evaluated in the context of the Impact Assessment accompanying the Commission Proposal for European Maritime, Aquaculture and Fisheries Fund 2021-2027<sup>10</sup>, the SWD will rely on that analysis and provide a more in-depth assessment of the non-EMFF type of measures. These are the ones falling under Article 44 and 45 of the FIBER<sup>11</sup> and Sections 4 and 5 of the Guidelines<sup>12</sup> and in particular:

- i. Aid to make good the damage caused by natural disasters (Article 44 FIBER, Section 4 of the Guidelines) and exceptional occurrences (Section 4 of the Guidelines)

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<sup>7</sup> The measures can be clustered into nine categories: (i) Employment, Job Creation, Health & Safety at Work; (ii) Climate, Environment and Biodiversity; (iii) Risk management; (iv) Public Health measures; (v) R&D, Innovation, Consultancy, Partnership-building; (vi) Measures for the Outermost Regions; (vii) Productivity-building measures; (viii) Fiscal & Parafiscal measures; (ix) Processing and Marketing.

<sup>8</sup> See Section 5.1. ‘Aid for categories of measures covered by a block exemption regulation’

<sup>9</sup> 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 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*; which may apply for aid 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.

<sup>10</sup> SWD(2018) 295 final of 12.6.2018

<sup>11</sup> 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.

<sup>12</sup> Section 4 of the Guidelines concerns ‘Aid that is compatible with the internal market’ and in particular 4.1. ‘Aid to make good the damage caused by natural disasters and exceptional occurrences’. Section 5 of the Guidelines concerns ‘Aid that may be compatible with the internal market’. This includes 5.1. Aid for categories of measures covered by a block exemption regulation, 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 financed through parafiscal charges, 5.6. Operating aid in outermost regions, and 5.7. Aid for other measures.



- ii. Aid to make good the damages caused by adverse climatic events (Section 5.3 of the Guidelines)
- iii. Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (Section 5.4 of the Guidelines)
- iv. Aid to compensate damage caused by protected animals, which is currently not explicitly included as a measure within the Guidelines (it is covered by “Aid for other measures”, Section 5.7 of the Guidelines), but whose explicit definition in the post-2020 State aid framework is being considered.

The special attention is justified by the fact that all the State aid notified by Member States during the evaluation period can be categorised within these four measures<sup>13</sup> (see also Section 3.1).

Finally, this SWD will not include in the analysis measures for operating aid (Section 5.6 of the Guidelines) and aid for the renewal of the fishing fleet in outermost regions (Section 5.6a of the Guidelines), due to the lack of data. These provisions are quite novel (Section 5.6a was included in the 2018 amendment) and no relevant scheme was notified during the evaluation period, nor was there any specific feedback from stakeholders, which hinders the possibility of drawing any conclusions in the context of the present SWD.

#### *Timeframe covered and geographical scope of the SWD*

The SWD covers the period from the entry into force of the relevant rules in 2014-2015 up until 31 December 2019, to the extent that the relevant information and data are available. For example, due to the time lag of the reporting obligations by Member States, the State aid Scoreboard<sup>14</sup> data available for this SWD are only for aid granted until 31 December 2019 (see Annex 8). The SWD includes an assessment of the impact of recent Commission policy initiatives on the State aid rules (see Section 3.2). For the reasons explained above, the impact of the COVID-19 outbreak is analysed as thoroughly as possible with the currently available information.

The SWD covers all current Member States and the UK (which was a Member State during the time covered by the evaluation).

## **2. 2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?**

### **2.1. 2.1. Description of the intervention and its objectives**

#### *2.1.1. 2.1.1. Notion of State aid and compatibility*

Competition policy is instrumental in maintaining a level playing field in the Single Market ensuring that businesses compete fairly with each other.

State aid rules are part of the EU competition legal framework. According to Article 107 TFEU, “Any aid granted by a Member state or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible within the internal market”.

<sup>13</sup> The only two schemes that do not fall within these measures are:

- A scheme notified by the Czech Republic for the construction and renovation of ponds and water reservoirs (2016-2021)
- A scheme in Spain for the security of Basque tuna vessels in the Indian Ocean, which was notified in 2017 but was only active in 2019, and therefore no funding was granted in 2014-2018.

<sup>14</sup> [https://ec.europa.eu/competition-policy/system/files/2021-06/state\\_aid\\_scoreboard\\_note\\_2020.pdf](https://ec.europa.eu/competition-policy/system/files/2021-06/state_aid_scoreboard_note_2020.pdf)

Despite the general prohibition of State aid, the Treaty leaves room for a number of policy objectives for which State aid can be considered compatible. 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 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 8 of Regulation (EU) No 508/2014 of the European Parliament and the Council, which establishes the European Maritime and Fisheries Fund (EMFF). 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 EMFF, 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 EMFF (so-called “pure State aid”), and aid which goes beyond the ceilings for public aid stipulated in the EMFF (“top up” aid, which renders the whole operation State aid to be assessed under Article 107 TFEU).
- Operations supported by the EMFF, which fall outside the scope of Article 42 TFEU. These are namely the ones which 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.

#### *2.1.2. 2.1.2 State aid framework in the fishery and aquaculture sector-its determinants and instruments*

State aid to the fishery and aquaculture sector is aligned with the framework of the Common Fisheries Policy (CFP). Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP. In this context, and given the mirroring of EMFF measures in the FIBER (and by extension, the Guidelines), the developments with regard to the CFP and EMFF during the evaluation period are an essential part of this evaluation.

The Common Fisheries Policy (CFP)<sup>15</sup> is the governance framework for managing European fishing fleets and for conserving fish stocks. Reformed in 2013<sup>16</sup>, the CFP covers four policy areas: i) fisheries management, ii) international policy, iii) market and trade policy, and iv) funding of the policy.

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 EMFF to pursue these objectives (which had an overall budget of € 6.4 billion for the programming period 2014-2020).

The EMFF focuses on six main priorities, which relate to: (i) fostering sustainable fisheries and (ii) sustainable aquaculture; (iii) fostering the implementation of the CFP; (iv) fostering marketing and processing (improving market organisation); (v) increasing

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<sup>15</sup> [The Common Fisheries Policy \(CFP\) | Fisheries \(europa.eu\)](#)

<sup>16</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354m 28.12.2013, p. 22-61; which took effect from 1st January 2014.

employment and territorial cohesion; and (vi) fostering the implementation of the IMP. Overall, the pursuit of those objectives is not to result in an increase in fishing capacity.

During the 2014-2020 programming period, significant novelties were introduced to the EMFF, with an important shift towards sustainability. This included the introduction of the concept of Maximum Sustainable Yield (MSY), and the so-called landing obligation<sup>17</sup>. This radical change in fisheries management aimed to improve fishing behaviour through more selective and sustainable fishing practices.

## 2.2. 2.2. Baseline and points of comparison

A baseline scenario typically corresponds to a situation without policy change. The most plausible baseline scenario is the one whereby the rules that were in force prior to the 2014-2015 revision of the rulebook would have continued to apply<sup>18</sup>. Indeed, the expiration of the substantive rules would have been a policy change. Its consequence **would have been the direct application of the Treaty**, i.e. the notification of each and every measure constituting State aid in the meaning of 107(1) TFEU and their compatibility assessment by the Commission directly under the Treaty.

In terms of design, the baseline implies that the State aid rulebook in the fishery and aquaculture sector would not have been aligned with the policy objectives set in the CFP or the EMFF Regulation for the period 2014-2020. As it will be shown below, the magnitude of the implications that the baseline entails differs among the three instruments. However, in all cases, the implications concern the policy priorities, the aid conditions and the scope.

As regards block-exempted measures, the Block Exemption Regulation preceding the FIBER, approved in 2008<sup>19</sup>, was aligned with the CFP and EFF for the period 2008-2013. The current Block Exemption Regulation (FIBER) is aligned with the CFP and EMFF for the period 2014-2020. However, the scope of the two block-exemption Regulations is not that different, with the most notable changes being in terms of conditions for the granting of aid. Nevertheless, the current FIBER Regulation includes some measures that were not covered by the previous regulation, and *vice-versa*. This is the case, for example, as regards aid for start-up support for young fishermen (Article 18 of FIBER), which would not be block-exempted in the counter-factual scenario.

Similarly, the previous Guidelines (2008-2015)<sup>20</sup> were aligned with the CFP and EFF for the period 2008-2013. The current Guidelines are aligned with the CFP and EMFF for the period 2014-2020. There are also differences in the scope; for instance, the measure ‘Tax

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<sup>17</sup> Discarding is the practice of returning unwanted catches to the sea, either dead or alive, because they are undersized, due to market demand, the fisher has no quota or because catch composition rules impose this. The reform of the CFP aimed at gradually eliminating the wasteful practice of discarding through the introduction of the landing obligation.

<sup>18</sup> That is notably i) Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State Aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products. OJ L 201/16 of 30.7.2008, ii) Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004, OJ L 193, 25.7.2007, p. 6 and iii) Guidelines for the examination of State aid to fisheries and aquaculture OJ C 229, 14.9.2004, p. 5.

<sup>19</sup> Approved by Commission Regulation (EC) No 736/2008 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:201:0016:0028:EN:PDF>

<sup>20</sup> The Guidelines were applicable from April 2008 until July 2015, when the new Guidelines entered into force. Guidelines published in 2008 available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0403\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0403(02)&from=EN)

relief and labour related costs concerning Community fishing vessels operating outside Community waters' that would be possible under the baseline scenario, has been removed from the current Guidelines as it was considered redundant (i.e. no aid was notified during the implementation of the previous framework). Moreover, with the amendment of the current Guidelines in 2018, 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).

As regards the *de minimis* rules, the baseline would have resulted in a lack of harmonisation with the list of ineligible measures under the EMFF. This would have allowed Member States to finance measures that had been excluded from or limited in the EMFF under the *de minimis*. That would be the case, for instance, for fleet measures where the EFF was much more lenient in its approach than the EMFF.<sup>21</sup> Not aligning the list of exclusions with that in the EMFF would have allowed Member States to grant *de minimis* aid for engine replacement or temporary cessation to unbalanced fleets, or for permanent cessation to scrapping for balanced fleets. It would also have permitted Member States to continue supporting scrapping beyond 31 December 2017. Therefore, under the baseline it would have been possible for Member States to support measures that could jeopardise the CFP objectives.

In addition, a direct consequence of the baseline would have been the lack of alignment with the SAM-specific objectives aiming at improved efficiency and effectiveness as well as simplification of the State aid rules. This would have implied a disruption of the streamlining of and the coherence with the rest of the State aid rules post-SAM.

In terms of volume, it should be noted upfront that State aid in the fisheries sector varies considerably from one year to another. This is mainly due to the fact that Member States do not consistently spend amounts for a given measure over the years. Moreover, fluctuations in spending may reflect the different points of the programming cycle under the EMFF. Finally, certain measures, notably those on compensation for damages caused by natural disasters or adverse climatic events are, by their very nature, higher in the year of the event or the subsequent ones than in other years.

As Table 1 shows, under the previous framework, i.e. before 2014, State aid expenditure<sup>22</sup> in the fishery and aquaculture sector followed a steadily declining trend in the EU in the period 2009-2014. Spending was at its peak in 2009-2011, coinciding with the culmination and immediate aftermath of the financial crisis, and continuously decreased reaching EUR 40.7 million in 2014, which was also the SAM cut-off year.

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<sup>21</sup> The main limitation is that support for permanent cessation, temporary cessation and engine replacement is capped (at the higher of EUR 6 million or 15% of the EMFF allocation to Union priorities 1,2 and 5). In addition, permanent cessation can only be used as part of the measures in the action plan MS have to present to the Commission to redress the situation of fleet segments the fishing capacity of which is unbalanced with regard to their fishing opportunities. Furthermore, permanent cessation can only be used until 31 December 2017. Conversely, start-up support for young fishermen and engine replacement can only be used for fleets segments which are balanced.

Last, the list of situations triggering the possibility of using temporary cessation is much shorter than that in the EFF and the period during which it can be applied is also significantly shorter.

<sup>22</sup> Cases which are still under examination are excluded. General measures that do not favour certain enterprises or sectors, and public subsidies that do not affect trade or distort competition, are not covered as they are not subject to the Commission's investigative powers under the State aid rules or deemed not to constitute State aid. Therefore, the data presented as regards State aid do not include funding granted under the *de minimis* rules. Funding granted under *de minimis* is presented separately, where necessary for the purposes of the analysis.

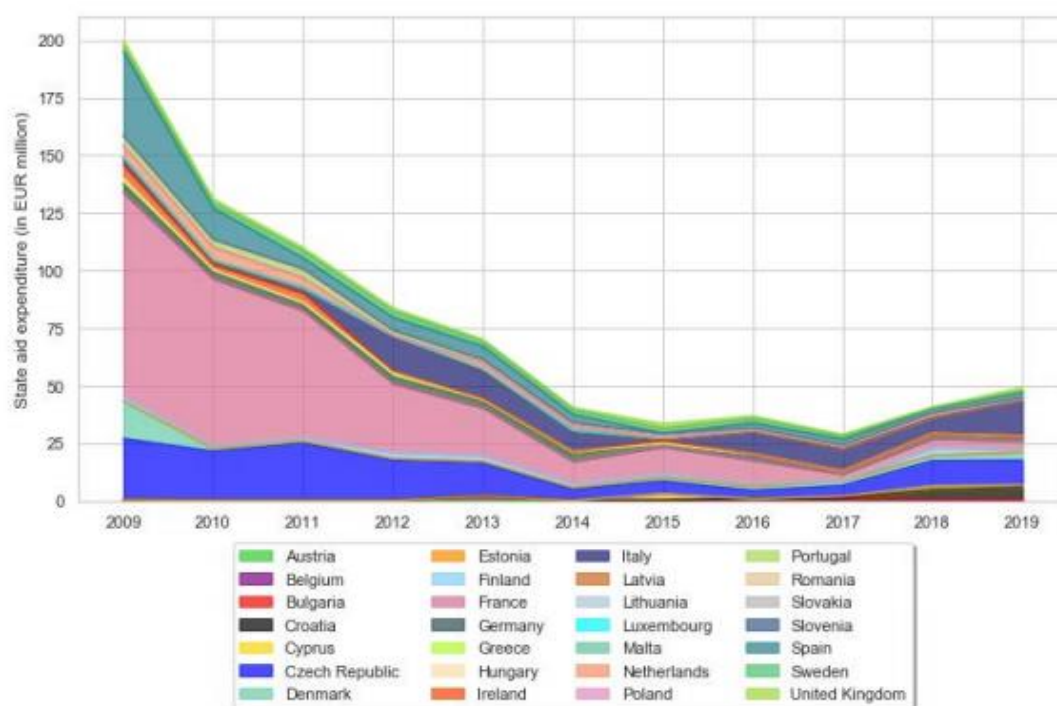
**Table 12 - State aid spending in the EU 2009-2019 (in million EUR)**

EU	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Total State aid, less railways</b>	72826.8	73086.1	66794.7	68454.4	68022.6	98686.9	101178.6	106609.1	116213.6		
<b>Aid to fishery/aquacult.</b>	199.9	131.0	109.8	83.8	69.9	40.7	33.5	36.7	28.7	37	49.15

Source: State aid Scoreboards, 2016, 2018, 2019, 2020

In the period 2014-2019, approximately EUR 212 million were spent on notified or block-exempted State aid in the sector<sup>2324</sup>. This amount covers aid granted under both the current and the previous State aid framework but paid during that period. As illustrated in Figure 1 below, the variation in spending was not as strong within this period, and State aid appeared to stabilise to around EUR 37 million per year on average throughout this timeframe.

**Figure 6 - Total subsidies to fisheries and aquaculture by Member State (in million EUR), 2010-2019**



Source: State aid Scoreboard, 2020

The strong correlation between State aid spending and the phase of the economic cycle supports the assumption that State aid in the sector under the baseline scenario would have followed a similarly stable trend. However, it cannot entirely be excluded that the priorities of the CFP 2014-2020 would have had an impact on those trends.

<sup>23</sup> State aid Scoreboards, 2016, 2018, 2019, 2020.

<sup>24</sup> Historical State aid data relative to subsidies to fisheries and aquaculture may be subject to corrections in the next Scoreboard.

## **2.3. 2.3. Intended Results and Intervention Logic**

### **2.3.1. Drivers of the Intervention – Needs and Challenges**

The preparation and adoption of the current State aid framework in the fisheries and aquaculture sector in 2014-2015 was triggered by the need to replace the previous framework, which was about to expire. At the time of the design of the current State aid rules in the sector, a crucial driver was the need to ensure their coherence and consistency with two overarching Commission policy initiatives, the State Aid Modernisation initiative (SAM) and the at that time newly adopted<sup>25</sup> Common Fisheries Policy (CFP) for the period of the EMFF 2014-2020.

SAM had established the need for a revision of the State aid instruments to improve the quality of the Commission's scrutiny of the use of State aid in the sector. Moreover, it had identified the need for State aid instruments to better address market failures, and limit competition distortions.

In terms of alignment with the objectives set by the revised CFP and the EMFF, the overarching challenge that informed the revision of the rules was that State aid in the fisheries and aquaculture sector should not result in an increase in fishing capacity, and that it had to address challenges related to the promotion of sustainability. Additional challenges were with regard to the improvement of market organisation in the sector, and in particular marketing and processing as well as increasing employment and territorial cohesion.

The design of the rules had also to take into account the impact on management costs and administrative burden. In the case of *de minimis* aid, there was the additional need to ensure that the new rules would provide sufficient flexibility to address short-term negative economic and social impacts and that *de minimis* aid would not be used for purposes antagonistic to the CFP objectives. Moreover, the comparison of the current scope of FIBER and the Guidelines to the scope of their predecessors, and the available information on the use of aid during the period under evaluation, reveal that there was a need to expand and/or clarify the scope with regard to risk management.

Finally, the overall economic environment at the time and broader policy developments at Union level were undoubtedly drivers that affected the design of the three State aid instruments under evaluation. In particular, at the time of their preparation and adoption, the EU was facing the immediate aftermath of the 2008 economic crisis, with serious budgetary constraints and increased economic and fiscal surveillance.

### **2.4. 2.3.2. Stated EU objectives and expected changes**

The design of the current State aid framework in the fisheries and aquaculture sector was in alignment with the SAM and the CFP for the new funding period 2014-2020. This was clearly reflected in the stated objectives of the three instruments.

Notably, the stated objectives of the fisheries Guidelines and the FIBER include the three SAM objectives on the modernisation of State aid control:

- i. fostering sustainable, smart and inclusive growth in a competitive internal market, what is known as “good aid”;

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<sup>25</sup> The revised CFP took effect on 1 January 2014.

- ii. focusing Commission *ex ante* scrutiny on cases with the biggest impact on the internal market whilst strengthening the cooperation with Member States in State aid enforcement; and
- iii. streamlining the rules and providing for faster decisions, thus enabling faster access to aid.

In addition to the SAM objectives, the FIBER includes two more objectives:

- i. allowing for better prioritisation of State aid enforcement activities and greater simplification;
- ii. enhancing transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while preserving the institutional competences of the Commission and the Member States.

Moreover, all three instruments state as an explicit objective the contribution to the achievement of the CFP objectives<sup>26</sup>.

Therefore, the changes that were introduced in relation to the above objectives have to be seen in the context of the overall objective of State aid control, which is to minimise distortions of competition in the internal market as well as the CFP objectives related to sustainability and avoidance of fishing overcapacity. Zooming in on the individual instruments, certain observations can be made concerning the expected changes.

Firstly, the scope of the FIBER was expanded in alignment with the CFP 2014-2020, and the conditions for the granting of block exempted aid were updated and clarified. This included the addition of aid to start-up support for young fishermen (Article 18) but also the clarification of the provisions on aid to make good the damage caused by natural disasters (Article 44); to improve legal certainty, the current FIBER defined the type of events that may constitute a natural disaster and are exempted by this Regulation. Seen alongside the anticipated changes resulting from the revision of other Block Exemption Regulations, including the General Block Exemption Regulation, the changes in the FIBER were expected to lead to an increased use of block exempted aid, which would in turn yield benefits to aid beneficiaries, granting authorities and the Commission. Notably, it would allow for simpler procedures leading to a faster access to aid, as there would not be a need for notification or a prior compatibility assessment of the Commission. This in turn would contribute to a lower administrative burden, freeing up resources for the national administrations and the Commission to deal with cases which are deemed to be most distortive.

Secondly, the Guidelines were adapted to reflect the objectives of the CFP and the EMFF 2014-2020. Each beneficiary must comply with the rules of the CFP and continue to do so after receiving the aid (point 31, 33). Also, aid measures must clearly identify the objective of the CFP they are contributing to (point 37) and no aid may be granted for measures of such a kind that they would be ineligible under Article 11 EMFF Regulation (point 35).

The Guidelines of 2015 do mirror the FIBER to a large extent. Under Section 5.1 of the Guidelines, categories of measures that are within the scope of Block exemption Regulations may as a matter of principle be considered compatible with the internal market. However, as stated above, the Guidelines are conclusive and all-encompassing with regard to State aid granted for the fisheries and aquaculture sector. Any aid that is not of a kind where specific assessment criteria have been laid down in the Guidelines will be

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<sup>26</sup> The CFP objectives are set out in Article 2 of Regulation (EU) No 1380/2013 of the European Parliament and the Council.



assessed under Section 5.7, aid for other measures. Aid for such measures is in principle not deemed compatible with the internal market and will be assessed on the basis of a case by case analysis. Under section 5.7, aid as compensation for damage by protected animals has been declared as compatible with the internal market during the evaluation period. Taking into account that the Guidelines of 2015 also include specific assessment criteria for the granting of aid to make good the damage caused by natural disasters and exceptional occurrences (Section 4.1), these offer a more comprehensive approach to risk management compared to the previous period – subject, however, to notification requirements. The inclusion of more detailed and clear eligibility conditions aimed at improving the legal certainty, thus reducing to the extent possible the administrative burden associated with the notification procedure.

Concerning *de minimis* aid, the impact assessment of the current *de minimis* Regulation carried out in 2013 noted as its specific objective ‘*the ability to allow Member States to quickly address short-term negative impacts resulting from unexpected events that could endanger the economic performance of viable operators and jeopardise jobs*’. It also indicated adequate flexibility as an objective. In that context, flexibility was understood as the ability to grant support very quickly to beneficiaries without a cumbersome administrative procedure, whilst preventing any market distortions and without jeopardising achieving the objectives of the CFP.

### **2.5. 2.3.3. Inputs: Provisions to deliver on the Objectives**

Reflecting the stated objectives set out in Section 2.3.2., provisions were introduced in the current State aid instruments to ensure delivery of the expected changes.

In line with the SAM objective of fostering “**good aid**”, a set of common assessment principles was introduced in the FIBER and the Guidelines, as was the case with the rest of the SAM initiatives. The common assessment principles ensure that the aid serves a purpose of common interest, has a clear incentive effect, and is appropriate and proportionate. Concerning *de minimis* aid, provisions were included to ensure that aid would not be channelled to measures running contrary to the CFP objectives.

**Concerning the ‘simplification’ objective**, the FIBER covers a number of measures, which are deemed manifestly compatible with the internal market on the basis of the experience accumulated in the Commission. Moreover, FIBER measures must grant aid amounts below the FIBER notification thresholds. In the case of measures which are deemed more likely to distort competition or which exceed the FIBER notification thresholds, the Guidelines have a set of streamlined rules based on common assessment principles. This allows the proper assessment of measures with potentially big effects on the market, ensuring that potentially distortive effects are minimised while aid is funnelled towards common objectives. Concerning *de minimis* aid, the provisions relating to the aid ceilings were adapted to allow simplification while avoiding market distortions.

The inclusion of specific provisions in line with SAM, such as streamlined assessment, transparency, reporting and evaluation are instrumental in achieving the objective of **faster access to aid**. The existence of these provisions allows the Member States to design their aid measures from the very beginning in line with those rules, avoiding thus unnecessary delays. In this context, and in terms of input, special mention needs to be made of the enhanced transparency requirements. In compliance with SAM, new requirements were introduced for public information on beneficiaries of aid awarded under notified schemes



or schemes covered by the FIBER, which are then introduced into an EU public transparency module for individual aid awards<sup>27</sup>.

Finally, sustainability is an overarching principle that weaves together the whole structure of the State aid instruments in the fisheries and aquaculture sector. To this end, as described in Annex 12, the measures included in the scope of the FIBER and the Guidelines are heavily geared towards the CFP sustainability, job creation and cohesion objectives. In that context, special attention was given in avoiding the inclusion of measures which could lead to fishing overcapacity and waste of catches.

## **2.6. 2.3.4. Expected Outputs and Results**

The changes that were introduced in pursuit of the stated objectives must be analysed under the prism of potential costs and expected benefits, outputs, outcomes and impacts.

Looking at the outputs, the expected result of these efforts was the **development of a revised and streamlined sector-specific State aid framework**. This framework was aligned with the objectives of the SAM, EMFF and the CFP. As a result, the current rulebook was expected to contribute to a clearer, more consistent and more coherent architecture of State aid control in the fisheries and aquaculture sector. In addition, a clear expected output of the introduction of the SAM common assessment principles and common general provisions in FIBER and in the Guidelines, was the promotion of the granting of ‘good aid’, that is aid supporting sustainable, smart and inclusive growth. As a result, the aid granted under the current framework was expected to strengthen the internal market, and promote more effective public spending.

Moreover, an expected result of the provisions of the current State aid framework was **simplification** and increased legal clarity. This is reflected in the clear delineation of the aid, which can be block-exempted as opposed to aid for which there are notification and evaluation requirements. In the same vein, the adaptation of the ceilings for *de minimis* aid was expected to allow simplification while avoiding market distortions. Seen together, these changes were seen as necessary to **reduce the administrative burden** of administering State aid for public authorities and beneficiaries of aid while preventing negative effects. At the same time, the improved prioritisation of cases, was expected to allow the proper focus -and **resources- on those cases with potentially bigger impact on the internal market**.

**An additional expected impact was with regard to transparency.** In line with the general SAM requirements, the provisions of the current State aid framework in the fisheries and aquaculture sector on **monitoring and control of State aid** ensure that all information is publicly available on an EU public **transparency** module for individual aid awards.

Another dimension is how State aid rules were expected to contribute to the delivery of the CFP objectives, including sustainability and biodiversity, on the one hand, while at the same time they had to prevent unintended effects on competition and trade on the other hand. In this context, the expected outputs were the direct consequences for undertakings receiving State aid, i.e. how beneficiaries would use the aid. Based on the nature of the

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<sup>27</sup> Although before SAM Member States already collected aggregate information on all of their national State aid expenditures in the context of a so-called “annual reporting exercise”, which was then transmitted to the Commission for publication through the annual State aid Scoreboard and on the Eurostat website, more detailed information was not available under the previous rules.

costs covered by State aid, these include, inter alia, support for start-ups of young fishermen, compensation to repair or replace assets, to continue economic activity in spite of adverse events and, in the case of measures to prevent, control or eradicate animal diseases, to carry out health checks, apply vaccines and medicines, etc. In this context, State aid was expected to contribute to a better risk management, by covering losses of assets and income. In addition, an expected result was the increase of survival rates for fishery and aquaculture businesses and contribution to maintaining jobs, hence contributing to CFP objectives. Furthermore, subsidies, including any health measures undertaken, would reduce the production costs and/or increase the profitability or competitiveness of the undertakings. Finally, health measures were expected to contribute to control and mitigate diseases that pose a wider threat to EU biosecurity.

Figure 7 overleaf summarises the intervention logic:

### Problems/needs

#### Needed to:

- address expiry of previous rules
- ensure coherence with the State Aid Modernisation initiative and the CFP for 2014-2020 whilst providing transparency and legal certainty
- improve the quality of the Commission's scrutiny of the use of State aid in the sector
- ensure a sound use of public resources for growth-oriented policies, addressing market failures, and limiting distortions of competition
- simplify the legal framework
- better prioritise State aid enforcement activities
- streamline the assessment process



### Objectives

- SAM objectives:
  - To foster sustainable, smart and inclusive growth in a competitive internal market, what is known as "good aid"
  - To focus Commission ex ante scrutiny on cases with the biggest impact on the internal market whilst strengthening the cooperation with Member States in State aid enforcement; and
  - To streamline the rules and provide for faster decisions, thus enabling faster access to aid
- Non SAM objectives:
  - To allow for better prioritisation of State aid enforcement activities and greater simplification;
  - To enhance transparency, effective evaluation and the control of compliance with the State aid rules; and
  - To minimise distortions of competition in the internal market
- Contributing to CFP objectives:
  - Ensuring that fishing and aquaculture activities are environmentally sustainable
  - promotion of economic, social and employment objectives
  - Food security



### Inputs and provisions to deliver on the objectives

- In line with the SAM objectives introduction of a set of common assessment principles and transparency, reporting and evaluation requirements in the FIBER and the Guidelines
- Simplification objective: The scope of the FIBER was expanded in alignment with the CFP 2014-2020, and the conditions for the granting of exempted aid were changed and clarified
- The Guidelines were adapted to reflect the objectives of the CFP 2014-2020, which had a strong sustainability focus, with their scope covering measures that do not fall under the EMFF.
- The inclusion of more detailed and clear eligibility conditions aimed at improving legal certainty, thus reducing to the extent possible the administrative burden associated with the notification procedure
- The Guidelines offer a more comprehensive approach to risk management compared to the previous period



### Outputs and expected results

- Development of a revised and streamlined sector-specific State aid framework, aligned with the objectives of the SAM, EMFF and the CFP
- Provisions of the new State aid framework should result in simplification and increased legal clarity.
  - This is reflected in the clear delineation of the aid, which can be block-exempted as opposed to aid for which there are notification and evaluation requirements
  - The adaptation of the ceilings for de minimis aid should allow simplification while avoiding market distortions
- These changes should allow the framework, in general terms, to reduce the administrative burden of administering State aid for public authorities and beneficiaries of aid while preventing negative effects
- The nature of the aid covered by the framework should contribute to CFP objectives
  - For instance, by covering losses of assets and income; it increases the survival rates for fishery and aquaculture businesses and contributes to maintaining jobs, hence contributing to CFP objectives.



### External factors

- Other EU legislative and policy initiatives and revisions
  - Revision of the CFP for the period 2014-2020
  - Work of the Member States and the EU on delivering the targets set in the Europe 2020 strategy
- Broader market trends
- Overhaul of the EU fiscal framework in the aftermath of the economic crisis
- Direction of the MFF for the period 2014-2020

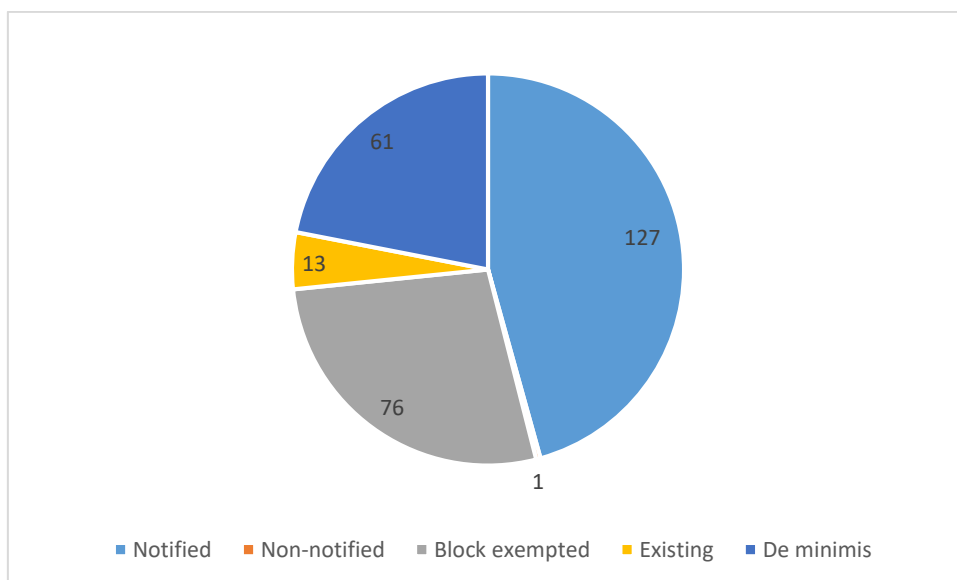
### 3. 3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?

#### 3.1. 3.1. Current state of play

The EU is a major world market for fish and seafood. In 2018 its apparent consumption amounted to 12.48 million tonnes corresponding to around 24 kg per capita. The EU is the sixth largest producer in the world of fishery and aquaculture products, covering in 2018 around 3% of global production (5.5% for catches and 1.2% for aquaculture). Products caught by Member States' fleet represent more than 80% of the supply and the remaining 20% is represented by farmed fish<sup>28</sup>.

During the reference period 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 rules<sup>29</sup>. The figures below present the total expenditure broken down by category and by year.

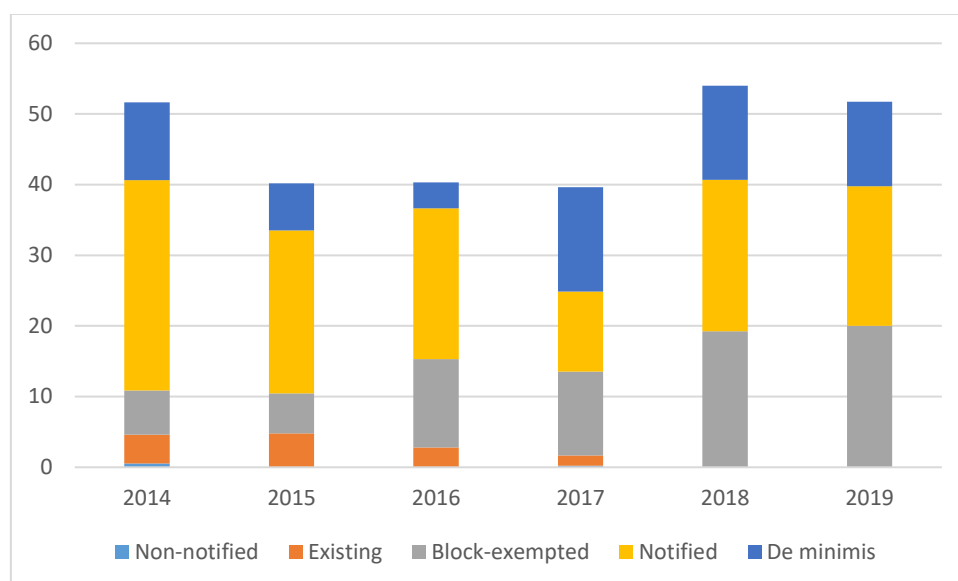
**Figure 8 - Expenditure on State aid and *de minimis* aid in the EU in the period 2014-2019, by category (million EUR)**



<sup>28</sup> <https://www.eumofa.eu/the-eu-market>

<sup>29</sup> 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.

**Figure 9 - Expenditure on public aid in the EU by year and category (million EUR)**

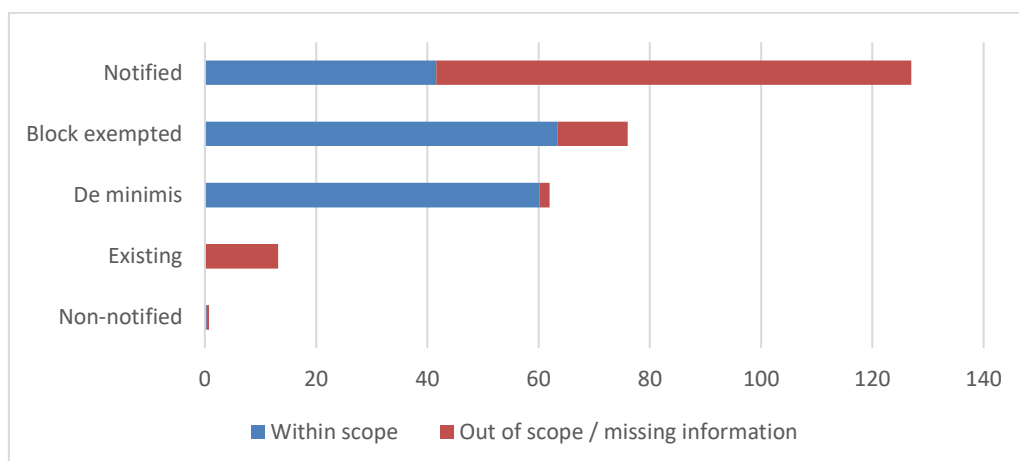


The expenditure on State aid has not remained static, varying per category between 2014 and 2019. In general, spending under block exempted aid (FIBER) increased, while spending under notified aid (Guidelines) decreased. However, in the year 2018 there was a marked increase in State aid spending in the 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 3 *ut supra* 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.

It is important to note that, out of the total of EUR 278 million spent in the EU on State aid<sup>30</sup> and *de minimis* aid for the fisheries and aquaculture sector between 2014 and 2019, a considerable part of the aid corresponds to schemes that existed before 2014 and that were designed in accordance with the previous legal framework. The SWD only concerns aid schemes and *ad hoc* aid approved after 1 July 2014 and under the current State aid framework: therefore, the overall expenditure analysed is EUR 165 million. Figure 10 below illustrates the difference. Block exempted aid constituted 38% of the total expenditure (EUR 63 million), while notified aid amounted to 25% of the total expenditure (EUR 42 million). The remaining expenditure (37%) was granted through *de minimis* (EUR 60 million), for which the SWD considers all cases reported by Member States in yearly reports sent to DG MARE between 2014 and 2019 (the approval date is not relevant for *de minimis* aid).

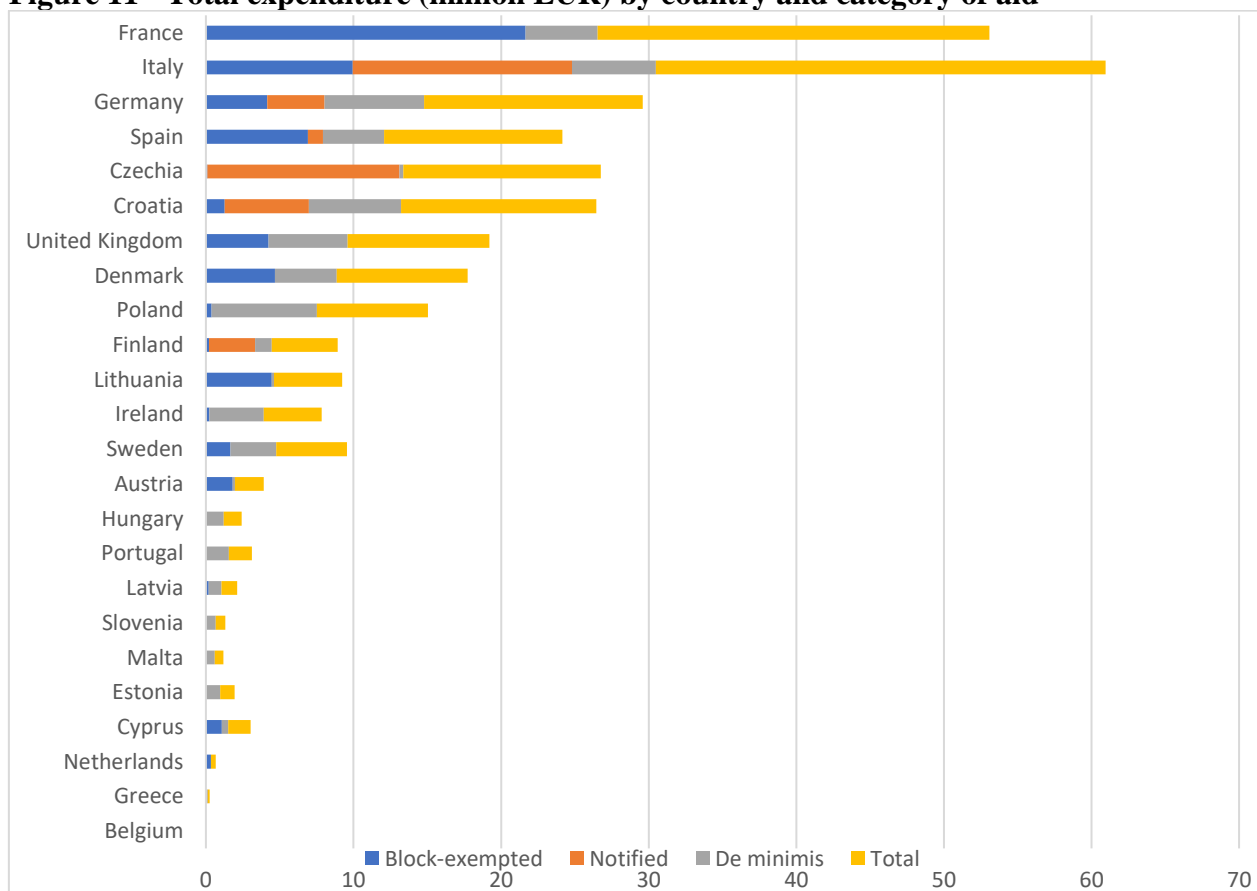
<sup>30</sup> Historical State aid data relative to subsidies to fisheries and aquaculture may be subject to corrections in the 2020 Scoreboard.

**Figure 10 - Total expenditure in the EU by category, differentiating between schemes within and without the scope of the evaluation (million EUR)**



As regards expenditure per Member State, as shown in Figure 11 below, Member States favoured different instruments. Six countries decided to make use of notified aid (Croatia, Czech Republic, Finland, Germany, Spain and Italy), with Czech Republic and Finland relying almost exclusively on it. The other Member States mainly resorted to block exempted State aid and *de minimis* aid. Italy has the highest aggregate expenditure per Member State, representing 19% of the total expenditure, while France and Germany are in the second and third position accounting respectively for 16% and 9% of the total expenditure.

**Figure 11 - Total expenditure (million EUR) by country and category of aid**



The evaluation study conducted by an external contractor<sup>31</sup> which underpins the present SWD (see Annex 8 for more details on this and other data sources), covered, for the reference period, a total of 662 schemes or *ad hoc* aid measures. These refer to expenditure of all categories, including 116 block exempted cases, 32 notified cases (of which 6 were in the end withdrawn), and 514 *de minimis*. In addition to this, three cases refer to non-notified aid, three to pre-notified aid and the other five were complaints.

In terms of type of measures that the Member States employed during the evaluation period 2014-2019, a total of EUR 29.3 million was spent on non-EMFF type of measures via 39 schemes.<sup>32</sup> Table 13 below summarises the number of schemes existing for each measure, as well as the amounts spent per measure and year.

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).

On the other side of the spectrum, the measure with the least frequent uptake was ‘Aid for the damage caused by adverse climatic events’, with no expenditure for the two schemes registered during the period of analysis. Some of the measures specifically addressed by the Guidelines, such as aid financed through parafiscal charges, aid in outermost regions, and aid falling within the scope of certain horizontal guidelines (Sections 5.2, 5.5 and 5.6) were not used by Member States for schemes or individual cases during this period.

**Table 13 - Number of non-EMFF type schemes and expenditure (million EUR) by measure and by year**

Measure	N · o f s c h e m e s								
• 4.1 Aid to make good the damage caused by natural disasters and exceptional occurrences	• 9	•	•	•	•	•	•	•	•
• 5.3 Aid to make good the damages caused by adverse climatic events	• 2	•	•	•	•	•	•	•	•
• 5.4 Aid for the cost of prevention, control and	• 3	•	•	•	•	•	•	•	•

<sup>31</sup> 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>

<sup>32</sup> As in the previous section, the figures for non-EMFF measures include only cases approved from 2014 (2014/N onwards).

eradication of animal diseases in aquaculture									
• 5.7 Aid to compensate the damage caused by protected species (Other)	• 5	•	•	•	•	•	•	•	•
• 5.7 Other	• 2	•	•	•	•	•	•	•	•
• Article 44 - Aid to make good the damage caused by natural disasters <sup>(*)</sup>	• 5	•	•	•	•	•	•	•	•
• Article 45 - Tax exemptions and reductions in accordance with Directive 2003/96/EC	• 10	•	•	•	•	•	•	•	•
• Total	• 36	•	•	•	•	•	•	•	•

(\*) There is a scheme that covered several articles, including Article 44 that has not been included. The scheme is considered to target mostly EMFF-type of measures

Source: Coffey, Ipsos, Poseidon study, DG MARE monitoring information

## 3.2. 3.2. Recent relevant Commission policy developments

### 3.3. 3.2.1 The European Green Deal

The European Green Deal (henceforth, the ‘Green Deal’)<sup>33</sup> is of particular significance for the fisheries and aquaculture sector. It provides an action plan to make the EU economy sustainable, resource-efficient and competitive<sup>34</sup> by moving to a clean, circular economy, restoring biodiversity and reducing pollution. It comprises policy initiatives and projected legislative proposals with the aim to reach climate neutrality and resource-efficiency in the EU by 2050, decoupling growth from resource use and preserving EU’s natural environment. The Green Deal, and its underpinning policy initiatives, are also central to the Commission’s agenda to achieve the United Nations’ Sustainable Development Goals (SDGs)<sup>35</sup> and to implement the Paris Agreement.

The Green Deal recognises the importance of the fisheries sector in delivering on the climate objectives, protecting the environment and preserving biodiversity. In that regard, it acknowledges the importance of supporting European fishermen as they have a critical role in managing the transition and accelerating the shift to sustainable fish and seafood production. In that context, the Green Deal, and its associated ‘Farm to Fork’ Strategy, has

<sup>33</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>34</sup> 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”).

<sup>35</sup> The United Nations’ 2030 Agenda for Sustainable Development identified conservation and sustainable use of oceans as one of the 17 Sustainable Development Goals (SDG 14).



set an ambitious target-to reduce by 50% the overall EU sales of antimicrobials for farmed animals and in aquaculture by 2030.

The Commission adopted on 17 May 2021 a Communication<sup>36</sup> on a new approach for a sustainable blue economy in the EU (*A green recovery for the blue economy – transforming the EU's blue economy for a sustainable future*). The goal is to, in line with the ambitions of the Green Deal, transform our economic model towards one that is resource-efficient, 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 promote an improved fisheries control system, support the use of selective fishing techniques through EMFAF funding and even adopt an initiative on algae in 2022<sup>37</sup> to support the development of the sector.

Along the same lines, the Farm to Fork Strategy<sup>38</sup>, which is one of the main underpinning initiatives of the Green Deal, aims to strengthen these efforts through dedicated initiatives that aim at the promotion of diversification of the sector, in terms both of species and methods of production. These initiatives aim to reduce the adverse impacts that fishing can have on ecosystems, especially in sensitive areas and to contribute to achieving a circular economy. In the same context, the Commission recently adopted new Strategic Guidelines for the sustainable development of EU aquaculture<sup>39</sup>.

At the core of the Green Deal and the 'Farm to Fork' strategy lies the strategic objective of just transition. This means, ensuring that all citizens and operators across value chains, in the EU and elsewhere, should benefit from comprehensive plans for and investments in a transition to environmentally and socially sustainable jobs, sectors and economies. A distinct strand of work under the Farm to Fork Strategy is with regard to food crisis, where the Commission has committed to develop a contingency plan in order to ensure food security and safety.

The importance of just transition, and therefore the significance of these policy initiatives, has been accentuated in the aftermath of the COVID-19 pandemic and the economic downturn. A shift to a sustainable food system can bring environmental, health and social benefits, offer economic gains and ensure that the recovery from the crisis puts the EU onto a sustainable path<sup>40</sup>. Ensuring a sustainable livelihood for primary producers, who still

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<sup>36</sup> 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>

<sup>37</sup> [Roadmap for Commission initiative "Blue Bioeconomy-towards a strong and sustainable EU algae sector"](#)

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> At global level, it is estimated that food and agriculture systems in line with the SDGs would deliver nutritious and affordable food for a growing world population, help restore vital ecosystems and could create new economic value of over EUR 1.8 trillion by 2030. Source: Business & Sustainable Development Commission (2017), *Better business, better world*.

lag behind in terms of income<sup>41</sup>, is essential for the success of the recovery and the transition.

The Green Deal and ‘Farm to Fork’ objectives are further 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 (e.g. by reducing wasteful discarding), 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.

In addition, to support the considerable efforts required to reach these ambitious objectives, the Commission adopted on 14 January 2020 a Communication on the European Green Deal Investment Plan (the Investment Plan)<sup>42</sup>. Among the key objectives of the Investment Plan is ‘enabling sustainable investments through a supportive State aid framework’, stating that the relevant State aid rules will be revised by 2021 in light of the policy objectives of the Green Deal.

The new policy landscape as described above puts an increased emphasis on issues of environmental, economic and social sustainability, to which the current State aid framework in the fisheries and aquaculture sector appears to be well-equipped to contribute. As shown in Table 3, the FIBER and the Guidelines already include a significant arsenal of measures which are directly linked to the pursuit of the Green Deal objectives as described above.

**Table 14 - STATE AID MEASURES CONTRIBUTING TO GREEN DEAL OBJECTIVES**

<b>Fisheries/ aquaculture</b>
Aid to support systems of allocation of fishing opportunities
Aid to support the design and implementation of conservation measures and regional cooperation
Aid to limit the impact of fishing on the marine environment and adapt fishing to the protection of species
Aid to innovation linked to the conservation of marine biological resources
Aid for the protection/restoration of marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities
Aid to improve energy efficiency and to mitigate the effects of climate change
Aid to added value, product quality and use of unwanted catches
Aid to inland fishing and inland aquatic fauna and flora
Aid to encourage new aquaculture farmers practicing sustainable aquaculture
Aid for the conversion to eco-management and audit schemes and organic aquaculture
Aid to aquaculture providing environmental services
Aid for public health measures
Aid for animal health and welfare measures

*Source: Analysis by DG COMP*

As the above analysis demonstrates, fisheries and aquaculture have a key role to play in pursuing the Green Deal objectives. Their role is particularly significant as regards ensuring sustainable food chains, preserving and restoring ecosystems and biodiversity in line with the Green Deal, ‘Farm to Fork’ and biodiversity commitments, and promoting circular economy and zero pollution for a toxic-free environment.

<sup>41</sup> For example, the average EU farmer currently earns around half of the average worker in the economy as a whole. Source: CAP Context indicator C.26 on Agricultural entrepreneurial income ([https://agridata.ec.europa.eu/Olik\\_Downloads/Jobs-Growth-sources.htm](https://agridata.ec.europa.eu/Olik_Downloads/Jobs-Growth-sources.htm)).

<sup>42</sup> COM(2020) 21 final.

The possibility for further alignment with the Green Deal objectives, particularly through alignment with the EMFAF (see Section 3.2.2 below), will have to be fully assessed in the context of the review of the State aid rules. However, the analysis above indicates that the current State aid framework in fisheries/aquaculture is already well equipped to contribute to the Green Deal objectives.

### **3.4. 3.2.2 EMFAF 2021-2027**

On 13 June 2018 the Commission proposed a new regulation on the European Maritime and Fisheries Fund as part of the next EU budget framework for the 2021-2027 period. The proposal aimed to simplify the delivery of the EMFF 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 force<sup>43</sup>. Under this agreement, the total budget of the Fund amounts to €6.108 billion<sup>44</sup>, with the objective to sustain and modernise the sector over the new programming period.

In line with the Commission proposal, the EMFAF will further foster efforts towards sustainable aquaculture. The stronger focus on aquaculture 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. Permanent cessation and temporary cessation will be supported under strict conditions to ensure that support for fleet measures will not be at the detriment of the core priorities of the EMFAF. These conditions also safeguard against the creation of an artificial offer of subsidies that would generate its own demand and consequently distort the market.

Moreover, the EMFAF will particularly support small-scale coastal fisheries and vessels up to 24 meters long, as well the first acquisition of a vessel by a young fisherman. The measures come with restrictive conditions, such as the respect of fishing capacity ceilings. At least 15 % of Member States' allocations should be spent on control and data collection. The text includes provisions to finance investments that will improve safety, working conditions, energy efficiency and the quality of catches on EU's fishing vessels. For example, the fund can be used to finance the replacement or modernisation of engines of fishing vessels to increase energy efficiency and reduce CO2 emissions.

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.

### **3.5. 3.3 Recent events**

#### **3.6. 3.3.1 The impact of the COVID-19 outbreak on the fisheries and aquaculture sector**

Acknowledging the significant effects on the global and Member States' economies and social cohesion, the Commission adopted a Temporary Framework for State aid measures

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<sup>43</sup> 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.

<sup>44</sup> For the period 2014-2020, the European Maritime and Fisheries Fund (EMFF) had an overall budget of €6400 million.

to support the economy in the current COVID-19 outbreak<sup>45</sup>, based on Article 107(3) (b) TFEU. The objective of the Temporary Framework was to ensure that public support could be available for firms, thus facilitating their access to liquidity and finance, and preserving employment in the EU.

Parallel to this, the Commission published in May 2020 a revised multiannual financial framework proposal, significantly increasing the budget for the EMFAF as compared to its initial proposal. In addition, it adopted, on 27 May 2020, its Recovery Plan<sup>46</sup> to tackle the crisis caused by COVID-19. The Plan includes a temporary recovery instrument of €750 billion, known as “Next Generation EU”, as well as targeted reinforcements to the long-term EU budget for 2021-2027.

The COVID-19 crisis has particularly affected certain sectors, which are more susceptible to supply chain disruptions and the multilevel effects of national control measures and travel restrictions. As regards the fisheries and aquaculture sector in particular, it should be noted that fish and fish products are among the most highly traded food products in the world, with 38 percent of global fish production entering international trade<sup>47</sup>. The fisheries and aquaculture sector is particularly dependent on the hospitality industry, tourism and exports, all segments of the market massively impacted by the COVID-19 pandemic.

The protection measures taken by governments to contain the spread of the disease, while necessary, have impacted each step of the seafood supply chain, posing challenges as regards jobs, incomes and food security. According to the latest reports<sup>48</sup>, changes in food consumption and difficulties in reaching consumers are significantly impacting demand and prices. The effects on domestic demand of the closing down of domestic fish markets are often compounded by a collapse in export markets. Changes and disruption to the early stages of production processes can be particularly challenging for aquaculture, leading to higher production costs and potentially lower sale prices if the resulting final products differ from consumers’ preferences.

In the context of the State aid cases notified to the Commission under the Temporary Framework so far, Member States report that part of their fleet has stopped fishing activities due to the disturbances in the regular market channels. In addition to this, overall capacity of their fleet has been seriously reduced because of the impracticability of putting the same amounts of fresh fish in the market and the lack of specific equipment for adequate deep freezing. Finally, the change in consumption patterns due to the COVID-19 outbreak, combined with the perishability of the production and the limited alternative to immediate consumption have particularly affected the fisheries and aquaculture sector, and precipitated further reductions in selling prices. Nevertheless, it should be noted that according to the latest projections, the EU fisheries sector has shown resilience in the face of these unprecedented challenges; in 2020, the EU fishing fleet remained profitable overall, despite the effects of COVID-19 on the fleet and fish markets. The main contributing factors credited are the progressive shift towards more sustainable fishing and

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<sup>45</sup> C(2020) 1863 final, OJ C 091 I, 20 March 2020.

<sup>46</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_940](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940)

<sup>47</sup> Food and Agriculture Organisation of the United Nations, ‘The State of World Fisheries and Aquaculture 2020’

<sup>48</sup> [https://read.oecd-ilibrary.org/view/?ref=133\\_133642-r9ayjfw55e&title=Fisheries-aquaculture-and-COVID-19-Issues-and-Policy-Responses](https://read.oecd-ilibrary.org/view/?ref=133_133642-r9ayjfw55e&title=Fisheries-aquaculture-and-COVID-19-Issues-and-Policy-Responses)

the lower fuel costs, which have helped to mitigate the socio-economic impacts of the pandemic<sup>49</sup>.

As regards the full impact of the COVID-19 outbreak on the fisheries and aquaculture sector, while it is not possible to make an assessment at this stage (aggregate data will need to be collected to better assess the economic and financial consequences), there are two main drivers which will determine the medium and longer-term effects<sup>50</sup>. These drivers are, namely (i) the impact of the changes in fishing effort on the sustainability of fish stocks and ecosystems and on biodiversity more generally, as well as (ii) the adequacy of the policy and industry responses to the risks posed to jobs, incomes and food security. As regards the latter, their performance will need to be assessed as regards both their ability to mitigate the immediate effects of the COVID-19 pandemic on economy and society and their contribution to achieving long-term sustainability of resources and the viability of fisheries. In terms of policy orientations going forward, the COVID-19 pandemic and the economic downturn that ensued as a result have strongly corroborated the importance of ensuring a sustainable livelihood for primary producers, food security and sustainability of the food system as cornerstones of the recovery and just transition. Through their alignment with the CFP objectives and the concept of 'good aid', the State aid rules in fisheries and aquaculture already contribute to these objectives by supporting measures that promote sustainability, food security and compensate the loss of income of primary producers.

### **3.7. 3.3.2 Brexit**

After intensive negotiations, the European Commission reached on 24 December 2020 an agreement with the United Kingdom on the terms of their future cooperation. The Trade and Cooperation Agreement<sup>51</sup>, in force from 1 January 2021, 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.

The importance of the fisheries sector is key for both actors. Fisheries in UK waters for EU vessels account for EUR 637 million, which represents on average 12% of Member States' overall total catches in value (this figure varies significantly from one Member State to another, from less than 1% for Spain up to 43% for Belgium).

While only 10% of UK's total catches come from the EU27 exclusive economic zone (around EUR 110 million in value of landings), access to it is vital to some fishing communities in the UK, with more than 2/3 of the total UK fisheries production being exported to the EU internal market.

The European Commission issued on 25 December 2020 a proposal for a Brexit Adjustment Reserve (BAR), to counteract the adverse economic and social aftermath of the crisis. With an overall budget of €5 billion, the Reserve will support affected sectors and communities, including those dependent on fishing activities in UK waters. All measures financed under the BAR will have to comply with State aid law, including those related to the fishery and aquaculture sector.

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<sup>49</sup> The 2020 Annual Economic Report on the EU Fishing Fleet, [https://ec.europa.eu/fisheries/press/eu-report-projects-resilience-fishing-fleet-during-covid-19-pandemic\\_en](https://ec.europa.eu/fisheries/press/eu-report-projects-resilience-fishing-fleet-during-covid-19-pandemic_en)

<sup>50</sup> OECD, Fisheries, aquaculture and COVID-19: Issues and Policy Responses, June 2020

<sup>51</sup> [https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en)

However, apart from the possibilities provided for in the *de minimis* Regulation, the FIBER and the Guidelines, it has become clear that there is a need for some extraordinary measures, not covered by the existing State aid rules, in order to mitigate the effects of Brexit. For such measures to be considered under the BAR, they should respond to actual needs that have a causal link with Brexit, facilitate the resilience and the development of the aided activities and should not just preserve the status quo. Those measures should facilitate an orderly adjustment to the reduced quota shares. Against this background, and in order to provide clarity and facilitate the efforts of Member States to support the fisheries and aquaculture sector in this transition, the Commission published guidance<sup>52</sup>. The guidance sets out a set of measures that would be considered favourably on the basis of Article 107 (3) (c) TFEU during the transitional period set in the BAR<sup>53</sup> and provides detailed information on the general and specific conditions that need to apply<sup>54</sup>.

The final impact of Brexit and future arrangements on the fisheries (and aquaculture) sector is uncertain at this stage, but the abovementioned regulatory background depicts a scenario where State aid policy will certainly have a crucial role. First off, the UK will be forced to replace the subsidies coming from the EMFF with comparable aid. The EU will face challenges to ensure that no harmful subsidies are granted and that the level playing field is maintained for both parties, while also making sure that the Member States' fishing communities are viable economically. These aspects may very well require considering structural changes in the relevant legal and policy framework. Even though the SWD does not cover these points, further amendments to the Guidelines may be necessary to accommodate for any needs stemming from the post-Brexit scenario.

### **3.3.3. Russia's invasion of Ukraine**

In response to Russia's invasion of 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 Framework<sup>55</sup> based on Article 107(3) (b) TFEU. At this stage, the data on the impact of the invasion in the fisheries and aquaculture sector is very limited, and no conclusions can be drawn for the purpose of this SWD.

## **4. 4. EVALUATION FINDINGS (ANALYTICAL PART)**

This section assesses the performance of the State aid rules in the fisheries and aquaculture sector against five evaluation criteria: i) relevance, ii) efficiency, iii) effectiveness, iv) coherence and v) EU added value. The evaluation questions per criterion are described in detail in Annex 9 (evaluation matrix).

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<sup>52</sup> European Commission Guidance document on State aid in the fishery and aquaculture sector to mitigate the effects of the withdrawal of the UK from the European Union.

<sup>53</sup> The transitional period during which these measures may be implemented is from 1 January 2021 to 31 December 2022, with the exception of liquidity aid for vessel owners and fishers which can be granted until 31 March 2021.

<sup>54</sup> These measures are: a) aid for permanent cessation;  
b) aid for temporary cessation support measures;  
c) liquidity aid for vessel owners and fishers;  
d) liquidity aid for operators other than vessel owners and fishers.

<sup>55</sup> 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

#### 4.1. 4.1. To what extent was the intervention successful and why?

#### 4.2. 4.1.1. Efficiency

The present section addresses the question on whether and to what extent the State aid rules in the fisheries and aquaculture sector have been efficient. The efficiency criterion examines the relationship between the resources used and the changes generated by the intervention. In doing so, it looks closely at both the costs and benefits that the State aid framework in the fisheries and aquaculture sector has accrued among different stakeholders.

To this end, this section examines four aspects to evaluate efficiency, considering all three types of aid in the fisheries and aquaculture sector: i.e. *de minimis* aid, block exempted and notified State aid. Firstly, the overall efficiency of the State aid instruments in the fisheries and aquaculture sector in terms of administrative cost is considered. The different categories of aid (*de minimis*, block-exempted, notified) are assessed against the administrative burden they entailed, and their overall cost is quantified.

In this context, the administrative burden is understood as the cost incurred by Member States relative to the benefits of application of State aid rules. Secondly, the analysis focuses on whether the administrative burden is justifiable and proportionate to the benefits achieved. In this regard, the analysis examines imbalances in costs/administrative burden among Member States and the potential causes behind them. Finally, this section examines efficiency in terms of the intervention's process for reporting and monitoring. In particular, it examines the reporting requirements set in the State aid rules, and the extent to which they allow proper control and review of aid granted by the Member States.

Evaluation Question	Scope
What has been the administrative burden (cost incurred by Member States relative to the benefits of application of State aid rules) in relation to different categories of aid: <i>de minimis</i> , block exempted, notified?	All types of measures
To what extent do the reporting requirements set in the State aid rules allow efficient control and review of aid granted by Member States?	All types of measures
To what extent is the administrative burden justifiable and proportionate to the benefits achieved?	All types of measures

*What has been the administrative burden (cost incurred by Member States relative to the benefits of application of State aid rules) in relation to different categories of aid: de minimis, block exempted, notified?*

As part of the survey and public consultation (see Annex 8 on data sources and methodology), granting authorities were asked to quantify both the time and cost of performing various procedures associated with the implementation of legal instruments for *de minimis*, block exempted and notified aid. This data was supplemented with data taken from interviews with a number of these authorities.

Out of 37 granting authorities who participated in the survey and the public consultation, only 14 provided data on the time and additional costs spent to grant and administer aid (for more details on the results and specific data, see Annex 11).

As expected, granting authorities reported that the administrative burden was more substantial for notified aid. The total cost of the procedures under the Guidelines was almost 2.5 times higher than those for *de minimis* aid and 1.8 times higher than for exempted aid. The available information on the break-down of costs and time required shows that the preparation of a notified scheme, i.e. from the point of its design to the Commission's approval, is the part of the procedure that entails the biggest investment (for more details, see Annex 11).

Whilst this part of the procedure in particular was seen to substantially add to administrative costs, overall, authorities did not view the costs involved to be unjustified. As will be shown in this section, evidence from both the consultations and interviews supports the view that these costs were, in the most part, considered appropriate. Namely, they were seen justified given the nature of State aid, the difference in the potential of the measures under the three instruments to distort competition in the Single Market and the ensuing necessary legal restrictions.

It is important to note, however, that authorities found it difficult to provide an accurate reflection of the time and costs involved. Analysis of the data highlights considerable divergences among Member States and granting authorities as regards the estimated administrative burden for the same actions in many cases. This, seen in conjuncture with the mixed feedback received on qualitative aspects, indicates difficulties amongst these bodies to accurately assess the time and costs involved.

In any case, the results of the analysis point out to the success in the State framework for the fisheries and aquaculture sector as a set of efficient instruments. In comparison to the baseline scenario as depicted in Section 2.2, whereby the framework in force prior to the 2014-2015 revision would have been in place and the FIBER and *de minimis* would have expired, this has prevented the notification of each and every measure constituting State aid within the meaning of 107(1) TFEU, which would have entailed substantial administrative burden.

Even if the instruments had not expired, the efficiency of the current State aid framework as compared to that of the baseline is confirmed by the in-house data of the Commission. In 2010, DG MARE received 19 new notifications and was informed of 43 (compared with 17 in 2009) new schemes covered by the FIBER; In 2011 there was a slight increase with 23 notified cases and a net decrease in new schemes covered by the FIBER, with 11 schemes. In 2012, there was again a decrease in notified cases, with 19 cases notified, and 14 FIBER schemes. There was a slight reversal of the decrease in notified cases in 2013, with 21 new notified cases (mainly due to the aid schemes notified by Germany and the Czech Republic to make good the damages caused by the floods of May and June 2013), and 9 new schemes were set up under FIBER during 2013.

This data, when set against the numbers of 2014-2019, clearly corroborates the efficiency of the current framework. As stated in Section 3.1, the measures transmitted to the Commission include a total of 116 block exempted cases, 32 notified cases (of which 6 were in the end withdrawn), and 514 *de minimis*. Compared to the baseline, with 99 notifications during 2009-2013, this shows a clear trend of increased recourse by Member States to block exempted aid not requiring a notification, thereby reducing the administrative burden.

Finally, as described in Annex 8, the findings of the analysis are subject to the limitations derived from the format of the stakeholder consultation, which was the main source to carry out this cross-examination.



*To what extent is the administrative burden justifiable and proportionate to the benefits achieved?*

While competition is an area of exclusive EU competence, the application of the State aid rules lies with the Member States. Therefore, the administrative burden incurred by the application of the EU aid rules in the fisheries and aquaculture sector is influenced both by the requirements set in EU legislation and by Member States' administrative organisation and decision-making structures. The targeted interviews and consultations (see Annex 8 on data sources and methodology) showed that procedures for the application of public aid varied greatly among Member States. Some Member States have adopted a centralised State aid system where one or a handful of authorities grant aid. Other Member States follow decentralised procedures with multiple authorities granting aid. In the latter case, procedures were seen to be lengthier with multiple reviews by multiple organisations preceding the submission to the European Commission.

In general, the majority of the granting authorities considered the administrative burden associated with the application of EU aid rules for beneficiaries to be fully or to some extent justifiable and proportionate (for more details, see Annex 11).

It is important to note that throughout the interviews, granting authorities found it difficult to accurately assess the amount of time certain procedures take. In addition, the estimates of time and costs per task provided by granting authorities in the survey vary substantially and should be treated with caution.

- ***De minimis aid***

The administrative burden incurred by *de minimis* aid was assessed in relation to the three key procedures that underpin its application. Those are i) the observation of the individual ceiling at undertakings' level and of the national cap, ii) the granting of *de minimis* aid and iii) the monitoring of aid granted under the *de minimis* Regulation.

Overall, the granting authorities considered the granting of *de minimis* aid to not be very burdensome (for more details, see Annex 11). In the interviews, *de minimis* aid was seen by granting authorities to enable fast and uncomplicated procedures. In that regard, the clarity of the rules on eligibility and the fact that no approval is required by the Commission were seen as important aspects.

Looking at the three procedures, the consultations showed that observing the individual ceiling and national cap is perceived to be the most burdensome of the procedures. This in part reflects the ways in which authorities track these ceilings and whether or not a central *de minimis* register is in place. Many authorities place the responsibility to observe the individual limit on the recipients, however.

An example of the impact of nationally defined administrative procedures on the overall administrative burden associated with the granting of *de minimis* is that of Italy. In Italy, granting of *de minimis* aid in the fisheries and aquaculture sector is subject to approval from the Ministry of Agriculture. All regions that want to use *de minimis* aid need to design a scheme and notify it to the Ministry.

As regards the burden incurred by annual reporting, only 6% of the granting authorities participating in the consultations found the procedure to be very burdensome. However, in-depth interviews revealed that the burden associated with this procedure depends greatly on the number of *de minimis* measures in place, whether or not a centralised system for

recording *de minimis* aid was in place and the number of granting authorities from which data must be collected and reported (for more details, see Annex 11).

Concerning the burden incurred by beneficiaries, interviews with producer organisations highlighted this type of aid as much simpler and less burdensome to access compared to notified or block exempted aid. However, they were not able to provide estimates of time required. Beneficiaries nevertheless noted that there was a trade-off in terms of the maximum aid that could be granted given the maximum ceilings per beneficiary that apply in the *de minimis* Regulation.

- **Notified State aid under the Guidelines**

As described above, the results of the consultations and the targeted interviews showed that the majority of the granting authorities consider notified schemes as the most burdensome to design and implement. The most significant investment in terms of time and cost is related to the preparation stage, from the point of design to the approval of the scheme (see Table 29 - Estimated administrative cost per procedure and category of aid in Annex 11). In that regard, it should be noted that, whilst not able to quantify the time required accurately due to the different number of authorities involved in each Member State, the notification request was seen to be simple.

However, from the interviews it emerged that the bulk of administrative cost derived from a period of approximately 6-8 months. During that period, authorities dealt with clarifications and changes requested by the Commission in line with the Guidelines. Nevertheless significant divergences were reported by Member States concerning the burden incurred in the stages of design and notification. The results of the survey and public consultation corroborate these findings (see Annex 8 on data sources and methodology). Granting authorities view the stage of obtaining the Commission's approval (i.e. responding to clarifications and/or adapting the measure in line with the Commission's instructions on the basis of the Guidelines) as by far the most burdensome (for more details, see Annex 11).

- **Block exempted State aid under the FIBER**

In the case of block exempted State aid, there is no notification obligation. However, Member States are required to submit summary information, which is also called a block exemption information sheet<sup>56</sup>. Estimates of the time required to fill an information sheet ranged from 0.5 to 1 day. Differences in internal organisation and procedures among Member States were important in terms of determining the amount of work required to fulfil this part of the procedure.

In general, the findings of the survey show that granting authorities viewed the submission of an information sheet and the monitoring of block exempted aid to be a little burdensome or burdensome (for more details, see Annex 11). From the interviews it emerged that granting authorities found that the mirroring of the eligibility rules of the EMFF in FIBER facilitated the implementation of measures under FIBER.

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<sup>56</sup> The procedure of informing the Commission is also called SANI2 notification. The information sheet is published on the website of DG Competition. The full text of the measure and the block exemption information sheet must be available no later than 20 working days following the entry into force of the support measure.

As pointed out in Annex 8, the findings of the analysis are subject to the limitations derived from the format of the stakeholder consultation, which was the main source to carry out this cross-examination.

*To what extent do the reporting requirements set in the State aid rules allow efficient control and review of aid granted by Member States?*

The State aid framework sets certain requirements on how aid should be monitored. However, these only cover the amount of aid granted per undertaking and do not control or monitor outputs or outcomes such as catches, economic activity (output), or effects on animal health.

The FIBER stipulates that State aid granted should be subject to a control mechanism and regular evaluation.<sup>57</sup> The Guidelines mandate Member States to maintain detailed records on all of their aid measures, containing information on eligibility and aid intensity, for 10 years. The *de minimis* Regulation establishes that aid should be monitored to ensure the relevant ceilings are not exceeded and the cumulation rules are complied with. However, to comply with that Regulation, before granting such aid Member States can either obtain a declaration from undertakings, about other aid covered by this or by other *de minimis* Regulations received during the fiscal year concerned and the previous two fiscal years. Alternatively Member States must set up a central register with complete information on *de minimis* aid granted and check that any new grant of aid does not exceed the relevant ceiling.

Granting authorities were requested to clarify whether they had set up a *de minimis* central register in the context of both the survey and the public consultation. 21 Member States submitted information, however there are some contradictory responses for Austria and France. On the basis of these two data collection tools<sup>58</sup> cross-referenced against the input received from consultations, it can be concluded that a central *de minimis* register exists in at least 19 Member States and may not exist in 6 (as respondents may not be aware of the register).

**Table 15 - Existence of a central register for *de minimis* aid in Member States**

Country	No	Yes	Don't know	Final assessment
Austria	1	1	2	-
Belgium	1			Irrelevant. No <i>de minimis</i> aid granted.
Bulgaria		1		There is a central registry at the national level
Czech Republic		1		There is a central registry at the national level
Estonia		2		There is a central registry at the national level
Finland	1			-
France	1	1	1	There is not a central register. Regions use their own system to control State aid and report it to the central government once a year.
Germany	1		1	No indication of a central database existing.
Greece			1	-

<sup>57</sup> Unlike notified aid, block exempted aid is not assessed by the Commission prior to granting aid.

<sup>58</sup> This question in the survey was asked only to those respondents who had not participated in the PC, and therefore there is no overlap between the tools.

Country	No	Yes	Don't know	Final assessment
Ireland	1			There is not a central register. However, most <i>de minimis</i> aid is granted via a single authority
Italy		2	1	There are two registers, one handled by the Ministry of Agriculture and one by the Ministry of Finance. Regions notify <i>de minimis</i> aid to the Ministries.
Latvia		2		There is a central registry at the national level
Lithuania		1		There is a central registry at the national level
Malta	1			Aid is monitored through yearly reporting to State Aid Monitoring Board
Netherlands	1			Irrelevant. No <i>de minimis</i> aid granted.
Poland		1		There is a central registry at the national level (electronic)
Portugal		3		There is a central registry at the national level
Romania			1	-
Slovenia		1	1	There is a central registry at the national level
Spain		4	1	There is a central registry at the national level
Sweden		1		-
Total	8	21	9	

Source: Ipsos study, Survey and Public Consultation (n=38)

No register has been developed in Belgium, the Netherlands, Finland, Germany, Ireland and Malta. Concerning Belgium and the Netherlands, *de minimis* aid does not play a significant role, no aid has been reported under *de minimis* for the evaluation period. Therefore it is not surprising that a register does not exist. However, *de minimis* aid has been granted in the case of the remaining four Member States. In Finland EUR 1.05 million has been granted via *de minimis* to 216 beneficiaries, in Germany EUR 5.77 million to 4,089 beneficiaries, in Ireland EUR 3 million to 2,663 beneficiaries, and in Malta EUR 0.45 million to 163 beneficiaries. The absence of a central register was explained as follows in the context of the survey:

- in Germany and Malta, granting authorities request undertakings to provide a declaration stating previous *de minimis* aid received;
- in Malta, in addition, they check this information with other granting authorities on a case-by-case basis;
- in Ireland, most *de minimis* aid is granted via one single authority. Therefore, although the registry does not exist officially, it exists in practice (although it may be incomplete if other authorities also grant aid);
- in Finland and Malta, they keep track of *de minimis* aid granted via the yearly reporting to the State Aid Monitoring Board.

The latter was the case for most Member States, according to the information facilitated by interviewees. Normally, each granting authority or region has its own system to monitor and register *de minimis* aid, and this is reported on an annual basis to the central authority. However, *de minimis* aid is frequently monitored at an aggregate level, and not per beneficiary.

Overall, the opinion of the stakeholders on the transparency, clarity and adequacy of the three aid instruments was overwhelmingly positive (for more details, see Annex 11). The vast majority had a positive opinion about the relevant provisions of the instruments. Among interviewees, NGO representatives were concerned about the low levels of control and scrutiny exercised on *de minimis* and block exempted aid granted. As *de minimis* aid is not considered State aid, it is not subject to control procedures by the Commission. However, Member States report yearly on *de minimis* aid granted to the Commission). In view of the fact that the evaluation has come across a small number of potential irregularities (see page 67 of this SWD on effectiveness of *de minimis* aid, section a) “*Contribution to CFP objectives and unexpected or unintended effects*”), it may be worth considering whether more control at either EU or the national level may be needed (while keeping in mind the scale of these potential irregularities, and the desire to keep administrative burden as low as possible for *de minimis* aid).

With regard to the transparency requirements for notified and block-exempted aid, Member States have to ensure the publication on a comprehensive State aid website of all individual aid awards exceeding the specific threshold (EUR 500 000 for the GBER and other sectoral State aid instruments, EUR 30 000 for the fishery and aquaculture sector). Despite the positive opinion of stakeholders on transparency, the analysis of the Commission has identified that, under the current publication requirements for individual aid awards, only around 20-25% of the total State aid spent in the EU is made transparent on the Commission’s transparency award module (TAM). This undermines the SAM transparency objectives.

On a different note, control of notified aid is exerted *ex ante* by the Commission, via the notification procedure. In addition, the Commission requests MS to provide information on State aid expenditure every year, which is then included in the State aid Scoreboard at an aggregate level (per MS and category of aid). The Commission carries out an in-depth scrutiny of the notified and block exempted State aid, which is demonstrated by the information included in the Commission internal notes on State aid activities prepared every year. In these cases, detailed information is recorded per scheme in terms of volume of aid granted and number of beneficiaries. More detailed information could be collected, for instance, by mapping aid granted to individual beneficiaries (using an identification number such as VAT). However, the benefits of having such information would have to be weighed against the burden for the Commission and Member States of collecting, reporting and monitoring the relevant data. In this regard, a possible avenue would be to consider regular small-scale evaluations of a number of schemes (for instance, organised by objective, frequency, or potential to distort the Single Market).

Finally, the survey and the public consultation (see Annex 8 on data sources and methodology) also enquired whether granting authorities have conducted any evaluation of the aid granted (referring to any type of aid, including *de minimis*, block exempted and notified). Results show that evaluation is rare, since only 6% of the authorities reported having carried out such an exercise (for more details, see Annex 11).

#### **4.3. 4.1.2. Effectiveness**

The present section evaluates the extent to which the objectives of the State aid framework for fisheries and aquaculture have been achieved. In this regard, it mainly focuses on the contribution of the State aid framework to the objectives of the CFP, and on the assessment of potential distortions of competition and effects on trade and the environment. It also

considers whether the objective of simplifying the State aid rules and increasing transparency, consistency and legal certainty has been attained.

As explained in Annex 8 below, the findings of the analysis on effectiveness are constrained by the limitations of the stakeholder consultation.

#### *To what extent have the current State aid rules met their objectives?*

The analysis suggests that the State aid framework for fisheries and aquaculture has as a whole met its objectives and hence is effective as a State aid architecture. The higher level of detail has allowed for a more transparent and streamlined compatibility assessment as regards both the Commission's handling of notified aid and the Member States' use of the FIBER.

In line with the approach to focus on cases with a big impact on competition, the current system also ensures that the Commission examines a limited number of measures involving large amounts which have to be notified. The analysis of the data as regards the take-up of the FIBER and Guidelines and the aid amounts under the respective measures confirm that. Nevertheless, as regards the FIBER, case-handling experience<sup>59</sup> supported by the analysis in the external study supporting this SWD (see Annex 8 on data sources and methodology) points to the possibility of enlarging its scope and avoiding notifications where the Commission has gained sufficient experience (and where there is no threat to competition and trade) in the context of the review of the rules. In particular, this refers to a number of measures that will be examined in this section (aid for the cost of prevention, control and eradication of animal diseases in aquaculture; aid to compensate damage caused by protected animals; aid to make good the damages caused by adverse climatic events).

The implementation of the common assessment principles seems to have led to a clearer methodological framework for the various State aid rules contributing to the achievement of the objective of fostering "good aid". In addition, SAM seems to have contributed to a significant clarification of the relevant State aid rules, even though some problematic areas have still been identified. Overall, State aid control has become more predictable, compared to what would have been the case under the baseline scenario, and has thus brought enhanced legal certainty to Member States and aid beneficiaries. Better consistency with the objectives under the CFP was achieved through the alignment of the State aid rules with the EMFF Regulation. According to the evidence collected in the in-depth interviews, the current State aid rules have reached their overriding objective of minimising distortion of competition and trade on the internal market. In the absence of quantifiable aggregate data on the effects on competition and trade, the evolution of the number of complaints can be taken as proxy to indicate whether this objective was met. According to internal data, the number of complaints went from 7 in the period 2009-2014 to 5 in the period 2014 - 2019. Moreover, most of the complaints received since 2014 concerned potential local impacts and did not involve intra-EU trade at any significant scale. The response to the public consultation points in the same direction.

The present section will thus analyse the overall performance of the State aid framework as well as the performance of the individual instruments (*de minimis* Regulation, FIBER and Guidelines).

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<sup>59</sup> For instance, with regard to cases concerning compensation for damages caused by protected animals, the Commission has dealt with an increasing number of measures (such as SA.55190, and more recently SA.59229, SA.57818, SA.100572). Same goes for aid for the cost of prevention, control and eradication of animal diseases in aquaculture (SA.51866, SA.43616) and for aid to make good the damages caused by adverse climatic events (SA.55774).

*Are the aid rules fit to ensure effective State aid control in order to minimise the distortions of competition and effect on trade;*

According to the very definition, an intervention by the State through State resources which gives recipients an advantage on a selective basis, distorts or is likely to distort competition and is likely to affect trade between Member States, constitutes State aid. In general, public subsidies reduce investment risks for companies and help with production costs. This in turn confers power to some market players over others, while attracting further investments in the area or sector. This may produce, in the worst case scenario, a relocation effect to other Member States where more favourable State support is granted, and affect exports to the point of causing distortions in the internal market.

State aid rules follow the logic that the smaller the size of the aid, the smaller is the likelihood of distortion of competition. Therefore, the FIBER sets notification thresholds limiting the application of that regulation. If the aid amount for an undertaking or project exceeds a certain threshold, the Member State will have to notify the aid to the Commission for closer scrutiny. The notification threshold under the FIBER is set at EUR 2 million, except for aid for research and development in the fisheries and aquaculture which falls under the GBER and its significantly higher notification thresholds. Nonetheless, case-handling experience shows that only a small fraction of notifications (strictly speaking, during the evaluation period, no scheme had to be notified because of aid amounts going over the notification thresholds) is due to aid amounts above the notification threshold. The notification threshold can therefore be considered adequate.

As already explained, the rules of the current State aid framework for the fisheries/aquaculture sector have not been substantially altered compared to the rules applicable under the previous State aid framework. The analysis suggests that these rules remain effective in ensuring predictability and legal certainty but that there is no significant change compared to the baseline scenario. However, the alignment with the EMFF has improved the consistency with the CFP, notably by allowing for a streamlined interpretation of the two set of rules.

In the context of the survey (see Annex 8 on data sources and methodology), granting authorities generally considered that the most serious negative effects of State aid on competition and trade were unlikely to materialise. Moreover, the majority of stakeholders did not regard State aid measures as distortive to trade. Along the same lines, most stakeholders expressed that State aid measures did not lead to unexpected or unintended results.

The public consultation also sought stakeholders' views about the importance of elements to limit undue distortive effects of aid. A majority of the respondents considered that it is especially important to impose stricter conditions for granting aid to large enterprises as opposed to SMEs, and that the inclusion of maximum aid intensities and maximum aid amounts was an important element. More detailed results and figures are presented in Annex 11.

Further to this general assessment, the analysis of the effectiveness criterion with regard to a potential mitigation of the distortions of competition and effect on trade, as already stated above, is targeted to the different types of aid.

- ***De minimis* aid**

Concerning *de minimis* aid, the consultation mainly focussed on the setting of the aid ceilings. Stakeholders offered their insight on whether *de minimis* ceilings had been adequately defined to reduce the risks of distorting competition and trade whilst allowing



Member States to address promptly short-term unexpected impacts in the fishery and aquaculture sector. The extent to which the implementation of the rules caused unexpected or unintended effects was also explored.

The *de minimis* Regulation currently in force sets a ceiling per beneficiary of EUR 30 000 in any 3-year period, plus national caps per Member State. Both the individual ceiling and cap intend to ensure that the aid is of a negligible amount, so as to avoid any negative effect on competition and trade among Member States. At the same time, they strike a balance to guarantee that the ceiling is not too low, which would unnecessarily burden the Commission and the Member States.

With regard to the national cap specifically, the impact assessment carried out in 2013 for the present *de minimis* Regulation<sup>60</sup> analysed the expected impacts of the current national cap, and 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”. 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.

A comparison of the amount of the *de minimis* aid actually granted by Member States with their national cap shows that, on average, Member State have only used 4% of their total allocations. Moreover, none has surpassed its respective caps. This is illustrated in Table 16 below:

**Table 16 - *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%

<sup>60</sup> European Commission (2013). 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.



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
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%
<b>EU28</b>	<b>58,735,982</b>	<b>9,789,330</b>	<b>813,485,000</b>	<b>271,161,667</b>	<b>4%</b>

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

However, the results of the public consultation cast some doubts on the adequacy of the national caps for *de minimis* aid. Only 28% of the respondents found that it was adequate, while 39% thought it insufficient.

With regard to the individual ceiling of EUR 30 000 in any 3-year period, the results of the public consultation confirm that the stakeholders acknowledge the limited impact of *de minimis* aid. Most stakeholders expressed that aid under the ceiling is indeed unlikely to distort competition and trade in the EU. The group that disagreed was mainly composed of NGOs, which argued that the ceiling was too high for the smallest companies in the fisheries and aquaculture sector. The majority of stakeholders however were of the view that the maximum of EUR 30 000 cannot in most cases help small companies to surmount financial difficulties.

The adequacy of the individual ceiling in terms of avoidance of negative effects on competition,<sup>61</sup> was further analysed in the external study supporting this evaluation (see footnote 117 and Annex 8 on methodology and data sources). To this end, the ceiling to the gross value added (GVA)<sup>62</sup> per undertaking in the sector. This indicator was chosen as it best reflects the incomes generated by the undertaking (the owner and the staff) and any assistance/subsidy would directly increase this income by the same amount.

$$GVA = Income - cost + capital depreciation + wages and salaries$$

The analysis was based on the following categorisation of the potential impact of *de minimis* payment in relation to the GVA<sup>63</sup>:

<sup>61</sup> Understood as competition among companies competing for the same market, e.g. type of fish and region, irrespective of whether they are located in one single MS or across several MS

<sup>62</sup> GVA has been calculated using data published by the Scientific, Technical and Economic Committee for Fisheries (STECF).

<sup>63</sup> Study commissioned by European Commission executed by Framian BV in co-operation with Symbeyond Research Group: Economic Analysis of Raising *de minimis* aid for fisheries (mare/2008/12) January 2009

**Table 17 - Potential impact of *de minimis* on competition, in relation to GVA**

Classification	Individual ceiling / GVA per firm
Very high	>25%
High	15-25%
Medium	10-15%
Low	5-10%
Very low	<5%

Source: Framian BV (2009) *Economic analysis of raising de minimis aid for fisheries*

The assessment drew diverging results depending on the sector and the specific Member State, which highlights the difficulty of setting a common ceiling across the internal market. The findings showed that the individual ceiling is overall high when compared to the GVA per firm in the fisheries sector (18% at EU level), and low in the aquaculture sector (9%), with great differences between Member States. In the fisheries sector, there are 12 Member States where the potential impact of the *de minimis* ceiling (EUR 10,000 per year) on competition is classified as very high or high. In the aquaculture sector, this is the case for five Member States.

However, in most countries the amount granted per beneficiary has been, on average, substantially below the individual ceiling. This confirms that in practice the impact of *de minimis* aid on competition at the EU level has been low in the fisheries sector (5.2% at EU level) and very low in the aquaculture sector (2.5%). Notably, as shown in Table 18 below, the individual ceiling is generally higher in comparison to the GVA per firm in the fisheries sector than in the aquaculture sector. However, for some Member States the ceiling is high enough to represent a potential threat to competition. As regards the fisheries sector, this is the case for Croatia, Cyprus, Estonia, Finland and Malta. In the aquaculture sector the potential distortion is very high in Croatia and Estonia, where the GVA per firm is negative.

Nonetheless, it is paramount to emphasize, as already pointed out above (see Table 16 *De minimis* aid granted compared to national cap, per MS) most Member States have granted aid per beneficiary well below the individual ceiling, therefore banishing any doubts on the impact of *de minimis* aid on competition in the fisheries sector (5.2% at EU level) and in the aquaculture sector (2.5%).

**Table 18 - Comparison of individual ceiling and *de minimis* aid granted per beneficiary with GVA per firm**

	<i>De minimis</i> granted per beneficiary & year (avg. 2014-18)	Avg. GVA per firm fishing sector and year (2014-17)	GVA per firm aquaculture sector (2014)	Individual ceiling / GVA fishing sector	Individual ceiling / GVA aquaculture sector	Aid granted per beneficiary /GVA per firm (fishing)	Aid granted per beneficiary/ GVA firm per (aquaculture)
Austria	3,939	N/A	N/A	N/A	N/A	N/A	N/A
Belgium	0	1,935	N/A	517%	N/A	0%	0.0%
Bulgaria	0	1,886	39,531	530%	25.3%	0%	0.0%
Croatia	2,560	9,396	-108,174	106%	100%	27%	100%

	<i>De minimis</i> granted per beneficiary & year (avg. 2014-18)	Avg. GVA per firm fishing sector and year (2014-17)	GVA per firm aquaculture sector (2014)	Individual ceiling / GVA fishing sector	Individual ceiling / GVA aquaculture sector	Aid granted per beneficiary /GVA per firm (fishing)	Aid granted per beneficiary/ GVA per firm (aquaculture)
Cyprus	852	3,572	712,178	280%	1%	24%	0.1%
Czech Republic	3,688	N/A	N/A	N/A	N/A	N/A	N/A
Denmark	15,274	220,234	252,103	4.5%	4%	7%	6.1%
Estonia	2,362	8,635	-11,436	116%	100%	27%	100%
Finland	4,856	13,364	82,342	75%	12%	36%	5.9%
France	4,180	121,473	118,106	8%	8%	3%	3.5%
Germany	1,412	85,605	909,250	12%	1%	2%	0.2%
Greece	0	5,949	303,744	168%	3%	0%	0.0%
Hungary	1,841	N/A	N/A	N/A	N/A	N/A	N/A
Ireland	1,326	82,348	154,246	12%	6%	2%	0.9%
Italy	5,098	69,725	379,111	14%	3%	7%	1.3%
Latvia	19,094	67,607	N/A	14.8%	N/A	28%	N/A
Lithuania	5,289	109,127	N/A	9%	N/A	4.8%	N/A
Luxembourg	0	N/A	N/A	N/A	N/A	0%	0.0%
Malta	2,746	6,175	2,264,998	162%	0%	44%	0.1%
Netherlands	0	373,946	357,041	3%	3%	0%	0.0%
Poland	3,831	48,511	N/A	21%	N/A	8%	N/A
Portugal	2,199	73,549	14,975	14%	67%	3%	14.7%
Romania	0	33,690	102,759	30%	9.7%	0%	0.0%
Slovenia	2,077	21,773	178,993	46%	6%	9.5%	1.2%
Slovakia	0	N/A	N/A	N/A	N/A	0%	0.0%
Spain	7,300	121,041	59,169	8%	17%	6%	12.3%
Sweden	4,035	71,607	115,961	14%	9%	6%	3.5%
United Kingdom	6,178	105,358	580,121	9%	2%	6%	1.1%
EU28	2,966	56,845	116,695	18%	9%	5.2%	2.5%

Sources:

- *De minimis* granted and granted per beneficiary and year: DG MARE monitoring data
- GVA in the fishing sector: 2019-08\_STECF 19-06 - EU Fleet Economic and Transversal data. GVA = Income – cost + capital depreciation + wages and salaries. The external contractor calculated the average GVA for the period 2014-2017 as data for 2018 was not available in the database.
- GVA in the aquaculture sector: STECF 18-19 - Aquaculture economic data tables. We used data for 2014 as it is the most complete data series. Data for 2015, 2016 and 2017 is missing for a large number of countries.
- Ratio of individual cap and aid granted per GVA: for cases where GVA<0, we assume the ratio is 100%.

In addition, to assess whether the individual ceiling may have posed a barrier, the evaluation analyses the *de minimis* schemes and ad-hoc measures to identify cases where the amount granted per beneficiary is close to the ceiling. As the evaluation will present in greater detail later in this section, when discussing the adequacy of the ceiling for optimal simplification, there were 69 out of 411 cases where more than EUR 10 000 per beneficiary was granted through *de minimis* aid. More than half of these cases (46) were granted in France, Germany, Italy, Poland and Spain, where the risk of distorting competition with the current ceiling is low-medium. Although a higher ceiling could provide more room in these countries to address unexpected events without distorting

competition, raising the ceiling does not seem suitable given the already existing high risk in other EU Member States.

Finally, an interesting finding of the public consultation was with regard to differences in the ceilings set in the *de minimis* Regulations applicable in the food sector. Granting authorities and producer organisations highlighted that the difference between the ceiling of EUR 30 000 set for *de minimis* aid in the fisheries and aquaculture sector for processing and marketing activities and the respective ceiling of EUR 200 000 for the same activities in the agriculture sector was prompt to distort competition in the food processing industry. Granting authorities noted this was particularly true for schemes put in place to compensate the same damage in both sectors.

- **EMFF type of measures under FIBER and the Guidelines**

The effectiveness of EMFF measures has been thoroughly evaluated in the context of the Impact Assessment accompanying the Commission Proposal for the EMFAF and the related consultations conducted for that<sup>64</sup>. The Impact Assessment informed the Commission proposal on the EMFAF Regulation (Section 3.2.4). The comparison of the Commission proposal on EMFAF with the EMFF Regulation in terms of aid intensity/level of public support, provides a further source of information about the effectiveness of the current EMFF measures. As explained, the EMFF measures are mirrored in the EMFF type of measures under FIBER and the Guidelines, and therefore the conclusions drawn for the former are fully applicable to the latter.

In this regard, the effectiveness of the different aid measures was evaluated in the light of the principles of the EMFAF (see Section 2.1). The Impact Assessment accompanying the Commission Proposal for the EMFAF concluded that further public support was needed for small-scale fisheries and fisheries in the outermost regions – however, with regard to the support for fishing fleets, stakeholders did not reach common ground. Moreover, the Impact Assessment drew attention to the need of subsidising the generational renewal, to combat the effect of the ageing workforce and cater for the needs of the blue economy. Taking this into account, the Commission’s proposal for the EMFAF Regulation increased the aid thresholds for small-scale coastal fisheries and outermost regions, and included a measure for permanent and temporary cessation, under the respect of strict conditions.

- **Non-EMFF type of measures under FIBER and the Guidelines**

As noted in Section 1 above, the present evaluation focuses on assessing the non-EMFF type of measures. In particular, the SWD examines those falling under Article 44 and 45 of the FIBER and Sections 4 and 5 of the Guidelines, for the reasons indicated *ut supra*.

For the period 2014-2020, 16 schemes were block exempted under Articles 44 and 45 FIBER, and 21 schemes were notified and approved under the Guidelines.

Only five Member States set up schemes under Article 45, which confer reductions or tax exemptions for energy products to undertakings active in the fisheries and aquaculture

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<sup>64</sup> In that context, in view of the EMFAF, a major consultation activity was the EMFF stakeholder conference held in Tallinn in October 2017. This allowed participants from the public sector, industry, NGOs and the academic world to present their views on the current and future fund. Furthermore, Member States were given the opportunity to provide input through meetings of the EMFF Expert Group in November 2017 and January 2018 and via written contributions. Other input was collected from advisory councils, non-governmental organisations, European social partners, the Conference of Peripheral Maritime Regions, the European Maritime Days and via a number of other workshops and reports.

sectors. Amongst them, two schemes were set up by Lithuania, of which only one operated in practice over the period 2015-2020. The scheme, allowing businesses to acquire oil with a tax exemption, was open to undertakings active in the aquaculture and inland fisheries sector, and benefitted around 65 businesses. An identical scheme under the same national law was open to the agriculture sector. Given the small size of the beneficiaries and of the market in Lithuania (the total production in aquaculture in 2017 amounted to EUR 10.6 million, which represents 0.2% of the total in the EU), any potential negative effects on competition and trade seem highly improbable.

The bulk of the remaining State aid expenditure for non-EMFF type of measures mainly falls within Sections 4 and 5 of the Guidelines, as no expenditure was reported for measures based on Article 44 of the FIBER. The remainder of the expenditure was related to two schemes; a scheme in the Czech Republic for the construction and renovation of ponds and water reservoirs, running from 2016 to 2021; and a scheme in Spain for the security of Basque tuna vessels in the Indian Ocean, active since 2019.

The present subsection therefore addresses whether the thresholds and requirements for aid were adequate and did not cause negative effects on competition and trade (or whether these were outweighed by the positive effects) for the following measures:

- aid to make good the damage caused by natural disasters (Article 44 FIBER) and exceptional occurrences (Section 4 of the Guidelines);
- aid to make good the damages caused by adverse climatic events (Section 5.3 of the Guidelines);
- aid for the cost of prevention, control and eradication of animal diseases in aquaculture (Section 5.4 of the Guidelines);
- aid for other measures (Section 5.7 of the Guidelines) – in particular “Aid to compensate damage caused by protected animals” (schemes subject to Commission’s non-objection decision).

***Aid to make good the damage caused by natural disasters (Article 44 FIBER) and exceptional occurrences (Section 4 of the Guidelines) and aid to make good the damages caused by adverse climatic events (Section 5.3 of the Guidelines)***

The goal of schemes designed under this measure is to restore the market situation before the natural disaster, adverse climatic event or exceptional occurrences took place, therefore, it should not entail negative effects to competition and trade by its very nature. Schemes that are approved *ex ante* could somehow deviate from this objective by reducing investment risks in certain areas, thereby putting areas with similar natural risks at a disadvantage and posing a potential threat to competition a trade.

The in-depth interviews with granting authorities have shown that the 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 beneficiaries had to go through the whole notification process on top. The data in possession of the Commission confirms the legitimacy of the motives behind these schemes and the unlikely negative effects they might pose to competition and trade: most beneficiaries were undertakings with less than 50 employees, and there is no case where State aid has been granted to cover natural disasters, adverse climatic events or exceptional occurrences only in certain regions (where the occurrence has taken place in several).

***Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (Section 5.4 of the Guidelines);***

Aid schemes under this measure have been set up in Finland, Italy and Germany. Other Member State have addressed animal diseases through block exempted schemes (Czech Republic, Italy, and Spain have set up insurance schemes that cover fish diseases to aquaculture businesses) and *de minimis* aid (Germany).

Some respondents to the survey for granting authorities and public consultation did consider that this measure may cause negative effects to competition and distort the market.

Other requirements that apply to this type of scheme further ensure that there is no threat to competition and trade. In particular, these schemes need to be a part of programmes at Union, national, or regional level for the prevention, control or eradication of animal diseases; and can only be granted in respect of a concrete list of aquatic diseases 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.

***Aid for other measures (Section 5.7 of the Guidelines) – in particular “Aid to compensate damage caused by protected animals”***

The damage caused by protected animal is a widespread problem in most Member States for both the fisheries and aquaculture sector, as confirmed by a majority of the authorities during the consultation phase. Notified aid according to the Guidelines has only been used for the aquaculture sector (particularly in Germany, Croatia, Lithuania and Sweden for the damages caused by birds, otters and seals), however, *de minimis* aid has been used to support both fisheries and aquaculture undertaking (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 analysed schemes show that most beneficiaries are of a size and profile that is unlikely to be able to distort competition. The schemes also cover damages for beneficiaries that are not able to benefit from EMFF-funded programmes to support the aquaculture sector (for instance, this is the case of a German scheme which covers a region affected by cormorants, which is not able to benefit from EMFF-funded programmes like other in the country).

The schemes also pursue the objective of guaranteeing operations in an environmentally friendly manner, and prevent that businesses resort to illegal measures to combat predators. The interviews conducted with insurance companies during the consultation phase confirmed that the high likelihood of this risk (of damages caused by protected animals) impedes offering insurance against the loss of income resulting from it – these schemes are thus unlikely to increase investments in the sector.

Finally, these schemes are mainly used by Germany, a Member State that has very limited aquaculture production<sup>65</sup> that is mainly for regional and local consumption<sup>66</sup>, which prevents it from hampering competition and trade. Most granting authorities across all

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<sup>65</sup> See Eurostat figures, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Aquaculture\\_statistics&oldid=356961](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Aquaculture_statistics&oldid=356961)

<sup>66</sup> The German market for aquaculture products is dominated by imports. For more information, see: [http://www.fao.org/fishery/countrysector/naso\\_germany/en](http://www.fao.org/fishery/countrysector/naso_germany/en)

Member States, during the consultation phase, expressed that they did not consider this measure to pose a threat to competition and trade.

*To simplify the State aid rules and to increase transparency, consistency, and legal certainty;*

The evaluation of the effectiveness criterion calls for an assessment of the adequacy of the current State aid framework, which can be carried out through the appraisal of its transparency, consistency, and legal certainty, and its scope for simplification.

To do so, the evaluation focuses on whether the different instruments conforming the State aid framework in the fisheries and aquaculture sector allow for optimal simplification, through the following main questions:

- i. Have the ceilings for *de minimis* been adequately defined to allow for optimal simplification?
- ii. To what extent has the scope for block exemptions been accurately defined? Have all the relevant categories of aid been included in the Block Exemption Regulation?
- iii. Have all the relevant conditions/principles/definitions, and types of aid been included in the Guidelines and what is the scope for improvement?

- ***De minimis aid***

One of the possible methods to ascertain whether the ceilings for *de minimis* been adequately defined to allow for optimal simplification is to determine if the aid granted has neared the ceiling of EUR 30 000 per beneficiary over three years. The monitoring data of the Commission for the 2014-2019 period implies that this was not an issue: on average, the 19 157 beneficiaries of *de minimis* aid during the said period received EUR 2 804 per case.

This however refers to the average aid per year and not to the total aid per beneficiary (received during three years). Moreover, these figures show significant divergences between Member States, with Germany, Ireland and Poland accounting for the largest number of beneficiaries, and Latvia, Denmark and Spain for the highest amount of *de minimis* aid per beneficiary. This is depicted in the tables below:

**Table 19 - Number of *de minimis* beneficiaries in the EU by year**

Years	Number of beneficiaries	Average per beneficiary (EUR)
2014	2,696	3,572
2015	3,441	2,527
2016	2,089	2,011
2017	3,239	3,419
2018	4,263	3,064
2019	3,429	2,059
Total	15,728	2,804

Source: Ipsos, DG MARE monitoring information

**Table 20 - Number of *de minimis* beneficiaries by country (2014-2019)**

Countries	Number of beneficiaries	Total expenditure (million EUR)	Average per beneficiary (EUR)
Germany	4,839	6.77	1,399
Ireland	2,502	3.70	1,479

Poland	1,973	7.14	3,618
Croatia	2,306	6.27	2,719
United Kingdom	895	5.35	5,977
France	1,232	4.89	3,971
Hungary	646	1.19	1,841
Italy	883	5.58	6,326
Spain	611	4.14	6,780
Portugal	580	1.56	2,683
Cyprus	447	0.44	990
Sweden	739	3.11	4,203
Slovenia	318	0.66	2,060
Denmark	279	4.18	14,978
Finland	238	1.13	4,742
Estonia	222	0.49	2,193
Malta	257	0.59	2,302
Czechia	69	0.26	3,826
Latvia	63	0.87	13,736
Austria	33	0.15	4,474
Lithuania	25	0.14	5,793
Grand Total	19,157	53.72	2,804

Source: Ipsos, DG MARE monitoring information

Another issue to point out is that the granting of *de minimis* aid for each sector (fisheries and aquaculture) also varied greatly across Member States. For instance, Germany, Spain and France often used *de minimis* aid to fund beneficiaries in the aquaculture sector, while Italy and Slovenia preferred to fund beneficiaries in the fisheries sector through this instrument. These differences arise because of the particular market structure of each Member State and the size and type of beneficiaries.

During the survey conducted with the granting authorities, some of them expressed that the expenditure in *de minimis* aid does not come close to the ceiling not because it is considered adequate or high, but because its narrow margin of manoeuvre –as perceived by the granting authorities- is deemed unsuitable to support the fisheries and aquaculture sectors. Nonetheless, the participation in the survey was limited, and no conclusion can be drawn for the whole group of granting authorities.

A related but still different opinion to that expressed by some granting authorities during the survey, that the EUR 30 000 limit per beneficiary over three years renders the majority of the envisaged measures impractical, was later echoed by other stakeholders during the consultation phase. These did not refer to the narrow margin of manoeuvre or the impossibility to design practical measures, but to the fact the fisheries and aquaculture sectors are capital-intensive and that the EUR 30 000 cap is too low for the sectors (for more details and figures on the results of the survey and consultation, see Annex 11).

In this regard, several granting authorities explained resorting to *de minimis* aid for those cases where immediate action at a small (or contained) scale is needed (one of them noted that *de minimis* aid was the preferred instrument to address risks related to animal disease in aquaculture and climatic events that cause higher mortality).



Recognizing that *de minimis* aid, although limited, might have negative effects on the market, most granting authorities expressed in the survey that maximum aid amounts (and aid intensities) are important to limit said distortive effects.

In any case, most granting authorities, producer organisations and advisory councils advocated for increasing the individual ceiling of *de minimis* aid and the overall national caps, to a range between EUR 40 000-200 000 per three fiscal years. The maximum of EUR 200 000 was suggested to bring the *de minimis* ceiling in fisheries and aquaculture to the same level as the one for agricultural processing and marketing.

Diverging from the opinion of most granting authorities and other stakeholders, NGOs suggested lowering the *de minimis* ceiling of EUR 30 000, pointing out that it may have detrimental side effects for sustainability, such as capacity increases.

As a conclusion, it can be generally said that the current design of the *de minimis* framework provides for a tool that can promptly tackle exceptional events without producing competition or market distortions. Whether the ceiling for *de minimis* been adequately defined to allow for optimal simplification is a question without a definitive answer – on the one hand, raising the ceilings might distort competition, particularly in the fisheries sector (in which the maximum ceiling represents a higher percentage in GVA per firm), on the other hand, most stakeholders considered the maximum individual ceiling to be too low.

- ***Block exempted aid***

The consultation phase of the evaluation, when assessing any potential simplification of the State aid rules (to increase transparency, consistency, and legal certainty), asked granting authorities and stakeholders to what extent had the scope for block exemptions been accurately defined, and whether all the relevant categories of aid had been included in the specific Block Exemption Regulation.

The results of the specific survey revealed a division of opinions between granting authorities. 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” (for more information, see Annex 11). Most granting authorities agreed to the fact that the block exemption of some measures that are currently under the Guidelines could further the effectiveness of the framework.

All in all, granting authorities recognized the need to apply certain requirements and limits, and felt that the current framework for block exempted aid precludes potential abuses (for instance, the exclusions of the FIBER incentivize undertakings to prevent damage caused by protected species, natural disasters or adverse climatic events).

With regard to the results of the public consultation with stakeholders, when asked about their views on measures that would simplify State aid rules, most respondents considered that clearer rules and definitions could contribute to simpler State aid rules, while a good number of them 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 by increasing the notification ceilings.

Overall, it can be said that block exempted aid, as currently designed, has contributed to the attainment of strategic priorities, such as providing support to young entrepreneurs or to marketing and promotion measures for improving the access of fisheries to the market.

Compared to the baseline, the design of FIBER and its higher level of detail has also facilitated the recourse to block-exempted aid, thereby entailing an enhanced legal certainty and increased transparency to Member States and aid beneficiaries.

When set against the baseline scenario, the current framework has also supplemented Member States' EMFF Operational programmes for the given period, strengthened the contribution to the objectives of the CFP and guaranteed consistency. This will be further analysed in the specific subsection below.

The current architecture for block exempted measures is comprehensive and profoundly intertwined with the EMFF, which allows for a coherent and consistent approach across the EU.

- ***Notified aid***

Over the period 2014-2019, seven Member States notified measures under the Guidelines: Croatia, Czech Republic, Latvia, Finland, Germany, Italy and Spain. The measures and corresponding expenditure were notified under the following sections of the Guidelines:

- 4.1 Aid to make good the damage caused by natural disasters and exceptional occurrences (EUR 4.1 million).
- 5.4 Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (EUR 3.2 million)
- 5.7 Aid to compensate the damage caused by protected species (EUR 6.9 million)
- 5.7 Other (EUR 11 million)

Of the total amount of aid, 37% (amounting to EUR 8.4 million) was spent by the Czech Republic, followed by Croatia (EUR 5.6 million) and Finland (EUR 3.1 million). Both for the Czech Republic and Croatia, notified aid was their preferred tool and almost the only type of aid they granted (it should be noted that in both cases the aid was devoted to a single project, the construction and renovation of ponds and water reservoirs and aid to compensate the damage caused by protected species, respectively). With regard to the distribution of the aid per sector, aquaculture projects received EUR 10.8 million of notified aid for the selected period, whilst EUR 12.2 million of notified aid targeted both aquaculture and fishing activities.

To assess the adequacy of the current Guidelines (through the appraisal of its transparency, consistency, and legal certainty) and its scope for simplification, the consultation phase of the evaluation asked stakeholders whether all relevant conditions/principles/definitions and types of aid had been included in the Guidelines (and the scope for improvement). 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 (this is explained in detail in Annex 11).

Stakeholders expressed the need 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 “aid for other measures”. The agricultural guidelines are also more flexible in the case of aid to compensate for damages 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 climate effects eligible under the guidelines (and FIBER).

In general, notified aid is not the preferred tool for granting authorities, which describe the administrative procedure it involves as cumbersome and protracted. The aid they intend to grant usually aims to tackle immediate occurrences, which clashes against the need to plan the design of aid schemes in advance. Granting authorities referred to the impossibility of resorting to *de minimis* aid in these cases, as the EUR 30 000 ceiling is too low to compensate larger firms in case of adverse events. Another granting authority pointed out that they opted for notified aid when storms were declared as an “adverse climatic event” and not a “natural disaster”, which meant that the aid to compensate for the event could not be block exempted. This is not the case for the agricultural counterpart, the ABER, where aid to compensate for the damage caused by adverse climatic events which can be assimilated to a natural disasters may be block-exempted under Article 25.

In the light of all of the above, it seems like 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, most respondents strongly agreed or agreed with the compensation for damages caused by protected animals covering indirect costs for damage and direct and indirect income loss due to damages caused by protected animals and animal diseases (see Annex 11).

On the other side of the spectrum, the old measure *Tax relief and labour related costs concerning Community fishing vessels operating outside Community waters* has been made redundant, there were no aid schemes notified according to it and it may be removed in the new amended Guidelines.

To sum up, it can be generally stated that the Guidelines are relevant and adequate taking into account the results of the consultation phase of the evaluation (there are exceptions such as schemes to compensate damage caused by protected animals) and the data of the Commission (the schemes notified correspond to categories listed). Nonetheless, there is room for improvement with regard to certain measures and the general structure of the Guidelines.

*To contribute to the achievement of the CFP objectives. The CFP seeks to ensure, in particular, 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 to contributing to the availability of food supplies.*

The last step to complete the evaluation of the effectiveness criterion is the appraisal of the contribution of the current State aid framework to the objectives of the CFP.

This has been done by assessing specific objectives against the State aid framework and its effects in Member States’ economies during the evaluation period. Other potential and unintended effects were also probed in the light of the internal data of the Commission and the results of the consultation phase.

Both granting authorities and stakeholders were asked about their views on the contribution to the CFP objectives at the consultation phase of the evaluation. Further to the targeted questions, granting authorities and stakeholders were indirectly about the contribution to these objectives through a series of questions:

- *Have the ceilings for de minimis been adequately defined to allow Member States to address promptly short-term unexpected impacts in the fishery and aquaculture sector?*
- *Which types of measures received most funding? Was the concentration (distribution) of funding in certain measures determined by the Member States or by the beneficiaries?)*

**a) CFP objectives and contribution of the State aid framework towards their achievement**

The public consultation posed the question to stakeholders on the importance of the problems State aid currently addressed or could potentially address. The environmental sustainability of fishing and aquaculture activities was rated as the most important problem to be addressed by stakeholders, closely followed by the avoidance of harmful impacts on the environment (see Annex 11 for more details).

As well as the importance of the problems, the public consultation also asked stakeholders about the importance of the objectives pursued by the granting of State aid. These objectives were generally regarded as of key importance by respondents (see Figure 14 - Opinions on the relative importance of the objectives pursued by State aid). Moreover, participants in the public consultation were enquired about the extent to which they regarded current State aid rules had achieved the abovementioned objectives. The replies were less positive in relation to the reduction of the administrative burden for public authorities and aid beneficiaries, but the majority of stakeholders felt that the current State aid rules achieved at least to some extent consistency and coherence with the Common Fisheries Policy objectives.

The Impact Assessment accompanying the Commission proposal for the EMFAF Regulation provides further insight in this regard concerning the EMFF type of measures. Namely, while the Impact Assessment echoes the findings of the public consultation as regards the progress achieved, it highlights that there is scope for further improvements. In that regard, it notes that there is broad agreement among stakeholders that one of the most significant achievements of the EMFF 2014-2020 was the strengthening of the support to sustainability and to competitiveness and to less extent also to the social dimension of the CFP. However, the majority of stakeholders agreed that despite these considerable improvements, the objectives of the CFP as laid down in the TFEU could not be considered as fully met and thus there is still need to **further align the Fund with the CFP** (Tallinn, EMFF EG, environmental NGOs). This finding should therefore be taken in due account in reviewing the EMFF type of measures in particular but also the overall State aid framework in the sector.

Similar questions were posed in the survey from granting authorities, where the representatives were asked about the contribution to certain CFP objectives (particularly, CFP(2)5 f: Contribute to a fair standard of living for those who depend on fishing activities) for beneficiaries or the local economies where State aid was granted. Around half of respondents agreed or strongly agreed that State aid granted since 2014 has contributed to the availability of food supplies, to the continuation of economic activity that otherwise would have stopped, and to avoiding long term unemployment (see Annex 11 for specific figures). The results of this specific question correspond to the trends observed in granted State aid, since this one of the main objectives that granting authorities support by *de minimis* aid.

**b) Contribution to CFP objectives and unexpected or unintended effects**

Another necessary point in the analysis, linking to very first objective examined in this subsection of the effectiveness criterion, is the potential unexpected or unintended effects that measures contributing to the CFP objectives might have. In principle, the use of State aid can only be justified if it is in line with the objectives of the CFP and demonstrated that the measure contributes to these objectives.

As it has been explained in Section 1.2, the evaluation puts a special focus on the non-EMFF type of measures which have been most used by Member States during the period of analysis, to which we add the measure *Tax exemptions and reductions in accordance with Directive 2003/96/EC* under Article 45 of the FIBER.

Article 45 of the FIBER, which refers to measures to reduce or exempt the taxes of energy products, was signalled back in 2010, by DG Internal Policies (citing Sumaila et al.<sup>67</sup>), as a measure that could lead to the increase of capacity and encourage overcapacity and overfishing. It also cautioned that such fuel subsidies may deter the use of more energy efficient techniques and increase (or prevent the reduction of) GHG emissions<sup>68</sup>. However, Article 45 has not contributed to overcapacity or overfishing, since it has been only used in aquaculture schemes.

The rest of this subsection, therefore, analyses how the non-EMFF type of measures with a special focus, as described in Section 1.2, have contributed to the CFP objectives, and may potential unintended effects that may arise from them. Table 21 below list the schemes per CFP objective, as notified by the granting authorities to the Commission.

**Table 21 - Number of schemes and expenditure per CFP objective**

Objective	Number of schemes	Expenditure (million EUR)
CFP (2)1	2	11.26
CFP (2)1, CFP (2)5 c	3	2.16
CFP (2)1, CFP (2)2, CFP (2)3, CFP (2)4, CFP (2)5	1	0.62
CFP (2)5 c	1	0.58
CFP (2)1, CFP (2)5 e, CFP (2)5 j	1	0.32
CFP (2)1, CFP (2)5 f	1	0.00
Objective not specified	14	3.56
Total	23	18.52

Source: DG MARE monitoring data

The analysis on the existence of any possible unexpected or unintended effects is based on monitoring information, opinions raised by stakeholders through the public consultation and the survey of granting authorities, and the contributions to the roadmap and position papers submitted (see Annex 8 on data sources and methodology). The line of study, or

<sup>67</sup> Sumaila U.R., Khan A., Dyck A., Watson R., Munro G., Tydemers P., Pauly D. (2010), A Bottom-Up Re-Estimation of Global Fisheries Subsidies, Research Report, Fisheries Centre, University of British Columbia, Canada. Cited by DG for Internal Policies (2013) Fuel Subsidies in the EU Fisheries Sector, European Parliament, available at: <https://op.europa.eu/en/publication-detail/-/publication/98340f60-983e-4efb-80e4-74fac8dcf552>

<sup>68</sup> Assuming that higher fuel prices are an incentive for lowering fuel consumption. Supporting this, the report 'Fuel subsidies in the EU fisheries sector', noted for example that "According to results contained in the 2012 Annual Economic Report (AER) on the EU fishing fleet, as fuel prices increased in 2008, the total fuel consumption of the EU fleet fell significantly. Furthermore, in 2010 and 2011 a decrease in the amount of fuel consumed by the EU fleet was observed, largely due to the steady increase in fuel prices".

theoretical framework of potential unintended effects which will then be assessed against the abovementioned data, is presented in Table 22 below.

**Table 22. Framework to assess other potential effects of the measures to be assessed with special focus**

Measure	Other positive or negative effects
Aid to make good the damage caused by natural disasters and exceptional occurrences and Aid to make good the damages caused by adverse climatic events	State aid is granted to recover from a situation of disaster or exceptional occurrence. Therefore, fishing capacity is not expected to go beyond that of a normal situation where the disaster has not occurred.
Aid for the cost of prevention, control and eradication of animal diseases in aquaculture	Overuse of medicines and substances for the treatment of animals in marine aquaculture may increase antimicrobial resistance in wildlife
Aid to compensate damage caused by protected animals	This type of schemes is not expected to produce any negative impact. By compensating the damage caused, for instance, by cormorants feeding on carp in aquaculture facilities, the aid contributes to ensuring that economic activities can be pursued and provides cormorants a natural habitat where they can feed.

In the first place, aid to make good the damage caused by natural disasters and exceptional occurrences and aid to make good the damages caused by adverse climatic events have not distorted competition and trade, by the very nature and design of the measures, where State aid is granted to recover from a situation of disaster or exceptional occurrence and to repair the damaged assets. The generally small size of undertakings and the fact that these schemes can be approved *ex ante* contributes to the absence of unintended effects.

With regard to aid for the cost of prevention, control and eradication of animal diseases in aquaculture, the data sources used by the Commission have not identified any potential unexpected or unintended effects. This conclusion is particularly true for inland aquaculture, as the measure has not yet been used for marine aquaculture. Nonetheless, an NGO raised, during the consultation phase, that the use of antibiotics in marine aquaculture could lead to unwanted microbial resilience, and that the use of vaccines should be preferred in this case to halt the spread of diseases in the wildlife. More importantly, the Farm to Fork Strategy and the new strategic guidelines on EU aquaculture as referred to in Section 3.2.1, with regard to the evaluation of potential of possible negative effects, share this stance for marine aquaculture and will be promoting the reduction of the use of antimicrobials, including via preventive measures and alternative treatments.

Finally, aid to compensate damage caused by protected animals has not led to any unexpected or unintended effects or distorted competition or trade – in fact, it has had positive consequences for the protection of certain species (particularly cormorants), as noted by stakeholders of all types during the consultation phase.

- ***De minimis* aid**

*De minimis* aid merits particular attention within this subsection, since it does not qualify as State aid and it does not need to be justified in line with the objectives of the CFP. In fact, it has been found in the past (2013 Impact Assessment for *de minimis*) that it was used

in ways that could have a negative impact on the CFP objectives, in particular on the general objective of achieving a sustainable exploitation of fisheries resources.<sup>69</sup>

Nonetheless, the current *de minimis* Regulation lists in its Article 1 a number of ineligible measures<sup>70</sup>, which reflect the exclusions in the EMFF, with the intention of avoiding any negative effects that might threaten the achievement of the CFP objectives.

In this regard, the positive contribution of these exclusions to the objectives of the CFP is clear, as it has likely impeded the use of *de minimis* aid to finance activities that could have a negative impact. Particularly, the objective of sustainability could be severely affected, as Member States could try to implement measures that pursue objectives contrary to those of the CFP and potentially ineligible under Article 1. In fact, the Commission detected three cases with objectives that might not be eligible: one case in Slovenia that provided aid to renew and modernise the fishing fleet<sup>71</sup> and two cases in Sweden for the provision of aid to export related activities<sup>72</sup> (aid to export-related activities is one of the exclusions of Article 1, but aid towards the costs of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market does not amount to export aid).

Even though *de minimis* aid does not have as one of its goals the contribution to the CFP objectives, the present evaluation covers the assessment of its positive effects on them, for the abovementioned reasons. This assessment has been carried out on the basis of monitoring information, interviews, the public consultation and the survey for granting authorities (see Annex 8 on data sources and methodology).

In the context of the SWD, the external contractor (see footnote 117) analysed the market failures that *de minimis* aid aims to address, analysis which can also be extended to the degree to which *de minimis* measures follow the CFP objectives. The analysis, which has to be taken with caution (coming from an external source) and assessed against the rest of the data, is presented in the table below:

**Table 23. Link between *de minimis* measures, CFP objectives, and other positive or**

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<sup>69</sup> Source: European Commission (2013). 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.

The IA conducted in 2013 noted that “*experience shows that de minimis aid has been granted in recent years to cater for operational costs (e.g.: income support or fuel costs) or for measures not included in the EFF or beyond what is covered by the EFF*”.

<sup>70</sup> The exclusions are: (a) aid the amount of which is fixed on the basis of price or quantity of products purchased or put on the market; (b) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity; (c) aid contingent upon the use of domestic over imported goods; (d) aid for the purchase of fishing vessels; (e) aid for the modernisation or replacement of main or ancillary engines of fishing vessels; (f) aid to operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish; (g) aid for the construction of new fishing vessels or importation of fishing vessels; (h) aid to the temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014; (i) aid to exploratory fishing; (j) aid to the transfer of ownership of a business; (k) aid to direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.

<sup>71</sup> Intervention in the area of fisheries by Piran Municipality - objective: Renewal and modernisation of the fishing fleet - with EUR 9,000 granted between 2015 and 2018 to five/six undertakings per year

<sup>72</sup> A scheme for export-led measures on the basis of two government decisions to the Swedish Export and Investment Council (Business Sweden), with EUR 106,000 granted in 2017 to two undertakings in Sweden; and another scheme for construction goods and their release for export, with EUR 240 000 granted 2017 to one undertaking in Sweden.

## negative effects

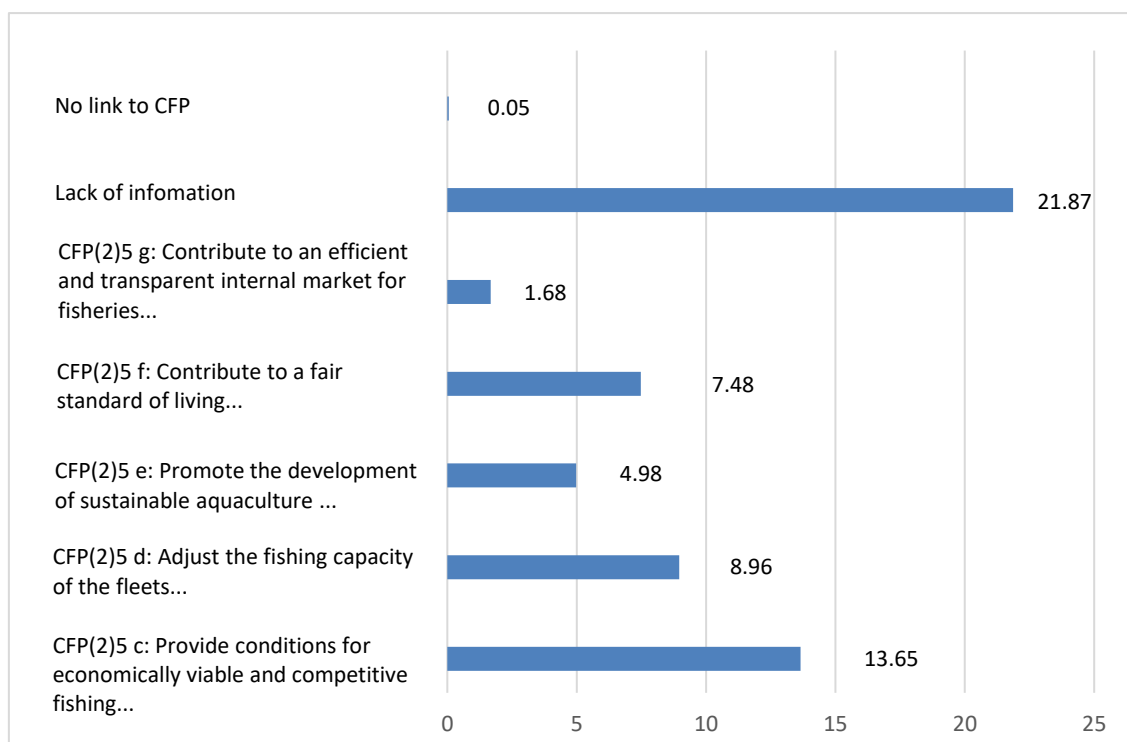
Measure	Aid granted (million EUR)	CFP objective	Negative effects	Other positive effects
Compensation of temporary cessation or quota reduction	8.96	CFP(2)5 d: Adjust the fishing capacity of the fleets according to fishing opportunities	It may support fishing at inefficient levels	
Natural disasters or climatic events	9.02	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		
Safety of fishers (including investments in vessels to improve safety)	5.93	CFP(2)5 f: Contribute to a fair standard of living for those who depend on fishing activities		
Damage caused by protected species (fisheries)	3.95	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		
Damage caused by protected species (aquaculture)	1.69	CFP(2)5 e: Promote the development of sustainable aquaculture activities		This type of measures generates positive benefits in terms of protection of other species and conservation of biodiversity
Marketing/Promotion	1.68	CFP(2)5 g: Contribute to an efficient and transparent internal market for fisheries and aquaculture		
Investments other than renewal of fishing fleet (fisheries and processing)	0.26	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		
Investments other than renewal of fishing fleet (aquaculture)	1.07	CFP(2)5 e: Promote the development of sustainable aquaculture activities		
Employment (training, young fishers, diversification...)	1.55	CFP(2)5 f: Contribute to a fair standard of living for those who depend on fishing activities		
Animal health	2.08	CFP(2)5 e: Promote the development of sustainable aquaculture activities		
Innovation in aquaculture	0.12	CFP(2)5 e: Promote the development of sustainable aquaculture activities		
Innovation (except in aquaculture)	0.25	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		
Operational costs in aquaculture	0.02	CFP(2)5 e: Promote the development of sustainable aquaculture activities		
Operational costs (except aquaculture)	0.16	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		



Measure	Aid granted (million EUR)	CFP objective	Negative effects	Other positive effects
Energy efficiency	0.01	CFP(2)5 c: Provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing-related activity		
Other / unknown	21.87	There is not enough information on this type of measures to classify them		
Measures potentially ineligible	0.05			
Total	58.67			

The analysis of the external contractor (updated and confirmed by the Commission, see Annex 8 on methodology and data sources) connects EUR 37 million of the *de minimis* aid granted in the evaluation period to specific CFP objectives, which amounts to a 62% of the total *de minimis* aid. The remaining 38% of *de minimis* aid granted, which amounts to around EUR 22 million, could not be assessed by the contractor in the light of its contribution to the CFP objectives, due to lack of information<sup>73</sup>.

**Figure 12 - Volume of *de minimis* aid granted in the EU contributing to CFP objectives, 2014-2019, million EUR**



Source: DG MARE monitoring data

The interviews with granting authorities somewhat confirmed this distribution of *de minimis* aid – some Member States (Denmark, Germany and Spain) explained that they used *de minimis* aid to compensate for temporary cessation or quota reduction (EUR 3.4 million, EUR 2.6 million and EUR 1.2 million, respectively), since this measure is not eligible for block-exemptions. Along the same lines, others contributed to the objective of a fair standard of living for those who depend on fishing activities through *de minimis*

<sup>73</sup> This figure includes measures classified as "Debt deferral, compensation of interest rates and tax advantages", and "Other / unknown".

measures aimed at the safety of fishers (namely Ireland, with EUR 3 million through their “Fleet Safety scheme”), again because of the impossibility of using block-exempted aid.

In light of the above, we can conclude that the design and implementation of *de minimis* aid has largely aligned to the objectives of the EMFF and the CFP (particularly taking into account the list of ineligible measures of Article 1 of the *de minimis* regulation), and, therefore, generally not led to unexpected negative effects.

- **Other unintended effects: sustainability and environmental impact**

The assessment of unintended effects on the environment and general sustainability of the sector merits special attention, particularly taking into account the recent policy developments (and amongst them, the Green Deal), as described above in Section 3.2.

Therefore, the design of the State aid framework in the sector has to bear in mind that subsidies might foster undesirable conducts. With regard to fishing companies, these subsidies could promote fishing at levels that are unsustainable or inefficient for the environment or for the current state of fish stocks (for instance, if there were a situation of overcapacity of the fishing fleet). With regard to aquaculture, these effects could manifest through antimicrobial resistance, if the administration of antibiotics is not properly scaled and over subsidised.

Both the survey for granting authorities and the public consultation explored the views of stakeholders on these potential unintended effects, and generally found that these are unlikely. The results of the public consultation and specific survey can be examined in Annex 11.

Apart from the survey of granting authorities and the public consultations, in-depth interviews were carried out with a number of stakeholders. In this regard, it is particularly important to highlight the concerns raised by NGOs in these interviews, where they noted that State aid might lead to the increase of fishing capacity, putting at risk fish stocks, and to the promotion of fishing at inefficient levels. NGOs pointed to the following measures for these unintended effects: measure 5.6a. *Aid for the renewal of the fishing fleet in outermost regions*, introduced in 2018 in the Guidelines; investments to increase productivity; marketing and promotion campaigns. A particular case is that of aid to compensate for the temporary cessation of activities (a measure included in EMFF, but explicitly excluded from FIBER), where opinions were divided among both NGOs and granting authorities.

Nonetheless, NGOs and other stakeholders recognized the existence of positive effects for the environment also stemming from State aid measures. Again, these results can be explored in depth in Annex 11.

#### **4.4. 4.1.3. Coherence**

This section will examine the coherence of the State aid instruments in the fisheries and aquaculture sector both internally and in relation to other relevant EU rules. Firstly, the analysis will focus on the internal coherence of the instruments, that is, whether the design of the Guidelines, block-exemptions and *de minimis* rules are consistent and constitute a systematic approach. Secondly, the coherence of the State aid instruments in the fisheries and aquaculture sector will be assessed against the wider policy background, that is, it will be examined whether they are coherent with other EU Legislation.

In comparison to the baseline scenario as described in Section 2.2, the policy framework for the fisheries and aquaculture sector represents a substantial improvement, particularly with regard to external coherence in the sense that it has aligned with the requirements stemming from the CFP and EMFF and other related EU policies. With regard to the horizontal and other State aid instruments, which refers to the internal coherence of the State aid architecture, the current framework as compared to that of the baseline has added considerable value and integrated the common assessment principles introduced by the SAM.

The present analysis is subject to the limitations stemming from the stakeholder consultation (see Annex 8) and the fact that the policy scenario is still unravelling due to recent developments.

#### *To what extent are the State aid rules internally coherent?*

This question was not addressed to stakeholders in the various consultations and targeted surveys (this was merged with questions on other policies and only referred to horizontal and other State aid instruments), however, despite this limitation, the Commission can carry out a complete internal analysis with in-house data.

#### **Internal coherence of the State aid framework**

It can be generally said that the State aid framework in the fisheries and aquaculture sectors is consistent and coherent, the regulation for State aid granted under the FIBER and under the Guidelines complement each other well, and *de minimis* aid completes the puzzle, providing for support that cannot be embedded within the former instruments.

Member States mainly employ EMFF funding through their operational programmes, however, when the measures they envisage are not compatible with the EMFF or any unforeseen incident or unexpected circumstance arises, Member States resort to State aid or *de minimis* aid.

In case Member States decide to provide support outside of their operational programmes, they tend to, in the first instance, grant State aid under the FIBER or use the possibility of *de minimis* aid. Block exempted aid under the FIBER can be used depending on the objectives of the aid (it contains a *numerus clausus* of measures and only allows State aid under certain conditions) and the needs of undertakings, which are normally SMEs (unless it refers to aid to make good the damage caused by natural disasters under Article 44, which disregards the size of the beneficiary). Where the need for support is more immediate or the type of measure is not covered by FIBER, Member States can choose to provide aid under *de minimis* while respecting the individual and national ceilings. When neither of these options is suitable for the envisaged intervention, Member States can notify State aid measures under the Guidelines, which usually entails a longer process with more administrative requirements. Nonetheless, the Guidelines are more flexible (there is even an article for “other measures” that still have not been scrutinised by the Commission), allow for State aid to large undertakings, and the maximum aid that can be granted depends on the costs it aims to compensate.

The State aid framework for the fisheries and aquaculture sector as set is, therefore, internally coherent, as the three instruments cover the needs of Member States and the support for any circumstance that may arise (this is, however, independent of the necessary modifications and improvements that have been described in the subsections above).

Finally, the coherence of the State aid rules in the fisheries and aquaculture sector with other horizontal State aid instruments was assessed at the consultation stage and rated quite

highly, see Figure 41 in Annex 11 (Opinions on coherence of State aid rules with other EU policies and legislation – Horizontal State aid instruments).

Nonetheless, with regard to the fact that national authorities have to apply different set of rules for the same scheme (this sometimes happens in relation to the agricultural instruments), the examination of measures under the FIBER or the Guidelines, or aid under *de minimis* (as already discussed with regard to the ceilings in the specific heading of Section 5.3) signals that there could be issues with internal coherence and efficiency that merit attention. Several of the schemes analysed in the present evaluation were also open to the agriculture sector: in some cases, Member States submitted identical schemes under the same national law under the FIBER and the ABER (or the agricultural and fisheries Guidelines in the case of notified aid). In other cases, they submitted a joint scheme, which was then treated administratively by the two Services of the Commission that were during the evaluation period responsible for State aid in the fisheries (DG MARE) and the agriculture/forestry (DG AGRI) sector. The recent developments in the internal organisation of the European Commission as regards State aid policy provide an additional argument in that direction. Namely, the synergies following the concentration of State aid competence for all sectors since the 1<sup>st</sup> December 2019 in DG COMP. This organisational change has also helped concentrate the internal knowledge of the Commission in terms of experience and expertise concerning the application of State aid rules in the two sectors of primary production, as well as fostering administrative efficiencies.

Therefore, the analysis suggests that the State aid framework in the fisheries and aquaculture sector constitutes a coherent package, as the three instruments in principle cover the needs of Member States and the support for any circumstance that may arise – however, there is some room for improvement, in accordance to what has been discussed in the subsections above.

*To what extent are the State aid rules consistent with or complementary to other relevant EU rules and policies (CFP and EMFF; Horizontal and other State aid instruments; EU Cohesion Policy; EU Environmental Protection Policy; EU 2030 Climate and Energy Framework; EU Veterinary and Public Health Policy; EU Policy on Small and Medium Enterprises (SMEs)).*

Even though the analysis has been far-reaching and tried to cover in the stakeholder consultation as many policies as possible (CFP and EMFF; Horizontal and other State aid instruments; EU Cohesion Policy; EU Environmental Protection Policy; EU 2030 Climate and Energy Framework; EU Veterinary and Public Health Policy; EU Policy on Small and Medium Enterprises (SMEs)), the more recent developments have rendered the analysis of this question difficult. On the one hand, the new Commission has recently set out its priorities for 2019-2024, particularly the EU Green Deal, which are still turning into concrete proposals and political approaches. On the other hand, other recent events (see Section 3.3) will have a significant but yet to be defined impact on the State aid instruments for the fisheries and aquaculture sector – at this stage, only a limited assessment can be performed and provisional conclusions be drawn.

Nonetheless, the State aid instruments in the fisheries and aquaculture sector have proven to be coherent with the CFP, as analysed in depth in the last subsection of Section 4.1.2 with the internal knowledge of the Commission, by contributing to environmentally sustainable fishing and aquaculture activities and to the availability of food supplies, and have also proved consistent with the objectives of achieving economic, social and employment benefits.

This internal analysis of the Commission is confirmed by the findings of the public consultation, where most of the stakeholders agreed on the coherence of the State aid framework with the CFP and the EMFF. This was however not the case with other policies, particularly with regard to the EU 2030 Climate and Energy Framework, the EU Environmental Protection Policy and the EU Veterinary and Public Health Policy. The details of these responses are presented in Annex 11 below.

The results of the public consultation already show the need to act and align the State aid framework in the fisheries and aquaculture sector with environmental policies, which is accentuated by the new Commission policies set for the 2019-2024 period and particularly the Green Deal (through the EMFAF), as explained in Section 3.2.1 above. The general coherence may also need to readjust to the new scenario that will unfold due to recent events (see Section 3.3 above).

*To what extent would the developments in the international standards (e.g., WTO rules) require revision of the State aid rules?*

Setting rules for subsidies in the fisheries sector (not aquaculture) that threaten the conservation of marine resources has been on the table of discussion of the World Trade Organization (WTO) since 2001, when the Doha Development Agenda was launched and the WTO Negotiating Group on Rules in the framework of the Agreement on Subsidies and Countervailing Mechanisms started operations (with an elaboration of the negotiating mandate, agreed in the 2005 Hong Kong Ministerial Conference, to prohibit subsidies that contribute to overcapacity and overfishing.).

Undeterred by the constraints faced during the years, mainly due to divergent standpoints between least developed countries (LDCs), developing and developed countries, 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 (a) the prohibition by 2020 of fisheries subsidies that contribute to overcapacity and overfishing; and (b) the elimination of subsidies that contribute to IUU fishing (illegal, unreported and unregulated fishing), while recognizing the need for an appropriate special treatment for LDCs and developing countries. The negotiations are based on a draft consolidated text. The aim is to conclude the agreement by the 12<sup>th</sup> WTO Ministerial Conference, at the end of November 2021.

The negotiations are still ongoing and no substantive rules have been adopted in the matter. Nonetheless, the coherence of the State aid framework with the WTO rules has to be assessed against the 2015 SDGs, in particular SDG 14.6, which the EU committed to implement in its internal and external policies.

In the first place, it is paramount to note that the principles pursued by the 2015 SDGs are already recognized by the State aid framework for the sector and embedded in the CFP and EU law in general. The CFP lays down strict provisions to combat IUU fishing through the Control Regulation<sup>74</sup> and the IUU Regulation<sup>75</sup>, and the very CFP Regulation<sup>76</sup> pledges to prevent over-fishing through the achievement of maximum sustainable yield.

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<sup>74</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

<sup>75</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC)

More specifically, these principles are also followed in each of the instruments for the different categories of aid:

- Under the FIBER, as seen in Section 4.1.2 above and the subsection for the contribution to the achievement of the CFP, the measures are coherent with the SDGs targets and actually have a conservation bias. This is tangible in measures like those of Article 23 (Aid to limit the impact of fishing on the marine environment and adapt fishing to the protection of species), Article 24 (Aid to innovation linked to the conservation of marine biological resources); Article 25 (Aid for the protection and restoration of marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities). However, the Commission services have identified that the block-exemption of “Aid to start-up support for young fishermen” might not be compatible with the careful examination that is needed to align on such commitments. This measure appears to be better targeted in the framework of the EMFF and EMFAF multiannual programming as part of an overall strategy developed by each Member State, along with a SWOT analysis and a performance monitoring framework.
- With regard to the Guidelines, these specify that “[...] *the pursuit of those objectives* [the Union’s IMP objectives, in a manner complementary to cohesion policy and to the CFP] *is not to result in an increase in fishing capacity.*” Moreover, by the very nature of the measures, aid to make good the damage caused by natural disasters and exceptional occurrences and aid to make good the damage caused by adverse climatic events should not have any impact in terms of overcapacity, overfishing or IUU fishing.
- Finally, the *de minimis* Regulation, as already detailed in this SWD, expressly prohibits under its Article 1 any aid that could lead to increased fishing capacity, such as: aid for the purchase of fishing vessels; aid for the modernisation or replacement of main or ancillary engines of fishing vessels; aid to operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish; aid for the construction of new fishing vessels or importation of fishing vessels; and aid to exploratory fishing.

To sum up, it is evident that the current architecture of the State aid framework in the fisheries sector is coherent with the principles set by the UN Sustainable Development Goals. At this stage, no substantive rules have been adopted by the WTO, but the Commission should follow closely the negotiations.

### **3.2. How did the EU intervention make a difference?**

#### **4.5. 4.2.1. EU added value**

This final section intends to ascertain whether the intervention of the Commission with the adoption of State aid rules for the fisheries and aquaculture sector has had EU value, that is, whether it has presented positive effects in comparison to what could have been attained by Member States acting on their own. It is important to bear in mind that both competition policy and the common fisheries policy are exclusive competences of the EU (Article 3 TFEU), and thus the subsidiarity principle does not apply to them.

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No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

<sup>76</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

*What is the additional value resulting from the fact that the Commission has adopted the State aid rules in the fisheries and aquaculture sector, compared to what could have resulted from a case-by-case assessment of the notified State aid measures?*

It can be generally said that the EU added value of State aid rules in the fisheries and aquaculture sector is evident.

As stated, Article 3 TFEU gives the EU exclusive competence in “(b) the establishing of the competition rules necessary for the functioning of the internal market” and “(d) the conservation of marine biological resources under the common fisheries policy”, which determines that the subsidiarity principle does not apply in these areas. Therefore, the need of an EU intervention in both is clear, against to what would have happened with no regulation of the fishery and aquaculture sector after the expiry of the instruments and a direct application of the Treaty or a continuation of the previous framework (see baseline scenario in Section 2.2), which would have undermined legal certainty and posed a threat to the observance of the policy objectives set in the CFP and the EMFF Regulation for the period 2014-2020.

The EU has thus to pass legislation, be it soft law (guidelines) or regulations (block exemption and *de minimis*), otherwise all aid measures would have to be individually notified to the Commission and assessed directly against Article 107 TFEU, which would cause a significant and unnecessary administrative burden. Moreover, the existence of guidance from the Commission, to which Member States can adhere when conceiving aid measures *ex ante*, provides a high level of legal certainty. This approach is also consistent with the wording of Articles 107 (2) and (3), which contemplate exceptions to the general prohibition of State aid, in cases where it is necessary to address market failures, or to facilitate the development of certain economic activities and policy objectives (such as the CFP). Following this mandate, Member States can implement schemes without the need to notify them if designed according to FIBER, and implement aid measures under certain amounts and criteria directly in accordance with the *de minimis* Regulation.

The State aid framework in the fisheries and aquaculture sector also provides for a level playing field between Member States in the internal market, thereby guaranteeing the confluence of aid measures across borders. The rules also contribute in safeguarding the internal market by limiting market distortions and ensuring better coordination between Member States.

The public consultation, in order to evaluate said EU added value, asked to stakeholders whether they agreed that a common framework of rules on State aid in the fishery and aquaculture sector helped to contribute to the EU’s policies more efficiently. As presented in detail in Annex 11, the majority of respondents felt that a common framework of rules on State aid in the fishery and aquaculture sector helped contribute to the Union’s policies more efficiently, by maintaining a level playing field for companies in the internal market, increasing legal certainty, consistency, coherence, and reducing the length of State aid control. The results of the public consultation were later confirmed by the targeted survey for granting authorities.

### **3.3. Is the intervention still relevant?**

#### **4.6. 4.3.1. Relevance**

The criterion of relevance examines how the objectives of an EU intervention correspond to wider EU policy goals and priorities. Of particular interest, in this regard, is whether the stated objectives of the intervention under evaluation still match the (current) needs or



problems. As explained in the analysis of the baseline (see Section 2.2.), when assessing the criterion of relevance, it should be taken into account that competition is an area of exclusive EU competence. Therefore, the complete absence of State aid rules for the fisheries and aquaculture sector is not a plausible scenario.

The evaluation examines two aspects under the relevance criterion. Firstly, whether the State aid instruments are still appropriate in light of potentially changing needs, and therefore whether the action as set out in the intervention logic (see Section 2.3) continues to be justified. Secondly, whether the stated objectives of the instruments under evaluation address market failures, and/or contribute to the provision of material improvements that the market by itself would not deliver.

The findings of the analysis on relevance are subject to the limitations stemming from the stakeholder consultation and constraints on the possibility of full triangulation (see Annex 8).

#### *To what extent are the existing State aid rules relevant?*

The analysis supports the conclusion that the objectives set by the three instruments under evaluation remain to a large extent relevant vis-à-vis the EU policy goals and priorities. This is the case both as regards the SAM objectives and the CFP objectives that the State aid rulebook in the fisheries and aquaculture sector pursues.

As regards the CFP objectives in particular, the responses to the public consultation (see Annex 8 on data sources and methodology) reveal that they were all considered important or very important by a majority of the respondents for the granting of State aid in the sector, with environmental sustainability of fishing and aquaculture activities and economic viability for enterprises in the sector featured at the top of the priorities. On the other side of the spectrum, the objectives that garnered the least favourable responses were the ones related to availability of food supplies and animal welfare. Annex 11 below presents a detailed analysis of the responses on the relative importance of the different objectives.

The SAM-related objectives pursued by the State aid framework, i.e. fostering good aid; being “big on big, small on small” and faster access to aid, were linked to the delivery of Europe's growth strategy, known as the EU 2020 strategy<sup>77</sup>. The results of the consultation confirm the relevance of competition policy in supporting the EU growth strategy. Namely, competition policy, including State aid control, is fundamental in ensuring a well-operating, level-playing field in the Single Market. Therefore, competition policy has a significant role in defending and strengthening the Single Market, thus contributing to sustainable, inclusive growth. Those principles remain valid under the new Commission priorities, as described in Section 3, and as such, the three SAM objectives continue to remain highly relevant and contribute to them.

Most of the State aid rules for fisheries and aquaculture are long-standing and have proven their relevance over the years. As indicated in the baseline scenario (Section 2.2), the substance of the current rules have not changed significantly compared to previous State aid framework, other than adaptations to ensure coherence with the CFP and the EMFF and to integrate the common assessment principles introduced by the SAM. Case-handling practice in the period 2014 – 2020 has not revealed any significant difficulties. Nor did the evaluation support study or the response to the public consultation reveal any important failures in meeting the needs of the fisheries and aquaculture sectors (see Annex 8 on data sources and methodology).

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<sup>77</sup> <https://europa.eu/!jh77xF>



In that context special mention needs to be made to the measure category “Other measures” which attracted most of the aid granted under this period (EUR 7.7 million). Within that category, aid for damage caused by protected species accounted for more than half of the total expenditure (EUR 6.9 million) in notified aid. Such aid supports the co-existence of primary producers and protected animals and thus contributes to the wider CFP objectives of promoting biodiversity. Unlike the long-standing risk and crisis management measures included in the Guidelines, aid related to protected animals is not explicitly mentioned in the fisheries and aquaculture State aid framework. However, case-handling practice shows that the possibility provided in the Guidelines has strengthened the relevance of the fisheries and aquaculture State aid framework in comparison to the baseline scenario.

Furthermore, the relevance of the CFP and the SAM objectives pursued by the State aid instruments vis-à-vis the new policy developments is corroborated by the feedback received in the frame of the consultations (see Annex 8). Overall, it emerges that environmental, economic and social sustainability are among the main considerations that stakeholders believe the State aid rules should factor in. This illustrates the significance of both the CFP objectives and the SAM objective of pursuing ‘good aid’, and corroborates that the relevance of the ‘big on big, small on small’ and ‘fast access to aid’ objectives embedded in the rulebook following the SAM reform remains.

Looking into the latest policy developments, the role of competition policy in pursuing the new policy priorities is reiterated in all the relevant strategic documents. However, only the ‘Farm to Fork’ strategy makes an explicit connection to the fisheries sector. As described in Section 3.2, the fisheries and aquaculture sector- and as a consequence the State aid rules applicable in the sector- are of particular significance for the achievement of the objectives of the Green Deal for Europe and the ‘Farm to Fork’ strategy. The Commission Communication on ‘the European Green Deal’ states that: *‘Evaluations are underway of the relevant State aid guidelines (...). The guidelines will be revised by 2021 to reflect the policy objectives of the European Green Deal’*. In addition, the recent Commission Communication on the ‘Farm to Fork’ strategy states that *‘to support primary producers in the transition, the Commission envisages clarifying the competition rules for collective initiatives that promote sustainability in supply chains. It will also help farmers and fishers to strengthen their position in the supply chain and to capture a fair share of the added value of sustainable production by encouraging the possibilities for cooperation within the common market organisations for agricultural products and fishery and aquaculture products’<sup>78</sup>*.

Moreover, the new SME Strategy reinforces that stance from an SME perspective: *“Rigorous enforcement of EU competition rules ensures that all companies active in the single market, in particular SMEs, can compete and innovate on their merits, preventing the abuse of market power and the concentration of wealth by a few big businesses.”*

As also emphasised in Annex 8, the public consultation as well as the targeted consultations took place before the announcement of Commission’s recent policy strategies, such the Green Deal, although some comments/position papers were received afterwards. The consultations took place well before the COVID-19 crisis and the finalisation of the Trade and Cooperation Agreement with the UK. Hence, possible misalignments with new general policy goals were perhaps not fully visible to

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<sup>78</sup> Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1)

stakeholders. However, in the mid- to long-term, future State aid policy actions will have to take into account the full impact of the above mentioned policy developments and the measures undertaken by the Commission on the State aid rules in general.

*To what extent does the scope of FIBER and the Guidelines address market failures and the real needs in the fishery and aquaculture sector and to what extent there is scope for improvement?*

As explained in Section 1, State aid is in principle prohibited in the European Union because it distorts competition in the internal market. However, this prohibition is not absolute. In cases where free markets fail to result in an efficient or equitable outcome, public subsidies may be justified and necessary to remedy market failures. Therefore, the assessment of relevance includes an assessment of the market failures or circumstances that justified the intervention.

The identification of potential market failures in the fisheries and aquaculture sector was based on the monitoring data, the review of academic literature conducted as part of the external study, as well as primary information collected via the survey of granting authorities and in-depth interviews (for more details, see Annex 8 on data sources and methodology). From that analysis, it emerges that the main market failures in the fisheries and aquaculture sector that may justify granting aid are the following:

- i. **Externalities (mainly, negative externalities):** this includes, for instance, cases of emergence of fish diseases and their contagion to other fish or aquaculture businesses if no action is taken.
- ii. **Access to private finance:** this includes an assessment on whether insurance markets are incomplete, and reasons why. This may happen in instances where the insurance products available to fishers and aquaculture businesses do not properly reflect the risk of the activity or are not developed.
- iii. **Commons dilemma:** The commons dilemma characterises a shared-resource system, such as fish stocks. The dilemma arises where individual users, acting independently according to their own self-interest, behave contrary to the common, long-term good of all users, by depleting or spoiling that resource (e.g. fish stocks) through their collective, un-coordinated action.
- iv. **Public goods:** State aid may be granted to provide a good that the market alone would not provide.
- v. **Hysteresis problems or fixed factor problems:** hysteresis arises when a single disturbance affects the course of the economy. An example of hysteresis is the delayed effects of unemployment, whereby the unemployment rate can continue to rise even after the economy has begun recovering. Hysteresis states that as unemployment increases, more people adjust to a lower standard of living. As they become accustomed to the lower standard of living, people may not be as motivated to achieve the previously desired higher living standard. Also, as more people become unemployed, it becomes more socially acceptable to be or remain unemployed. After the labour market returns to normal, some unemployed people may be disinterested in returning to the workforce. This market failure is typical of coastal regions, for instance as a result of mandatory cessation of fishing activity.

- ***De minimis aid***

By definition, *de minimis* aid is not considered to be State aid in the sense of Article 107 TFEU. The *de minimis* Regulation mainly serves the objective of making procedures to grant aid as efficient as possible by freeing up capacity for the control of aid that has higher likelihood to distort competition and/or trade. Therefore, the *de minimis* Regulation

in fisheries and aquaculture does not include any conditions on the use of *de minimis* aid, other than the maximum ceilings and national cap, and the list of restrictions (Article 1).

As a result, information on the objectives pursued by *de minimis* aid is scarce. 37% of the aid granted could not be categorised while 4% corresponded to debt deferral, compensation of interest rates and tax advantages. For this aid therefore the pursued objectives were not known. These cases amount to EUR 24 million out of the total *de minimis* aid granted. In addition, the high number of authorities granting aid and the varied circumstances in which it was granted do not allow more in-depth analysis of the market failures at the macro level. As there is no legal requirement for *de minimis* aid to address market failures, information about the use of *de minimis* aid by the Member States derived from available monitoring data on the objectives pursued, and information by survey respondents (see Annex 8 on data sources and methodology).

On the basis of the available information, the objectives pursued by the *de minimis* aid granted during the evaluation period respond the following market failures:

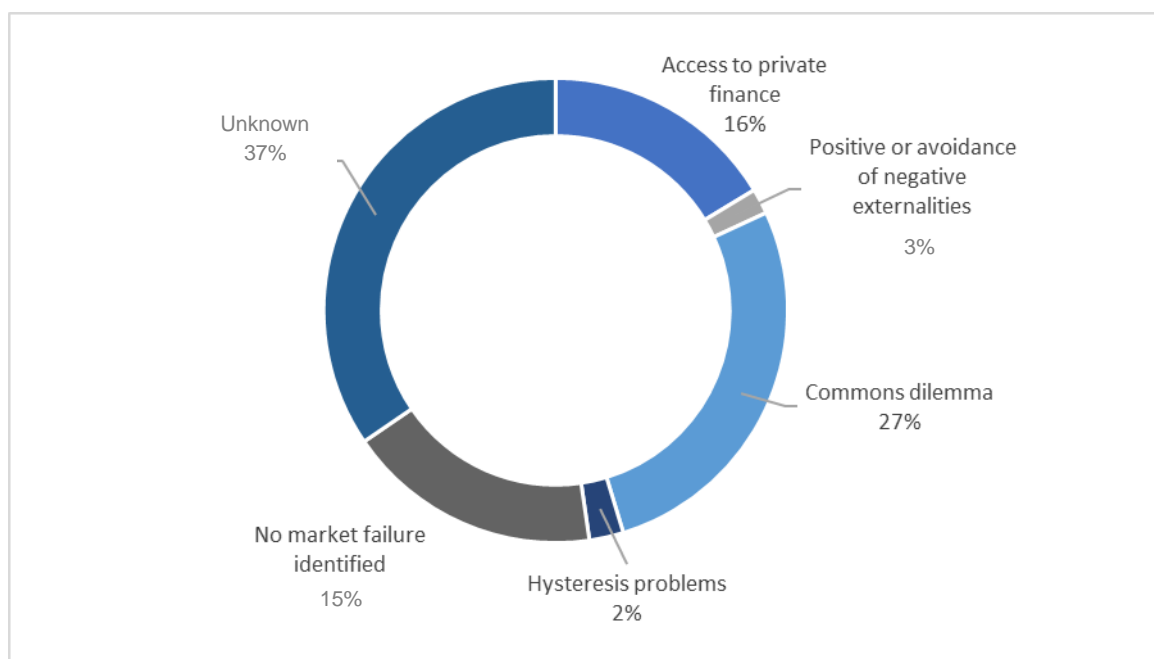
**Table 24 - Link between objectives of *de minimis* aid and market failures, externalities or public goods**

Objectives pursued by <i>de minimis</i> aid	Potential market failures, externalities or public goods
Natural disasters or climatic events	Access to private finance
Cost of control and eradication of animal diseases	Positive externalities (vaccination) and avoidance of negative externalities (administration of medicines / slaughtering)
Damage caused by protected species of animals	Commons dilemma
Temporary cessation of activities	Commons dilemma
Support for employment and diversification of activities	Hysteresis problems
Marketing and promotion campaigns	No market failure identified a priori
Innovation	Positive externalities
Safety of fishers	No market failure identified a priori
Investments other than renewal of fishing fleet	No market failure identified a priori
Energy efficiency	Positive externalities (reduction of GHG emissions)
Operational costs	No market failure identified a priori

Source: Coffey, Ipsos, Poseidon study

On the basis of the available information, *de minimis* aid was mostly granted for measures supporting temporary cessation of activities (EUR 9 million) and for the compensation for damages due to natural disasters or climatic events (EUR 9 million). The next category of measure that attracted the most *de minimis* aid was the promotion of the safety of fishers (EUR 5.9 million). *De minimis* aid in support of these measures amounted to 41% of the total *de minimis* aid granted over the evaluation period. As explained above, this analysis does not, however, include schemes or cases that pursued varied objectives, or where information was not available.

**Figure 13 - Potential market failures addressed by *de minimis* aid granted in the EU, 2014-2019 (million EUR)**



Source: Individual reports on State aid submitted by MS

For the remaining 15% of *de minimis* aid for which information was available, no direct link to market failure was identified. The schemes concerned have been further explored in interviews to gain insight on the motivation for the granting of *de minimis* aid.

They are as follows:

- funding of measures for the safety of fishers (EUR 5.9 million);
- marketing and promotion activities (EUR 1.7 million);
- investments other than renewal of fishing fleet (EUR 1.16 million) and
- operational costs (EUR 0.18 million).

As regards aid for safety on board, in principle, it can be block exempted via Article 19 of FIBER (Aid to improve health and safety). However, this is subject to the condition that those investments go beyond the requirements under Union or national law (Article 32 of EMFF). This requirement stems from the fact that State aid should have an incentive effect, fostering a change in behaviour. Therefore, State aid –or EMFF funding- cannot be justified for mandatory safety equipment. From the in-depth interviews, it emerged that this was the motivation in cases of Member States, like Ireland, where the protections afforded under national law went beyond EU requirements. These Member States could not use EMFF funding or block exempted State aid. Hence, national authorities had to resort to *de minimis* to provide funding to invest in safety equipment on board to comply with the more demanding national safety rules.

Concerning marketing and promotion activities, EMFF (Article 68) covers a number of activities under this category that contribute to the CFP sustainability objectives. Examples include finding new markets for unwanted catches or fishery and aquaculture products obtained using methods with low impact on the environment, promoting the certification and the promotion of sustainable fishery and aquaculture products, etc. However, the information available on *de minimis* aid granted for this type of activities does not specify the objectives pursued. Therefore it is not possible to judge whether these cases responded to market failures or material improvements that the market cannot deliver.

The third category concerns investments other than renewal of fishing fleet. This includes a broad range of measures targeting different sectors; fisheries, aquaculture and processing. Member States have used this category of aid to finance investment in ports (e.g. mooring), to provide aid to increase the potential of aquaculture activities, to support investment in fishing nets, etc. Therefore, it is not possible to make an overall assessment about the extent to which this category of aid addressed market failures.

Finally, the category of aid granted for the financing of operational costs corresponds to aid schemes compensating fisheries activities for rental costs (e.g. mooring of vessels and renting public spaces in terms more advantageous than market terms). Again, no immediate link to a market failure can be established at macro level.

Overall, and taking into account the absence of legal requirements and information gaps, the use of *de minimis* aid between 2014 - 2019 seems to have responded to market failures or to material improvements that the market alone could not provide.

- **EMFF type of measures under the Guidelines and the FIBER**

The relevance of the EMFF measures, including their ability to address market failures, has been analysed in-depth in the context of the Impact Assessment accompanying the Commission proposal for the EMFAF Regulation<sup>79</sup>. The conclusions drawn there fully apply to the EMFF-type of measures, as they are identical in scope and targeting. EMFF-type of measures include all measures falling within the scope of FIBER, with the exception of those falling under Articles 44 and 45, and the measures under Section 5.1 of the Guidelines. The analysis conducted in the context of the EMFAF Impact Assessment points to three main categories of market failures to which EMFF-type measures respond.

The first category concerns EMFF-type measures addressing climate and environmental sustainability challenges as well as risks to biodiversity (see Annex 12 for a list of these measures). Aid under the relevant FIBER measures amounted to EUR 11.49 million during the evaluation period. These measures responded to well-identified market failures concerning the sustainability of fisheries and the conservation of marine biological resources. In particular, overcapacity is still a serious problem in many segments and across sea-basins. In the Mediterranean, overfishing is broadly between two and three times the maximum sustainable yield (MSY). According to this analysis, public support, including through State aid, remains necessary to achieve the CFP objectives related to MSY and the implementation of the landing obligation.

Market failures related to sustainability are closely interlinked with failures related to data availability. Particularly relevant are in this regard measures under Article 43 of the FIBER (Aid for data collection). Measures in accordance with that Article contribute to efforts to address data gaps as, despite recent improvements, the status of many stocks remains unknown. Additionally, such measures can contribute to improving the inter-operability of data collection systems and support positive spill-overs in the form of knowledge dissemination and co-operation. This is particularly important in the areas of control and scientific data where the information collected needs to be used for a broader scope of purposes (surveillance and marine knowledge respectively) and requires more inter-operable systems.

The third type of market failure concerns identified gaps in innovation and market development in the fisheries and aquaculture sector. A particular aspect of that concerns ensuring food security in the Union through competitive and sustainable aquaculture and markets. The promotion of innovation and environmentally sustainable solutions have been

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<sup>79</sup> SWD (2018) 295 final of 12 June 2018.

found to be of paramount importance in promoting this objective. During the evaluation period, the total amount of aid granted for measures under FIBER supporting innovation, research, market development and productivity-building was approximately EUR 14 million. Out of this amount, EUR 7.18 million were granted for measures in the aquaculture sector. According to the analysis presented in the Impact Assessment supporting the EMFAF, such measures help address the slow growth that has characterised the aquaculture sector. In this regard the EMFAF Impact Assessment notes that these market failures continue to persist.

The fourth category of market failures is related to the attractiveness of the fisheries sector. Against the background of an ageing workforce, the sector has been facing difficulties in attracting new workforce. The limited attractiveness of the sector stems mainly from safety concerns and difficult working conditions aboard fishing vessels. Health and safety as well as hygiene concerns are among the main challenges in this regard. Articles 16-19 of the FIBER explicitly address issues related to the labour attractiveness of the sector. During the evaluation period, a total EUR 7.18 million were granted in aid under these measures. The viability of the fisheries sector requires the continued attention and efforts to improve the quality of work for current and future workers.

In this regard, a measure that merits special attention is Article 18 of the FIBER, “Aid to start-up support for young fishermen”. Within the framework of the EMFAF, the Commission services have identified that the block-exemption of this measure might not be compatible with the careful examination that is needed for this type of measure. In particular, given the potential harmful effects of certain investments in the fleet (i.e. as regards the risks of generating overcapacity and overfishing), these need to be carefully circumscribed to avoid negative impacts and to ensure that they pursue EU conservation objectives. In the EMFAF, the added value of these investments is ensured through the political commitments made by Member States in their programmes (which are adopted by the Commission). Concretely, the actions supported by the EMFAF are part of an overall strategy based on needs (through a SWOT analysis) and their performance is continuously monitored through indicators, with the possibility to take corrective actions in the course of the implementation. This thorough analysis does not apply to FIBER measures, which in turn deem the reasons that justify the possibility of support under Article 13 of the EMFAF not equally valid for a block-exemption.

The above analysis shows that despite improvements, the identified market failures persist. Therefore, future State aid support for fisheries and aquaculture policies should continue to address persisting market failures in particular related to sustainability and enabling conditions to facilitate, innovation and market development in the blue economy. Moreover, continued efforts are required to respond to emerging issues through the improvement of working and health safety conditions as well as early identification through improved data collection and analysis.

- **Non-EMFF type of measures under the Guidelines and FIBER**

As explained in Section 1.2, non-EMFF type of measures are formed by two block exempted measures (Art 44 and 45 of FIBER) and any other measure in the context of State aid to be assessed under the Guidelines that is not of the same kind as measures funded by the EMFF.

Concerning the measures approved under the FIBER, the rationale for state intervention from the angle of market failures through measures under Article 44 (‘Aid for natural disasters’) is examined in detail in Table 25 below. However, it should be noted that no

expenditure was reported during the evaluation period under any of the five schemes based on Article 44. As regards Article 45 of that Regulation, this concerns tax exemptions and reductions in accordance with Directive 2003/96/EC (Directive restructuring the Community framework for the taxation of energy products and electricity). Under this Article, schemes have been approved to provide tax advantages or tax exemptions to fishers. Analysis of the relevance of the measure in terms of its ability to address market failures would require an analysis of the tax duties applied across MS, and of the incidence of tax on fuel price and on total variable costs faced by fishers, as compared to other sectors. A 2013 study of the European Parliament concerning a measure of the same scope under the block exemption Regulation<sup>80</sup> preceding FIBER found that *“in some MS, such as Denmark, Sweden and Germany, the excise duties currently applied are much higher than the minimum rate set by the directive. In other MS, for example Spain and Lithuania, the rate is equal to the minimum value. However, this does not necessarily imply, for example, that for a Danish firm the fuel tax exemption is more relevant than for a Spanish firm because to draw conclusions in this regard it would be necessary to consider the incidence of tax on fuel price and on total variable costs faced by the firm.”*<sup>81</sup> Therefore, it is not possible to draw overall conclusions on whether the schemes approved have responded to market failures.

As regards the relevance of the measures under the Guidelines, which this SWD examines with a special focus, the following table analyses the rationale for state intervention from the angle of market failures.

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<sup>80</sup> Commission Regulation (EC) No 736/2008, Article 24 ‘Tax exemptions in accordance with Directive 2003/96/EC’

<sup>81</sup> DG for Internal Policies (2013, p. 9) Fuel Subsidies in the EU Fisheries Sector, European Parliament, available at: <https://op.europa.eu/en/publication-detail/-/publication/98340f60-983e-4efb-80e4-74fac8dcf552>

**Table 25 - Potential market failures identified for the four measures to be analysed with special focus**

Measure	Scope	Eligible costs	Potential market failures
Aid to make good the damage caused by natural disasters and exceptional occurrences	<p>To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that <b>exceptionally severe storms and floods</b> may constitute natural disasters. In addition, Regulation (EU) No 1388/2014 permits to block exempt the following types of natural disasters: <b>earthquakes, avalanches, landslides, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.</b></p> <p>The following events are examples of exceptional occurrences that have been recognised by the Commission in cases outside the fishery and aquaculture sector: <b>war, internal disturbances, strikes, with certain reservations and depending on their extent, major industrial and nuclear accidents, and fires resulting in widespread loss.</b></p>	<p>The eligible costs for State aid are the costs of the damage incurred as a direct consequence of the natural disaster or exceptional occurrence. The damage may include:</p> <p>(a) material damage to assets (such as buildings, equipment, machinery, stocks, and means of production); and</p> <p>(b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.</p> <p>The aid and any other payments received to compensate the damage, including payments under insurance policies, must be limited to 100% of the eligible costs.</p>	<p>Insurance to cover the damage caused by the circumstance in question was not available, did not cover all types of damage (e.g. loss of income), or its cost did not adequately reflect the risk of the activity.</p> <p>Hysteresis or fixed factor problems (i.e. if businesses cannot survive the circumstance or event, people made unemployed may find it difficult to move or find work in other sectors).</p>
Aid to make good the damages caused by adverse climatic events	<p>To date, the Commission has accepted that storms, atmospheric conditions causing exceptionally high waves, tides, heavy and persistent rainfall, floods, and exceptionally elevated water temperatures over a longer period may constitute adverse climatic events.</p>	<p>The eligible costs are the costs of the damage incurred as a direct consequence of the adverse climatic event. The damage may include:</p> <p>(a) material damage to assets (such as buildings, vessels, equipment, machinery, stocks, and means of production); and</p> <p>(b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.</p>	<p>Insurance to cover the damage caused by the circumstance in question was not available, did not cover all types of damage (e.g. loss of income), or its cost did not adequately reflect the risk of the activity.</p> <p>Hysteresis or fixed factor problems (i.e. if businesses cannot survive the circumstance or event, people made unemployed may find it difficult to move or find work in other sectors).</p>



<p>Aid for the cost of prevention, control and eradication of animal diseases in aquaculture</p>	<p>Aid under this Section of the Guidelines may only be granted: (a) in respect 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; and ; and (b) as part of: i. a programme at Union, national, or regional level for the prevention, control or eradication of animal diseases; or ii. emergency measures imposed by the competent national authority.</p>	<p>Eligible costs are costs related to: (a) health checks, analyses, tests, and other screening measures; (b) the purchase, storage, administration or distribution of vaccines, medicines, and substances for the treatment of animals; (c) the slaughtering, culling, and destruction of animals; (d) the destruction of animal products and of products linked to animals; (e) the cleaning and disinfection of the holding and equipment; (f) the damage incurred due to the slaughtering, culling or destruction of animals, animal products, and products linked to animals, limited to the market value of such animals and products if they had not been affected by the disease; (g) loss of income due to difficulties in restocking; (h) in exceptional and duly justified cases, other costs incurred due to animal diseases in aquaculture.</p>	<p>Negative externalities due to the spread of diseases (and positive externalities due to the administration of vaccines); risks for human health if the disease can be transmitted to humans</p>
<p>Aid to compensate damage caused by protected animals</p>	<p>This specific type of aid is not currently explicitly addressed in the Guidelines. However, it has been granted as part of "other measures". To date, the Commission has approved schemes for the compensation of the damage caused by big birds and by otters</p>	<p>The case in Germany (big birds) has been taken as an example. Aid may be granted up to the amount of the loss of income. The beneficiary must show that all possible legal measures of deterrence have been used. This includes proof of implementing appropriate measures to mitigate or prevent damage. Any payments received from third parties, such as insurance payments, will be deducted from the eligible costs.</p>	<p>Insurance to cover the damage caused by protected animals was not available, did not cover all types of damage (e.g. loss of income), or its cost did not adequately reflect the risk of the activity.  Commons dilemma (in the absence of compensation, those affected might damage protected species)</p>

*Source: Information produced by Coffey, Ipsos, Poseidon based on the Guidelines for the examination of State aid to the fishery and aquaculture sector.*

Concerning the rationale that motivated the use of non-EMFF measures, the analysis shows that it varied among granting authorities. Nevertheless, a red thread that emerged from the interviews (see Annex 8 on data sources and methodology) was the objective to support affected businesses in the case of natural disasters, exceptional occurrences and adverse climatic events. In these cases, State intervention through the granting of aid was considered necessary to address hysteresis effects. According to the granting authorities, in the absence of State intervention, some or all of the affected businesses would have ceased their trading operations. Some NGOs expressed concerns, however, with respect to State aid potentially allowing non-viable businesses to continue to operate artificially. For these organisations, a clear public interest was necessary to justify the use of State aid.

Lack of affordable insurance was cited as the main challenge from producer organisations concerning access to private finance (see Annex 8 on data sources and methodology). The insurance costs against damages caused by natural disasters and climatic events, were considered excessive, with high premiums making them inaccessible to small producers. The high insurance costs stem from the risks involved for insurers. For instance, an adverse weather event is difficult to predict and there is limited scope for mitigation available to small firms to prevent damage. Moreover, in line with recent market trends, insurers are increasingly paying out larger sums, thus further increasing the costs of such insurance for small producers. In the case of damage caused by protected animals, one insurance company interviewed indicated that as this is a recurrent event, it is not possible to insure it in the private market. Such a lack of affordable insurance substantiates one of the hypothesised market failures for these three measures.

In the case of animal diseases, measures were considered necessary to address market failures in most cases as the spread of disease clearly has the potential to cause damage for both producers and consumers (e.g. in the case of zoonosis).

Finally, two granting authorities (during specific interviews, see Annex 8 on data sources and methodology) also noted the importance of using aid to ensure ecological performance. One example was given in which in the absence of aid, the local aquaculture sector might collapse. In this case, ponds would no longer be maintained and might be converted into agricultural land, thereby impacting local biodiversity in a negative way.

Therefore, from the above analysis it can be concluded that the notified aid granted within the period of analysis was relevant. The measures financed addressed market failures and delivered positive externalities that the market by itself would not provide. In particular, aid was used to compensate costs that cannot be insured and contributed to prevent the spread of diseases. It should be noted that the changes made in the Guidelines in 2015 (notably the removal of the measure “Tax relief and labour related costs concerning Community fishing vessels operating outside Community waters”) seem relevant, as no schemes were notified falling within this description, and interviewees did not express a need for this measure.

As regards amendments to the current Guidelines in 2018, which allowed for operating aid and renewal of the fishing fleet in the OR under specific (and very restrictive) conditions, as described above in Section 1.2, no relevant scheme was notified during the evaluation period and there was no specific feedback from stakeholders.

## 5. 5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?

### 5.1. Conclusions

The analysis undertaken suggests that the objectives of the three instruments which compose the State aid framework for fisheries and aquaculture remain to a large extent **relevant** vis-à-vis the EU policy goals and priorities. The State aid instruments in the fisheries and aquaculture sector pursue and reflect both the SAM objectives and the 2014-2020 CFP objectives: the current rules did indeed not change significantly compared to the previous State aid framework, apart from the adaptation to ensure coherence with the EMFF and the common assessment principles introduced by the SAM. The case-handling practice also shows that the contribution to the wider CFP objectives is tangible, with aid for damage caused by protected species of animals under the category “other measures” attracting more than half of the notified aid granted under this period, a type of aid that supports the co-existence of primary producers and protected species of animals and thus promotes biodiversity. The relevance of the fisheries and aquaculture State aid framework is further corroborated by the feedback received in the consultation phase, where it also emerged that environmental, economic and social sustainability are among the main considerations for stakeholders. Even when the analysis was carried out before the COVID-19 outbreak and the adoption of major priorities like the Green Deal, the relevance of competition policy in supporting the EU growth strategy is reiterated in all the recent relevant strategic documents (e.g. ‘Farm to Fork’ strategy, Digital Strategy), which covers the gap in the assessment to a certain extent.

The analysis also confirms that the objectives of the instruments are **relevant** in the sense that they address market failures. In particular, the use of *de minimis* aid in the evaluation period seems to have responded to market failures or to material improvements that the market alone could not provide, taking into account the absence of legal requirements and information gaps. Along the same lines, the aid granted within the period of analysis for non-EMFF type of measures under the Guidelines and FIBER addressed market failures and delivered positive externalities that the market by itself would not provide. Aid was generally used to compensate costs that cannot be insured and contributed to prevent the spread of diseases. Moreover, the changes made in the Guidelines in 2015 (notably the removal of the measure Tax relief and labour related costs concerning Community fishing vessels operating outside Union waters) also proved to be relevant, as no schemes were notified falling within this description, nor any stakeholder expressed a need for this measure. Finally, with regard to EMFF type of measures under the Guidelines and the FIBER, the analysis shows that despite improvements, market failures persist, in particular related to sustainability and enabling conditions to facilitate innovation and market development in the blue economy. Certain measures like Article 18 FIBER (aid to start-up aid for young fishermen) also need to be carefully considered, given their potential harmful effects (i.e. as regards risks of generating overcapacity and overfishing) and the need to circumscribe these measures to avoid negative impacts and ensure that they pursue EU conservation objectives.

With regard to **efficiency**, the results of the analysis and the evidence obtained from the case-handling data of the Commission and consultations with all the relevant stakeholders suggest that the administrative burden and costs inherent to the enforcement of the State aid instruments are, for the most part, considered appropriate and justified. However, there are several possibilities to reduce the administrative burden and to obtain further efficiencies. Notified aid was considered the most burdensome to design and implement by granting authorities at the consultation stage, and confirmed by the reduced

number of schemes notified to the Commission. Nonetheless, its design is also generally seen as justified and appropriate, given the difference in the potential of the measures under the three instruments to distort competition. Block exempted aid was considered less burdensome, both as regards the preparation stage (submission of an information sheet) and the monitoring of schemes, and granting authorities confirmed that the mirroring of the eligibility rules of the EMFF facilitated the implementation of measures under FIBER. The analysis of the data of the Commission confirms the efficiency of the current State aid framework: the measures transmitted to the Commission include a total of 109 block exempted cases and 29 notified cases (of which 6 were in the end withdrawn), which, compared to the 99 notifications during 2009-2013 period, show a clear trend of utilizing block exempted aid, thereby reducing the administrative burden. Nonetheless, case-handling experience supported by the analysis in the external study points to the possibility of enlarging the scope of the FIBER and avoiding notifications where the Commission has gained sufficient experience and where the potential measures would not pose a threat to competition and trade (particularly in relation to 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; and aid to compensate damage caused by protected animals). Finally, the granting of de minimis aid was generally viewed as not very burdensome, as a procedure with clear rules on eligibility and no approval required from the Commission. Only the compliance with the individual ceiling and national cap is perceived as burdensome – but this needs to be put against the internal data of the Commission and the concerns on the level of control and scrutiny exercised on *de minimis* aid. In this regard, a central *de minimis* register exists in at least 19 Member States and Member States report yearly on *de minimis* aid: the evaluation has come across a small number of potential irregularities (aid granted for objectives that might not be eligible), but their magnitude might not be enough so as to consider more control at either EU or the national level, keeping in mind the desire to keep administrative burden as low as possible. With regard to the transparency, clarity and adequacy of the other aid instruments, the opinion of the stakeholders was overwhelmingly positive, which is generally confirmed by the experience of the Commission with the in-depth scrutiny of the notified and block exempted State aid and the yearly reports by Member States on State aid expenditure (included in the State aid Scoreboard at an aggregate level). This could be further improved with the ex-post monitoring of selected cases, also for *de minimis* aid. Moreover, taking into account the SAM transparency objectives and that only around 20-25% of the total State aid spent in the EU is made transparent on the TAM, it seems that the publication requirements for individual aid awards are not fully ensuring that relevant information is made publicly available.

The analysis conducted also seems to point out that the State aid framework in the fisheries and aquaculture sector has to a large extent met its objectives (to ensure effective State aid control in order to minimise the distortions of competition and effect on trade; to simplify the State aid rules and to increase transparency, consistency, and legal certainty; and to contribute to the achievement of the CFP objectives) and, therefore, is **effective**. The higher level of detail of the legal instruments has allowed for a more transparent and streamlined compatibility assessment as regards both the Commission's handling of notified aid and the Member States' use of the FIBER - State aid control has become more predictable and has thus brought enhanced legal certainty to Member States and aid beneficiaries. In line with the approach to focus on cases with a big impact on competition, the current system, as proven by the case-handling experience, also ensures that the Commission examines a limited number of measures involving large amounts which have to be notified. With regard to block-exempted aid,

the current design is comprehensive and has contributed to the objectives of the CFP (strategic priorities, such as providing support to young entrepreneurs or to marketing and promotion measures for improving the access of fisheries to the market) by enhancing Member States' EMFF Operational programmes and allowing for a coherent and consistent approach across the EU. Nonetheless, case-handling experience supported by the analysis in the external study points to the possibility of enlarging the scope of the FIBER and avoiding notifications where the Commission has gained sufficient experience. As to *de minimis* aid, it can generally be said that the current design can promptly tackle exceptional events without producing competition or market distortions. However, the results of the evaluation, taking into account the case data of the Commission, show that the individual ceiling and the national cap are not adequate for all Member States (particularly, the individual ceiling is too high for some and too low for others). On average, Member States have used 3% of their total allocation, and none has surpassed its respective national cap. Given that the last time these were analysed in-depth was with the impact assessment carried out in 2013 for the present *de minimis* Regulation, the national caps could benefit from further reflection. The amount granted per beneficiary has also been, on average, below the individual ceiling. On the other hand, raising the individual ceiling does not seem suitable given the already existing high risk of distorting competition in some EU Member States, particularly in the fisheries sector. However, it is also true that the *de minimis* individual ceiling has remained at the current level for approximately 15 years, since Regulation (EC) No 875/2007<sup>82</sup>. Another point to consider is that the ceiling for the fish processing and marketing industry is currently aligned to that of the primary production sector (EUR 30 000) and greatly diverges from that of the processing and marketing of agricultural goods (EUR 200 000) – this, however, needs to be studied with caution, given the different structure of the sector and sustainability concerns. The current *de minimis* set up is also largely aligned to the objectives of the EMFF and the CFP (particularly taking into account the list of ineligible measures of Article 1 of the *de minimis* regulation), and, therefore, has generally not led to unexpected negative effects. Finally, the analysis shows that the Guidelines are generally relevant and adequate, with some exceptions, like the lack of guidance on schemes that aim to compensate the damage caused by protected species of animals. Other measures, like “Tax relief and labour related costs concerning Community fishing vessels operating outside Community waters” have been made redundant, with no aid schemes notified, and have been removed in the amended Guidelines.

In relation to the **internal coherence** of the State aid framework in the fisheries and aquaculture sector, it can generally be described as being consistent and coherent: the regulation of State aid granted under the FIBER and under the Guidelines complement each other well, and *de minimis* aid completes the set-up, providing for support that cannot be embedded within the former instruments. The State aid rules in the fisheries and aquaculture sector are also coherent with other horizontal State aid instruments, as confirmed by the internal practice and by all the relevant stakeholders at the consultation stage. Nonetheless, some stakeholders expressed that technical alignments with the agricultural State aid instruments could further improve the framework, which is a point to consider given the Commission's experience with schemes covering both sectors (more specifically, with Member States submitting identical schemes under the same national law under the FIBER and the ABER).

With regard to **external coherence**, even though the analysis has been far-reaching and tried to cover as many policies as possible (for instance, the stakeholder consultation

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<sup>82</sup> Regulation (EC) No 875/2007 of 24 July 2007 (OJ L 193, 25.7.2007, p. 6, see Article 3(2) thereof.

included the CFP and EMFF; Horizontal and other State aid instruments; EU Cohesion Policy; EU Environmental Protection Policy; EU 2030 Climate and Energy Framework; EU Veterinary and Public Health Policy; EU Policy on Small and Medium Enterprises (SMEs)), the new Commission priorities for 2019-2024 (particularly the EU Green Deal) and other recent events (like the COVID-19 crisis) do not yet have a definitive and quantifiable impact on the State aid instruments for the fisheries and aquaculture sector, and only a limited assessment can be performed at this stage. There is not enough data and in-house experience to draw conclusions that could be of relevance for policy making. Nonetheless, the results of the public consultation, where most stakeholders expressed that the State aid framework is not fully coherent with the EU 2030 Climate and Energy Framework, the EU Environmental Protection Policy and the EU Veterinary and Public Health Policy, already show the need to act and align the State aid framework in the fisheries and aquaculture sector with environmental policies (now accentuated by the needs of the Green Deal). While the current State aid measures are deemed to contribute to the objectives of the Green Deal (see Table 14), these should be “adapted” in the sense that the State aid framework should align to the changes introduced to the EMFAF (see also Section 5.2 below). Finally, the analysis also shows that the State aid framework in the fisheries sector is coherent with the principles set by the UN Sustainable Development Goals. When new substantive rules on fisheries subsidies are adopted by the WTO, the Commission should assess if any adjustment of the EU’s State aid framework for fisheries is needed.

Finally, the State aid architecture for the fisheries and aquaculture sector examined in this evaluation has an evident **EU added value**, given that both competition policy and the common fisheries policy are exclusive competences of the EU. Against to what would have happened under the baseline scenario, with the continuation of the previous framework or the expiry of the instruments and a direct application of the Treaty, the current framework demonstrates EU added value by safeguarding legal certainty and ensuring the observance of the policy objectives set in the CFP and the EMFF Regulation for the period 2014-2020. Stakeholders have further recognized the importance of having a common framework that safeguards the internal market, provides legal certainty and brings coherence and stability.

## **5.2. Lessons learned**

The main lesson learned is the importance of the synergies between the EMFF and the State aid instruments in the fishery and aquaculture sector for the achievement of both the CFP and SAM objectives. In this regard, the findings of the evaluation, which point out to the success of aligning the State instruments to the EMFF, should take into account these lessons and transpose them to the new legal instruments, which should come with the adoption of the EMFAF.

The EMFF defined objectives, eligible actions, aid intensities and specific conditions per measure. For the period 2014-2022, the State aid rules have, by and large, been aligned with these detailed conditions. The analysis of this evaluation report suggests that the alignment between the EMFF and State aid rules has been effective in ensuring predictability and legal certainty. The case-handling experience shows that the alignment with the EMFF has improved the consistency with the CFP, notably by allowing for a streamlined interpretation of the two set of rules.

The EMFAF largely removes the eligibility conditions at EU level and sets only the main cornerstones and basic policy parameters. Member States are responsible for defining the details of their operational programmes in view of their specific needs and bear

responsibility for the results. Such a structure ensures a tailor-made approach and better results for the Union maritime, fishery and aquaculture sector. The achievement of the EMFAF political objectives in terms of providing greater flexibility to Member States to achieve their aims with less attached conditions is not compromised given the fact that the EMFAF itself exempts from State aid control all kind of support in the operational programmes falling within Article 42 TFEU (production of and trade in fisheries and aquaculture products). This means that the managing authorities will be fully able to use the flexibility foreseen under the EMFAF for these economic activities.

However, it represents a technical challenge for the design of the State aid rules, which must ensure a level playing field across the EU. Until now, the objective of consistency between State aid and the CFP/EMFF was achieved by a very close alignment of the State aid rules with the conditions of the EMFF (i.e. the State aid rules by and large mirrored that policy). For the future, however, it is not possible to cover in the State aid rules all possible modalities, which Member States may provide in their operational programmes under the EMFAF. At the same time, it is important to maintain coherence between the two policies (State aid control and EMFAF support), as identified in this evaluation, and to strike a balance between the requirements emanating from State aid control of measures that go beyond the strict demarcation of the scope of Article 42 TFEU (which cannot apply a similar degree of flexibility without the risk of distorting competition and trade) and the subsidiarity approach envisaged under the EMFAF delivery model.

The reflection on the lessons learned should however not stop here and take up, as points to ponder, the shortcomings that have been found in this evaluation report.

In particular, there are several possibilities to reduce the administrative burden by enlarging the scope of the FIBER and avoiding notifications where the Commission has gained sufficient experience and where the potential measures would not pose a threat to competition and trade (particularly in relation to 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; and aid to compensate damage caused by protected animals). On the other hand, certain block-exempted measures (aid to start-up aid for young fishermen) need to be carefully considered, given the need to avoid negative impacts and ensure that they pursue EU conservation objectives.

With regard to *de minimis* aid, the evaluation, taking into account the case data of the Commission and the feedback received by several stakeholders, shows that the individual ceiling and the national cap could benefit from further reflection. In parallel, this opportunity could be taken to address the concerns expressed by stakeholders on the differentiated treatment between the individual aid ceiling for the fish processing and marketing industry and that of the processing and marketing of agricultural goods.

As far as transparency and the reporting structures are concerned, given the publication statistics for individual aid awards (only 20-25% of the total State aid awarded is published), there might be room for improving the publication requirements so as to cover a larger amount of data. The potential irregularities discovered in the evaluation in relation to *de minimis* aid also suggests the need to strengthen reporting requirements or structures.

**6. 1. ORGANISATION AND TIMING**

The present policy evaluation project was included in the DG MARE evaluation plan, and followed the relevant Better Regulation guidelines for evaluations. It is paramount to note that the State Aid competence in fisheries and aquaculture moved from DG MARE to DG COMP on 1 January 2020. DG COMP has therefore been in charge for coordinating the drafting of the present Staff Working Document since that date, drawing on the work already conducted by DG MARE (evaluation roadmap, support study carried out by the contractor, etc.).

DG MARE set up an Inter-service Steering Group (ISSG) in spring 2019 (19/02/2019)<sup>83</sup>, 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. The following DGs were invited to participate in the ISSG, along with the Secretariat-General of the Commission: COMP, AGRI, REGIO, ENV, GROW, JRC and TRADE.

Following up on this work, DG COMP set up a further ISSG in February 2021 to conduct the review and discussion of the evaluation and Impact Assessment for the State aid instruments in the fishery and aquaculture sector. It was composed of representatives of 14 services<sup>84</sup>. Meetings were held on 25 March 2021, 21 May 2021, 7 July 2021, 27 October 2021, 17 February 2022 and 8 April 2022.

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 evaluation intended to assess the State aid framework through the criteria of effectiveness, relevance, efficiency, coherence and EU-added value. The roadmap received 4 contributions, which were later fed into the results of the Public Consultation.

The Public Consultation was open for feedback from 28 June 2019 until 31 October 2019 and received 64 responses.

The evaluation support analysis was outsourced to Coffey International, via a study paid for from DG MARE's operational budget. The study report was published in July 2020.

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<sup>83</sup> Ares(2019)1018269

<sup>84</sup> 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.



## **7. 1. DATA COLLECTION AND ASSESSMENT**

The information sources used for this evaluation mainly relate to two categories. These are (i) the in-house data and experience of the European Commission, and (ii) external data and input provided by stakeholders (including Member States' granting authorities, public consultation and stakeholders' consultation) as well as a study prepared for the Commission by external contractors.

With regard to the in-house data, this refers primarily to information included in the notifications submitted by the granting authorities (for State aid granted under the Guidelines) or the summary information sheets for block exempted aid. In addition, information is extracted from the analysis of State aid statistics on the basis of the annual reports submitted by Member States. These reports provide detailed expenditure per scheme and category (via the State Aid Scoreboard<sup>85</sup>). The present evaluation takes into account the data submitted in the 2020 State Aid Scoreboard, comprising expenditure made by Member States from 1.01.2009 to 31.12.2019 under the scope of Article 107(1) TFEU. 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, these sources of information do not cover all aid, as they do not include funding granted under the *de minimis* rules (as it does not amount to State aid). Furthermore, it is necessary to point out that the data presented in the Scoreboard excludes most of the aid to services of general economic interest and schemes approved under the Temporary Framework (see Section 3.3), as both legal bases impose limited reporting duties on Member States.

The notifications submitted by the Member State provide one of the most valuable sources of information for the Commission to be able to appraise the suitability and areas of improvement for the whole State Aid regime. Even though notifications refer to State aid granted under the Guidelines, the procedure also provides guidance to the Commission on what measures can be block-exempt in the context of future reviews after having gained sufficient experience and other areas of possible improvement.

The Commission's case practice also takes into account the developments in EU legislation, jurisprudence of the Union Courts and academic literature.

Moreover, the evaluation takes into account the views expressed by Member States in the State aid Working Groups<sup>86</sup>, where Member States exchange views and practices, and information is gathered to support implementation efforts. With the intention to conceive sound policymaking, these fora report on an annual basis to the High Level Forum, where the Commission and Member States review State aid issues beyond the mandate of the Working Groups.

Another channel of information for this SWD is the regular co-operation between the Commission and the national authorities. Member States engage with the Commission on

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<sup>85</sup> [https://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html#what](https://ec.europa.eu/competition/state_aid/scoreboard/index_en.html#what)

<sup>86</sup> Governed by Commission Decision C (2016) 3301 of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups.

a continual basis and regularly pose interpretation questions<sup>87</sup>, which serve the purpose of shedding light on the formulation of the legal instruments and the interpretation of other complex matters.

Furthermore, another valuable source of information is the complaints and the monitoring exercise. The Commission carries out an annual *ex post* monitoring, as required under Article 108(1) TFEU, according to which "*The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States*". The Commission selects a representative sample of aid measures implemented by Member States, and examines whether they comply with the provisions of the applicable State aid rules during the reference period and with any particular decisions.

The SWD draws, among others, from a specific study<sup>88</sup> 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 resources<sup>89</sup>. In addition, the present evaluation draws 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 Council<sup>90</sup>.

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 abovementioned in-depth interviews conducted by the contractor.

The Commission published a combined evaluation roadmap<sup>91</sup> 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 11 below, and referenced through this SWD.

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<sup>87</sup> The Commission has, for this purpose, put in place the eState aid Wiki, a dedicated platform for MS to raise interpretative questions and for DG COMP to provide answers. It can be accessed online at: <https://webgate.ec.europa.eu/fpfis/wikis/display/StateAid/Homepage?src=sidebar>

<sup>88</sup> 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>

<sup>89</sup> 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>

<sup>90</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0295>

<sup>91</sup> "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>

## 8. 2. ANALYTICAL MODELS

The methodological approach to the evaluation combined quantitative and qualitative analysis. As detailed above, this included surveys and interviews with granting authorities and other stakeholders, desk research, literature review and economic analysis (both externally from the Coffey, IPSOS and POSEIDON study and internally, with the up-to-date data of the Commission). All findings were categorised and further analysed in the light of the evaluation matrix, which is presented in Annex 9. This matrix is organised around a set of evaluation questions and sub-questions, and further introduces indicators and judgement criteria to answer these questions.

With regard to the specific assessment of the administrative burden incurred by granting authorities, it has been conducted for the purposes of this evaluation in accordance with the Standard Cost Model<sup>92</sup>. The main aim of the model is to assess the net cost of information obligations imposed by EU legislation on the different parties concerned. In this case, only data on the burden to public authorities (granting authorities) can be readily used to quantify the cost of designing, implementing and monitoring relevant aid measures.

## 9. 3. LIMITATIONS AND ROBUSTNESS OF FINDINGS

A series of constraints have affected the analysis and subsequently the findings of the evaluation. The first one is the uncertainty of the policy framework. The von der Leyen Commission has set out its political priorities and defined the objectives. However, their effects have not fully materialised as policy and legislative initiatives are at the early stages of implementation. Most data was also gathered and consultations took place before the outbreak of the COVID-19 pandemic. The full impact of the pandemic still cannot be assessed, as detailed in Section 3.3.1 above.

The evaluation takes into account the fact that the EMFAF had to align with the objectives<sup>93</sup> of the Paris Agreement<sup>94</sup> and the new ocean governance, and had to deal with the tangible effects of Brexit at the time. However, the evaluation roadmap, public consultation and targeted survey were designed without fully taking on board the scenario as detailed in sections 3.2 and 3.3 of the present SWD.

This also affected analysis and conclusions made in the external study as well as the content of the in-depth interviews conducted by the external contractor. Notably, at that time the EMFAF Regulation was still under negotiations and there was not sufficient clarity on its content. That was also the case for the rest of the abovementioned policy developments, as the new Commission had not yet taken office and the COVID pandemic had not yet emerged. The invasion of Ukraine only took place when the present evaluation was already at an advanced drafting stage.

Another limitation stems from the broad scope of the evaluation, i.e. all the State aid instruments in the fisheries and aquaculture sector. This has affected the depth of the assessment, which encompasses all measures but focuses on *de minimis* and non-EMFF aid. This approach intended to cover a wider set of measures, instead of exhaustively assessing the effects of a smaller excerpt.

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<sup>92</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-60\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-60_en_0.pdf)

<sup>93</sup> Around 30 % of the overall EMFF budget is expected to contribute to climate objectives.

<sup>94</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

Furthermore, despite efforts to ensure a broad outreach of and responsiveness to the various public and targeted consultations, the degree of representativeness of the replies is limited. Despite efforts to lighten the demands in terms of time investment required to conclude the survey<sup>95</sup>, only 30 responses were obtained out of a total of 126 granting authorities that were invited to participate. This has a considerable influence on the degree of representativeness of the responses obtained.

Finally, some of the limitations refer specifically to the estimation of the administrative burden of State aid procedures, for which the main source of information 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.

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<sup>95</sup> The contractor introduced a question at the beginning of the targeted survey where authorities could select whether they had participated in the public consultation and skip certain questions.

## ANNEX 9. EVALUATION MATRIX

### EVALUATION MATRIX

Criteria	Question	Sub-question	Judgement criteria	Indicator	Data sources
<b>Relevance</b>	1. To what extent are the existing State aid rules relevant?	1.1. To what extent does the scope of FIBER and the Guidelines address market failures and the real needs in the fishery and aquaculture sector and to what extent there is scope for improvement?	<ul style="list-style-type: none"> <li>Amount of aid granted for different types of measures responded to market failures or to material improvements that the market alone could not provide</li> <li>Case-handling practice reveals any significant difficulties or failures in meeting the needs of the fisheries and aquaculture sectors</li> <li>Feedback received in the framework of the stakeholder consultations on environmental, economic and social sustainability, and the significance of both the CFP objectives and the SAM objectives</li> </ul>	<ul style="list-style-type: none"> <li>Correspondence between objectives pursued by the aid granted during the evaluation period and market failures</li> <li>Problems and gaps identified by case-handling practice</li> <li>Adequacy of the CFP and the SAM objectives pursued by the State aid instruments vis-à-vis the new policy developments</li> </ul>	<ul style="list-style-type: none"> <li>Public Consultation</li> <li>Survey of granting authorities and in-depth interviews</li> <li>Commission in-house data and experience</li> <li>Literature review</li> </ul>
<b>Efficiency</b>	2. To what extent have the State aid rules been efficient?	2.1. Have the rules allowed to decrease administrative burden (cost incurred by Member States relative to the benefits of application of State aid	<ul style="list-style-type: none"> <li>Cost incurred by Member States relative to the benefits of application of State aid rules, imbalances in costs/administrative burden among Member States and the potential causes behind them.</li> </ul>	<ul style="list-style-type: none"> <li>Relationship between the resources used and the changes generated by the intervention</li> <li>Administrative cost/burden</li> <li>Whether the administrative burden</li> </ul>	<ul style="list-style-type: none"> <li>Public Consultation</li> <li>Survey of granting authorities and in-depth interviews</li> <li>Commission in-house data and experience</li> <li>Literature review</li> </ul>

		<p>rules) in relation to different categories of aid (<i>de minimis</i>, block-exempted, notified)?</p> <p>2.2. Are there are significant differences in costs (or benefits) between Member States? What is causing them?</p> <p>2.3. To what extent is the administrative burden justifiable and proportionate to the benefits achieved?</p> <p>2.4. To what extent do the reporting requirements set in the State aid rules allow adequate control and review of aid granted by Member States?</p>	<ul style="list-style-type: none"> <li>• Increased recourse by Member States to block exempted aid not requiring a notification, in comparison to the baseline.</li> <li>• Reporting requirements set in the State aid rules, and extent to which they allow proper control and review of aid granted by the Member States</li> <li>• Set up of a <i>de minimis</i> central register in certain Member States.</li> <li>• Opinion of the stakeholders on the transparency, clarity and adequacy of the three aid instruments, level of control and scrutiny exercised on <i>de minimis</i> and block exempted aid granted.</li> </ul>	<p>is justifiable and proportionate to the benefits achieved</p> <ul style="list-style-type: none"> <li>• Process for reporting and monitoring</li> </ul>	
<b>Effectiveness</b>	<p>3. To what extent have the current State aid rules met their objectives?</p>	<p>to ensure effective State aid control in order to minimise the distortions of competition and effect on trade;</p> <p>3.2. to simplify the State aid rules and to increase transparency,</p>	<ul style="list-style-type: none"> <li>• Transparent and streamlined compatibility assessment as regards both the Commission's handling of notified aid and the Member States' use of the FIBER. The Commission examines a limited number of measures involving large amounts which have to be</li> </ul>	<ul style="list-style-type: none"> <li>• Contribution of the State aid framework to the objectives of the CFP</li> <li>• Assessment of potential distortions of competition and effects on trade and the environment</li> <li>• Simplification of the</li> </ul>	<ul style="list-style-type: none"> <li>• Public Consultation</li> <li>• Survey of granting authorities and in-depth interviews</li> <li>• Commission in-house data and experience</li> <li>• Literature review</li> </ul>

		<p>consistency, and legal certainty;</p> <p>3.3. to contribute to the achievement of the CFP objectives. The CFP seeks to ensure, in particular, 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 to contributing to the availability of food supplies.</p>	<p>notified</p> <ul style="list-style-type: none"> <li>• Case-handling experience points to the possibility of enlarging the scope of FIBER and avoiding notifications where the Commission has gained sufficient experience</li> <li>• Adequacy of <i>de minimis</i> ceilings to reduce the risks of distorting competition and trade whilst allowing Member States to address promptly short-term unexpected impacts in the fishery and aquaculture sector. Analysis of whether this caused unexpected or unintended effects</li> <li>• Aid granted under <i>de minimis</i> nearing the ceiling of EUR 30 000 per beneficiary over three years</li> <li>• Effectiveness of the different EMFF type of measures in the light of the principles of the EMFAF</li> <li>• Adequacy of the ceilings and requirements for aid, no negative effects on competition and trade</li> <li>• Inclusion of relevant conditions/principles/definitions and types of aid in the Guidelines</li> <li>• Assessment of unintended</li> </ul>	<p>State aid rules and increase of transparency, consistency and legal certainty</p>	
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			effects on the environment and general sustainability of the sector		
<b>Coherence</b>	4. To what extent is the State aid framework coherent internally and in relation to other relevant EU rules?	<p>4.1. To what extent are the State aid rules internally coherent?</p> <p>4.2. To what extent are the State aid rules consistent with or complementary to other relevant EU rules and policies (CFP and EMFF: Horizontal and other State aid instruments; EU Cohesion Policy; EU Environmental Protection Policy ; EU 2030 Climate and Energy Framework; EU Veterinary and Public Health Policy; EU Policy on Small and Medium Enterprises (SMEs)).</p> <p>4.3. To what extent would the developments in the international standards (e.g., WTO rules) require revision of the</p>	<ul style="list-style-type: none"> <li>• The instruments cover the needs of Member States and the support for any circumstance that may arise</li> <li>• Coherent with the CFP: contribution to environmentally sustainable fishing and aquaculture activities and to the availability of food supplies; consistency with the objectives of achieving economic, social and employment benefits</li> <li>• Recognition of the principles pursued by the 2015 SDGs in the CFP (Control Regulation and IUU Regulation) EU law in general, and the State aid instruments in the sector</li> </ul>	<ul style="list-style-type: none"> <li>• Internal coherence of the instruments: whether the design of the Guidelines, block-exemptions and <i>de minimis</i> rules are consistent and constitute a systematic approach</li> <li>• External coherence of the State aid instruments in the fisheries and aquaculture sector with the wider policy background: other EU legislation and international standards (WTO rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Public Consultation</li> <li>• Survey of granting authorities and in-depth interviews</li> <li>• Commission in-house data and experience</li> <li>• Literature review</li> </ul>



		State aid rules?			
<b>EU added value</b>	5. What is the additional value resulting from the fact that the Commission has adopted the State aid rules in the fisheries and aquaculture sector, compared to what could have resulted from a case-by-case assessment of the notified State aid measures?	N/A	<ul style="list-style-type: none"> <li>• Both competition policy and the common fisheries policy are exclusive competences of the EU (Article 3 TFEU), and thus the subsidiarity principle does not apply to them.</li> <li>• Level playing field between Member States</li> <li>• Safeguarding the internal market by limiting market distortions</li> </ul>	<ul style="list-style-type: none"> <li>• Positive effects in comparison to what could have been attained by Member States acting on their own</li> </ul>	<ul style="list-style-type: none"> <li>• Public Consultation</li> <li>• Survey of granting authorities and in-depth interviews</li> </ul>

# ANNEX 10. OVERVIEW OF BENEFITS AND COSTS (REGARDING THE EVALUATION)

<i>I. Overview of benefits identified in the evaluation</i>							
		Citizens/Consumers		Businesses		Administrations	
		Quantitative	Comment	Quantitative	Comment	Quantitative	Comment
<b>Direct benefits:</b>							
a) Increased policy coherence	<b>Recurrent</b>	N/A	N/A	No quantification available	The fisheries and aquaculture State aid framework and its relationship with the EMFF is easier to understand.	No quantification available	Member States (in particular, granting authorities) have benefitted from a State aid framework that is aligned with EMFF and the CFP, in terms of clarity and legal certainty.
b) Administrative simplification	<b>Recurrent</b>	N/A	N/A	N/A	N/A	Administrative simplification: 11 schemes were set up under Article 18 FIBER during the evaluation period, which accounted for savings of around EUR 107,701 and 33.88 working days (taking into account the costs reported by granting	Introduction of aid to start-up support for young fishermen in FIBER (Article 18), and clarification of the provisions on aid to make good the damage caused by natural disasters (Article 44).

						authorities, see the table below in this same Annex)	
<p><b>Indirect benefits</b> (reduction of the administrative burden for businesses; avoidance of competition distortions and positive impacts on the environment for citizens)</p>	<p><b>Recurrent</b></p>	<p>No quantification available</p>	<p>European citizens and consumers are indirectly impacted by State aid legislation. In particular, the State aid framework in the sector had a positive impact on avoiding competition distortions in the markets for fishery and aquaculture products. In addition, the State aid framework in the sector had a positive impact on the environment, through the alignment with EMFF and the CFP, relevant for reaching the EU objectives. The harmonisation of the <i>de minimis</i> rules with the list of ineligible measures under the EMFF has prevented Member States to finance</p>	<p>No quantification available</p>	<p>Undertakings also indirectly benefitted from the inclusion a new measure under FIBER (Article 18 Aid to start-up support for young fishermen), through a faster and simpler procedure to design aid schemes. Moreover, the alignment of the framework to the EMFF ensured legal certainty. This lower degree of legal complexity would particularly benefit SMEs as potential beneficiaries.</p>	<p>N/A</p>	<p>N/A</p>

			measures that had been excluded from or limited in the EMFF under the <i>de minimis</i> measures where the EFF was much more lenient in its approach than the EMFF.				
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State aid rules 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.

Member States directly benefit from the simplification of the rules. For instance, with the inclusion of more measure under the FIBER they get easier 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 also benefit indirectly from any simplification.

<b>II. Overview of costs for granting authorities identified in the evaluation</b>				
	<b>Time (DAYS)</b>	<b>Labour costs (EUR)</b>	<b>Other costs (EUR)</b>	<b>Total Cost (EUR)</b>
	<i>De minimis</i>			
Design	1.29	1,964	428	2,392

<b>II. Overview of costs for granting authorities identified in the evaluation</b>				
	<b>Time (DAYS)</b>	<b>Labour costs (EUR)</b>	<b>Other costs (EUR)</b>	<b>Total Cost (EUR)</b>
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	<b>9,184</b>
	<b><i>Block exempted</i></b>			
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	<b>12,498</b>
	<b><i>Notified</i></b>			
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

<b>II. Overview of costs for granting authorities identified in the evaluation</b>				
	<b>Time (DAYS)</b>	<b>Labour costs (EUR)</b>	<b>Other costs (EUR)</b>	<b>Total Cost (EUR)</b>
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	<b>22,289</b>

## **ANNEX 11. STAKEHOLDER CONSULTATION (REGARDING THE EVALUATION) - SYNOPSIS REPORT**

The Commission published a combined evaluation roadmap<sup>96</sup> 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 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 framework for the period 2021-2027. 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 questionnaire<sup>97</sup>, published in all 24 EU official languages, was composed of 26 questions (without taking into account related sub-questions and open sections for comments). These were structured around the five evaluation criteria, i.e. relevance, effectiveness, efficiency, coherence, and EU added value of the State aid rules and covered the current and future framework. The consultation received 64 responses from 17 different EU Member States (out of the total 270 stakeholders that were invited to participate).

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<sup>96</sup> “*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>

<sup>97</sup> Published and accessible on the following website: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11543-De-minimis-aid-in-the-fishery-and-aquaculture-sector/public-consultation>

**Table 26 - Country of respondents**

	#	%		#	%		#	%
Austria	0	0%	<i>Martinique</i>	1	2%	Netherlands	1	2%
Belgium	7	11%	<i>Réunion</i>	1	2%	Poland	0	0%
Bulgaria	3	5%	Germany	0	0%	Portugal	3	5%
Croatia	0	0%	Greece	0	0%	Romania	1	2%
Cyprus	0	0%	Hungary	0	0%	Slovakia	0	0%
Czech Republic	2	3%	Ireland	0	0%	Slovenia	0	0%
Denmark	1	2%	Italy	6	9%	Spain	7	11%
Estonia	2	3%	Latvia	3	5%	Sweden	2	3%
Finland	3	5%	Lithuania	1	2%	UK	7	11%
France	9	14 %	Luxembourg	0	0%	Turkey	1	2%
<i>French Guiana</i>	1	2%	Malta	2	3%	<b>Total</b>	<b>64</b>	<b>100%</b>

Source: Public consultation, Coffey, Ipsos, Poseidon study

**Table 27 - Stakeholder category\***

	#	%
Public authority responsible for granting State aid in an EU Member State	20	31%
Beneficiary of aid in the fishery and aquaculture sector	8	13%
Producer organisation	8	13%
NGO or other civil society organisation	16	25%
Academia, think-tank, consultancy or other expert organisation	4	6%
General public	8	13%
Other	6	9%

\*Note that respondents could indicate more than one category

Source: Public consultation, Coffey, Ipsos, Poseidon study

The factual summary report of the public consultation has also been published in the BRP<sup>98</sup>. It provides an outline of the responses per country and category of stakeholders. Further, it provides the outcome of the public consultation through a statistical presentation of the responses.

In addition to this, a targeted survey was designed for granting authorities and conducted from 1 October 2019 to 4 November 2019. In total, the survey received 30 responses from 19 Member States, out of the 126 national and regional granting authorities originally invited to participate. Finally, the contractor organized follow-up comprehensive interviews with some granting authorities and other stakeholders (27 in total, as illustrated in the table below).

<sup>98</sup> Accessible from the same web address listed in *supra* note 95.



**Table 28 - Interviews planned and conducted**

	Target	Interviews conducted	Explanation if target not met
Advisory council	4	3	All Advisory Councils were invited (29 contacts in 9 Advisory Councils). Only 3 accepted.
Granting authority	14	15 <sup>(*)</sup>	N/A
Insurance company	3	1	Difficult to engage due lack of involvement in State aid
NGO/Civil society organisation	4	4	N/A
Producer organisation EU/Inter-branch	4	1	Difficult to engage
Producer organisation national/regional	5	3	due to limited knowledge of State aid framework (43 contacted).
Total	34	27	

(\*) Two granting authorities participated via a written questionnaire

Source: Coffey, Ipsos, Poseidon study

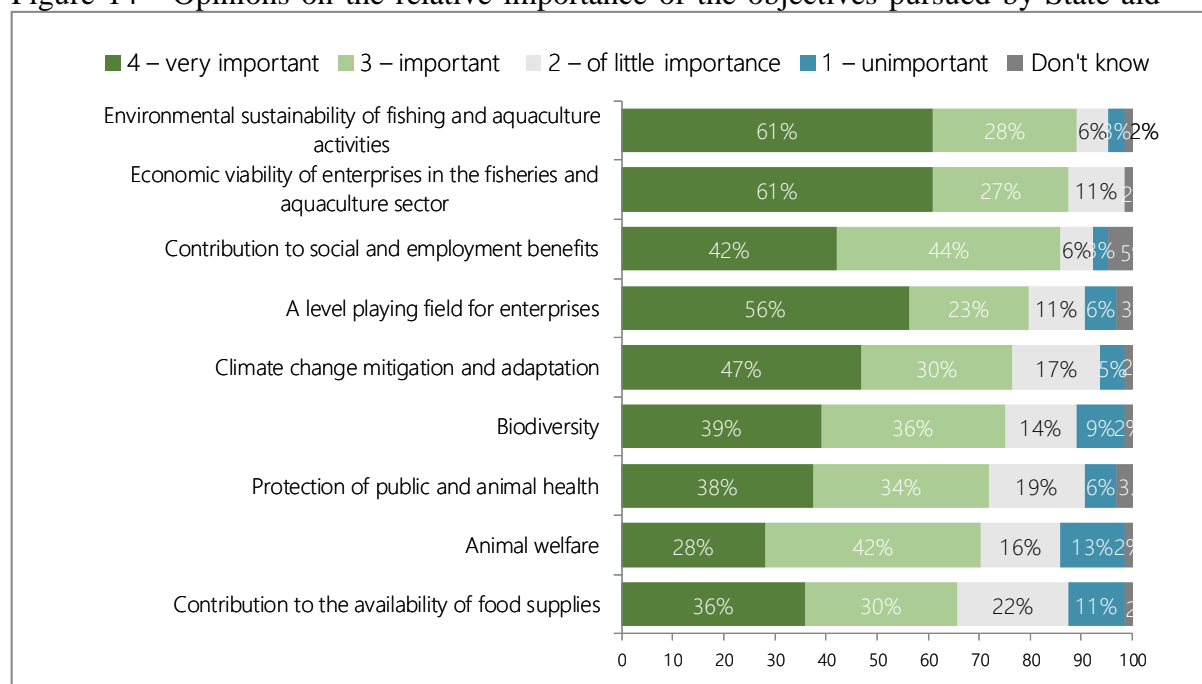
## KEY RESULTS PER EVALUATION CRITERION

### • Relevance

With regard to the question whether the existing State aid rules are relevant vis-à-vis the CFP objectives, the responses to the public consultation (PC) reveal that they were all considered important or very important by a majority of the respondents for the granting of State aid in the sector. Environmental sustainability of fishing and aquaculture activities and economic viability for enterprises in the sector featured at the top of the priorities; a total of 89% and 88% of the respondents characterised them respectively as very important or important, with the vast majority (61%) considering them as very important.

On the other side of the spectrum, the objectives that garnered the least favourable responses were the ones related to availability of food supplies and animal welfare. In particular, 1/3 of the respondents (31% and 35% respectively) found them to be objectives of little, no or not known importance as regards granting of State aid. Nevertheless, roughly two thirds (70% and 66%, respectively) of the respondents consider these two objectives relevant, i.e. important or very important. Figure 14 below presents the responses on the relative importance of the different objectives.

Figure 14 - Opinions on the relative importance of the objectives pursued by State aid

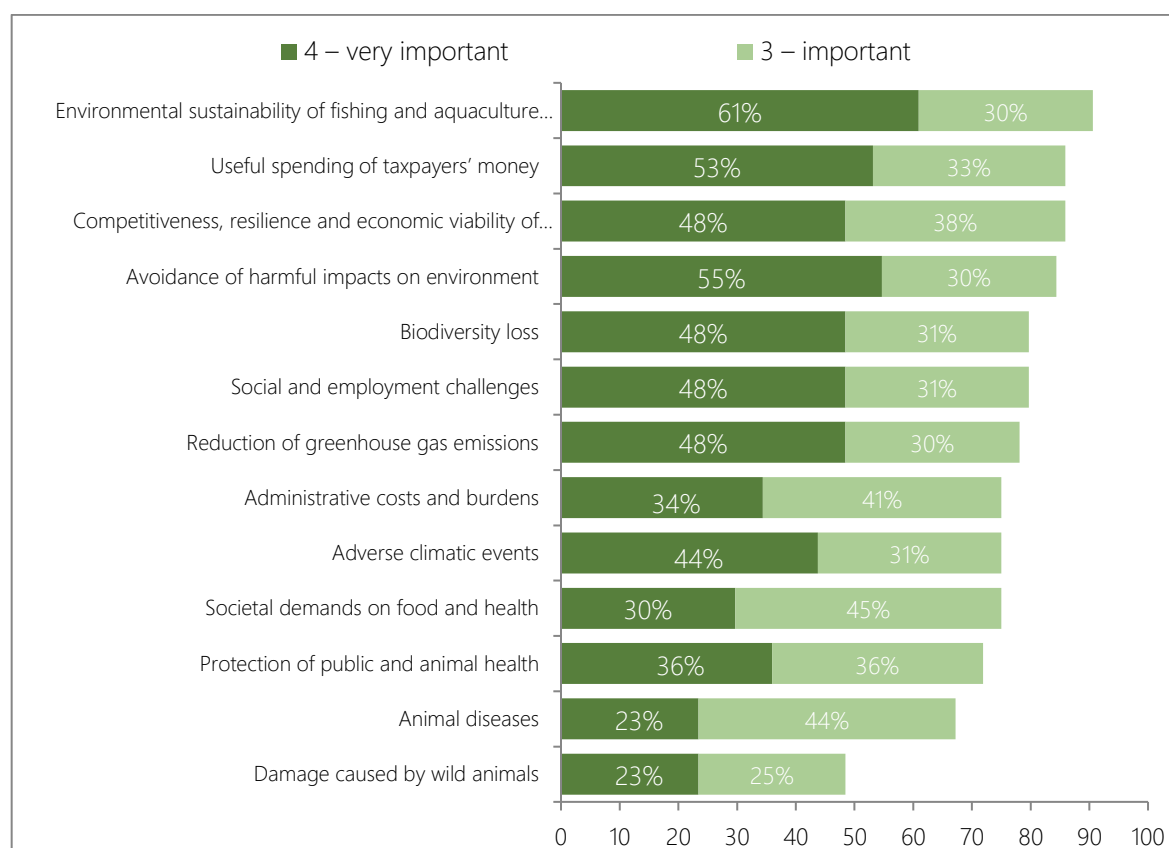


I.1. From your perspective, how important are the objectives pursued by the granting of State aid? Please rate from 1 to 4, 1 being 'unimportant', 2 – 'of little importance', 3 – 'important', and 4 – 'very important' %; All respondents (n=64)

Source: Public Consultation, Coffey, Ipsos, Poseidon study

In relation to the SAM-related objectives pursued by State aid, i.e. fostering good aid; being “big on big, small on small” and faster access to aid, the results of the consultation confirm the relevance of competition policy in supporting the EU growth strategy. Namely, competition policy, including State aid control, is fundamental in ensuring a well-operating, level-playing field in the Single Market. In fact, 79% of the respondents consider the creation of a level-playing field in the sector one of the very important or important objectives of the sector-specific rules governing State aid.

**Figure 15 - Problems that State aid rules should address**



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'.

%; All respondents (n=64)

Source: Public Consultation, Coffey, Ipsos, Poseidon study

The feedback received during the consultations also corroborates the relevance of the CFP and the SAM objectives pursued by the State aid instruments vis-à-vis the new policy developments. Overall, it emerges that environmental, economic and social sustainability are among the main considerations that stakeholders believe the State aid rules should factor in. This illustrates the significance of both the CFP objectives and the SAM objective of pursuing 'good aid'. Notably, environmental sustainability of fishing and aquaculture activities features also for the coming period as the most important priority that State aid rules in the sector should address. This priority objective is viewed as very important or important for 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. These findings corroborate that the relevance of the 'big on big, small on small' and 'fast access to aid' objectives embedded in the rulebook following the SAM reform remains.

- **Efficiency**

As part of the survey and public consultation, granting authorities were asked to quantify both the time and cost of performing various procedures associated with the implementation of legal instruments for *de minimis*, block exempted and notified aid. This data was supplemented with data taken from interviews with a number of these authorities.

Out of 37 granting authorities who participated in the survey and the public consultation, only 14 provided data on the time and additional costs spent to grant and administer aid. Among those who replied, there was a large number of respondents who indicated that they do not deal with some of the procedures. This leads to a limitation in the analysis in terms of representativeness as the feedback provided is not based on a broad number of responses.

The estimates are presented using average time and cost data provided by those granting authorities that participated in the consultations. The time has been costed using labour costs from Eurostat for the year 2016.

With that in mind, the estimates utilising consultation data do somewhat substantiate the views expressed in the interviews with notified aid incurring the largest average cost per authority.

**Table 29 - Estimated administrative cost per procedure and category of aid**

	Time (DAYS)	Labour costs (EUR)	Other costs (EUR)	Total Cost (EUR)
<b><i>De minimis</i></b>				
Design	1.29	1,964	428	2,392
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	<b>9,184</b>
<b><i>Block exempted</i></b>				
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	<b>12,498</b>
<b><i>Notified</i></b>				
Design	3.61	8,818	469	9,287
Submission of notification	1.17	30,093	38	3,131
Responding to Commission request for	1.73	5,165	111	5,276

	Time (DAYS)	Labour costs (EUR)	Other costs (EUR)	Total Cost (EUR)
clarifications				
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	<b>22,289</b>

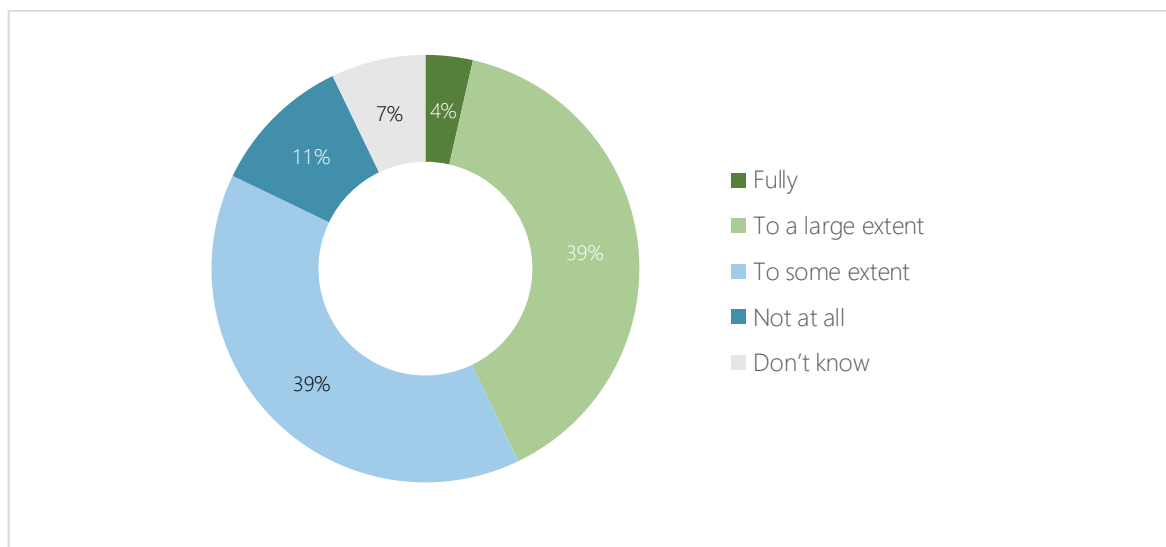
Source: Survey of granting authorities and Eurostat (2016) series LCSTRUCT, calculations by Coffey, Ipsos, Poseidon

As expected, granting authorities reported that the administrative burden was more substantial for notified aid. The total cost of the procedures under the Guidelines was almost 2.5 times higher than those for *de minimis* aid and 1.8 times higher than for exempted aid. The available information on the break-down of costs and time required shows that the preparation of a notified scheme, i.e. from the point of its design to the Commission's approval, is the part of the procedure that entails the biggest investment. Granting authorities report that they need 6.51 days to complete this part of the procedure for notified aid, which corresponds to 79% of the total administrative cost. In comparison, they need 2.51 days for a scheme under FIBER and 1.29 for *de minimis* aid. In terms of cost, the preparatory phase represents almost 46% of the total administrative cost of a FIBER measure and 26% of the administrative cost of a *de minimis* measure.

It is important to note, however, that authorities found it difficult to provide an accurate reflection of the time and costs involved. Respondents also had difficulty to differentiate between tasks related to EU procedures and tasks deriving from national processes. As a result, these cost estimates with regard to the burden incurred due to the EU State aid framework in the fisheries and aquaculture sector should be viewed with caution.

With regard to the justification and proportionality of the administrative burden, overall, authorities did not view the costs involved to be unjustified. The majority of the granting authorities (43%) considered the administrative burden associated with the application of EU aid rules for beneficiaries to be fully or greatly justified and proportionate to at least some extent. An additional 39% of the granting authorities perceived the administrative burden to be to some extent justifiable and proportionate. However, 11% of the authorities find the associated burden unjustifiable and disproportionate.

**Figure 16 - Opinion on whether the administrative burden for beneficiaries is justifiable and proportionate**



Do you consider that the administrative burden resulting from the application of State aid rules for beneficiaries is justifiable and proportionate?

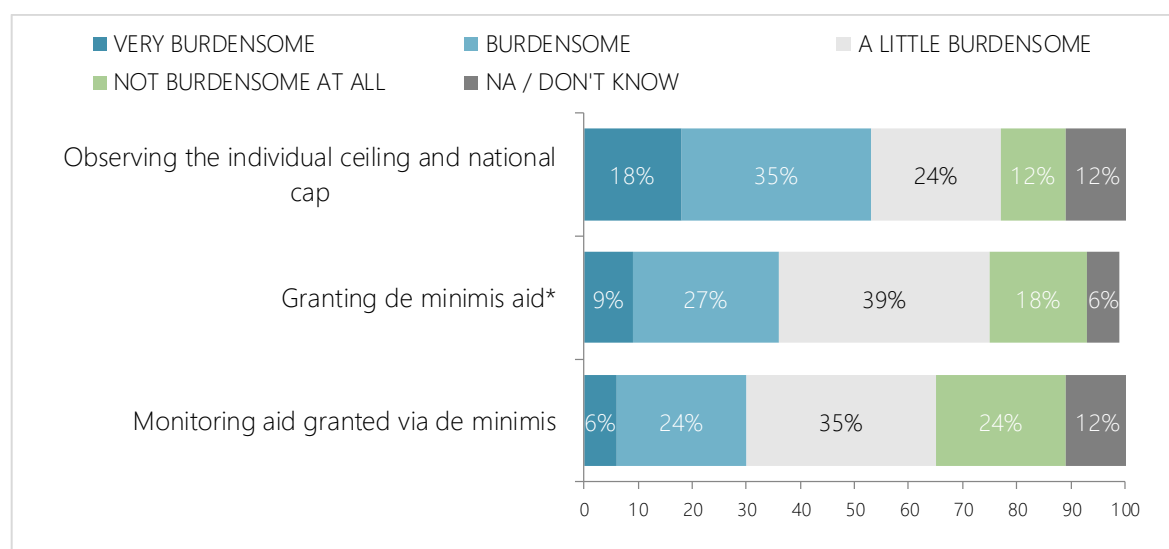
Source: Coffey, Ipsos, Poseidon study, Survey of granting authorities, including from OPC (n=28)

It is important to note that throughout the interviews, granting authorities found it difficult to accurately assess the amount of time certain procedures take. In addition, the estimates of time and costs per task provided by granting authorities in the survey vary substantially and should be treated with caution.

### ***De minimis***

Overall, the granting authorities considered the granting of *de minimis* aid to not be very burdensome. In the interviews, *de minimis* aid was seen by granting authorities to enable fast and uncomplicated procedures. In that regard, the clarity of the rules on eligibility and the fact that no approval is required by the Commission were seen as important aspects. Evidence from the survey backs this up as the vast majority of authorities perceived the application of *de minimis* to be only a little burdensome. Only around one in ten (9%) of granting authorities considered granting of *de minimis* aid to be a very burdensome process with one of these authorities in a MS with significant internal processes in place.

**Figure 17 - Perception of burden of procedures related to *de minimis***



Source: Coffey, Ipsos, Poseidon study, Survey of granting authorities, including from OPC (n=17-33)

Looking at the three procedures, the consultations showed that observing the individual ceiling and national cap is perceived to be the most burdensome of the procedures. 53% of the granting authorities found that procedure to be burdensome (35%) or very burdensome (18%). This in part reflects the ways in which authorities track these ceilings and whether or not a central *de minimis* register is in place. Many authorities place the responsibility to observe the individual limit on the recipients, however.

As regards the burden incurred by annual reporting, only 6% of the granting authorities participating in the consultations found the procedure to be very burdensome. However, in-depth interviews revealed that the burden associated with this procedure depends greatly on the number of *de minimis* measures in place, whether or not a centralised system for recording *de minimis* aid was in place and the number of granting authorities from which data must be collected and reported. Indicatively, while the granting authorities participating in the consultations reported that they needed on average 2.46 working days in full-time equivalent<sup>99</sup> (FTE) to monitor aid spending per undertaking, there were granting authorities which reported that they needed 24 days. Similarly, in order to fulfil their reporting obligations centrally and towards the Commission, granting authorities needed on average 1.9 days and 0.5 days respectively. However, there were granting authorities that diverged significantly from those averages, reporting that they needed 24 and 5 days respectively.

Concerning the burden incurred by beneficiaries, interviews with producer organisations highlighted this type of aid as much simpler and less burdensome to access compared to notified or block exempted aid. However, they were not able to provide estimates of time required. Beneficiaries nevertheless noted that there was a trade-off in terms of the maximum aid that could be granted given the maximum ceilings per beneficiary that apply in the *de minimis* Regulation.

### ***Notified aid***

The results of the consultations and the targeted interviews showed that the majority of the granting authorities consider notified schemes as the most burdensome to design and

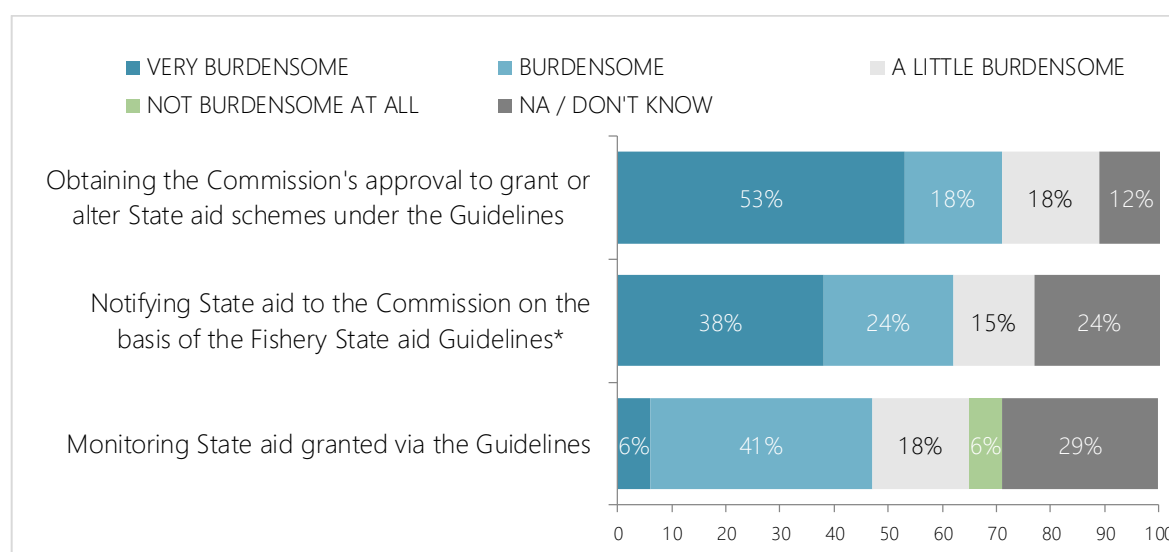
<sup>99</sup> A full-time equivalent is equal to the number of hours a full-time employee works for an organization.

implement. The most significant investment in terms of time and cost is related to the preparation stage, from the point of design to the approval of the scheme (see Table 29 - Estimated administrative cost per procedure and category of aid). In that regard, it should be noted that, whilst not able to quantify the time required accurately due to the different number of authorities involved in each Member State, the notification request was seen to be simple.

However, from the interviews it emerged that the bulk of administrative cost derived from a period of approximately 6-8 month. During that period, authorities dealt with clarifications and changes requested by the Commission in line with the Guidelines. Nevertheless significant divergences were reported by Member States concerning the burden incurred in the stages of design and notification. While granting authorities reported that they needed on average 4.78 days (in FTE) to cover the stages from the design of the scheme to its notification, there was a case of an authority that estimated it needed 20 days (in FTE) to complete this part of the process.

The results of the survey and public consultation corroborate these findings. As Figure 18 below shows, granting authorities view the stage of obtaining the Commission's approval (i.e. responding to clarifications and/or adapting the measure in line with the Commission's instructions on the basis of the Guidelines) as by far the most burdensome. More than half (53%) of the participating granting authorities viewed this part of the process as very burdensome, with a further 18% considering it burdensome. In line with the findings of the interviews, the stage of notification was also considered very burdensome or burdensome from 62% of the respondents.

**Figure 18 - Administrative burden of procedures related to the Guidelines**



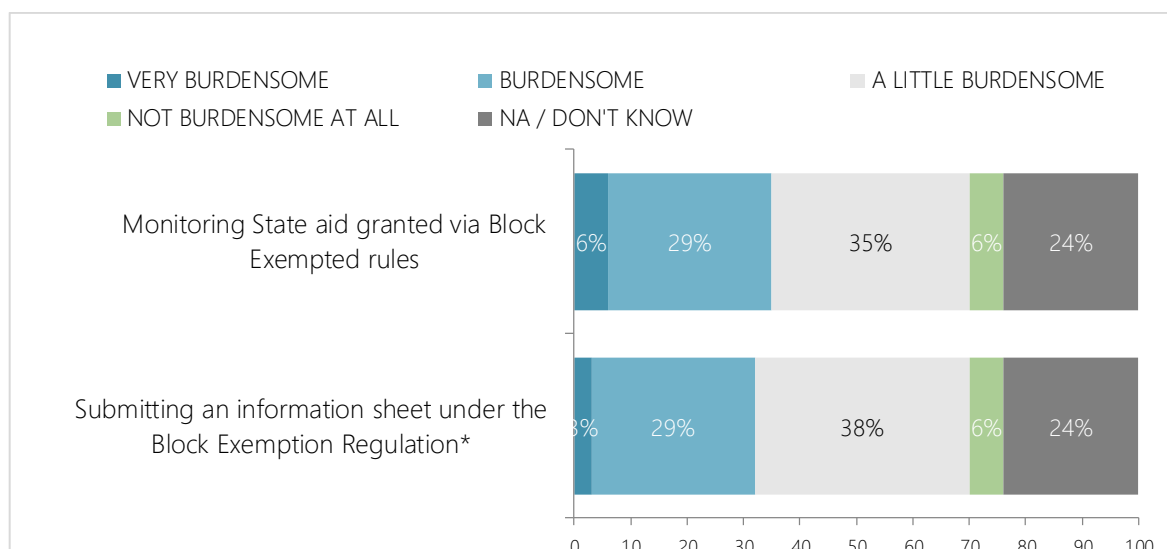
Source: Coffey, Ipsos, Poseidon study, Consultation of granting authorities, including public consultation (n=17-34)

### ***Block exempted aid***

In general, the findings of the survey show that granting authorities viewed the submission of an information sheet to be a little burdensome or burdensome. Similarly, the monitoring of block exempted aid was also seen by most to be a little burdensome or burdensome. From the interviews it emerged that granting authorities found that the mirroring of the eligibility rules of the EMFF in FIBER facilitated the implementation of measures under FIBER.



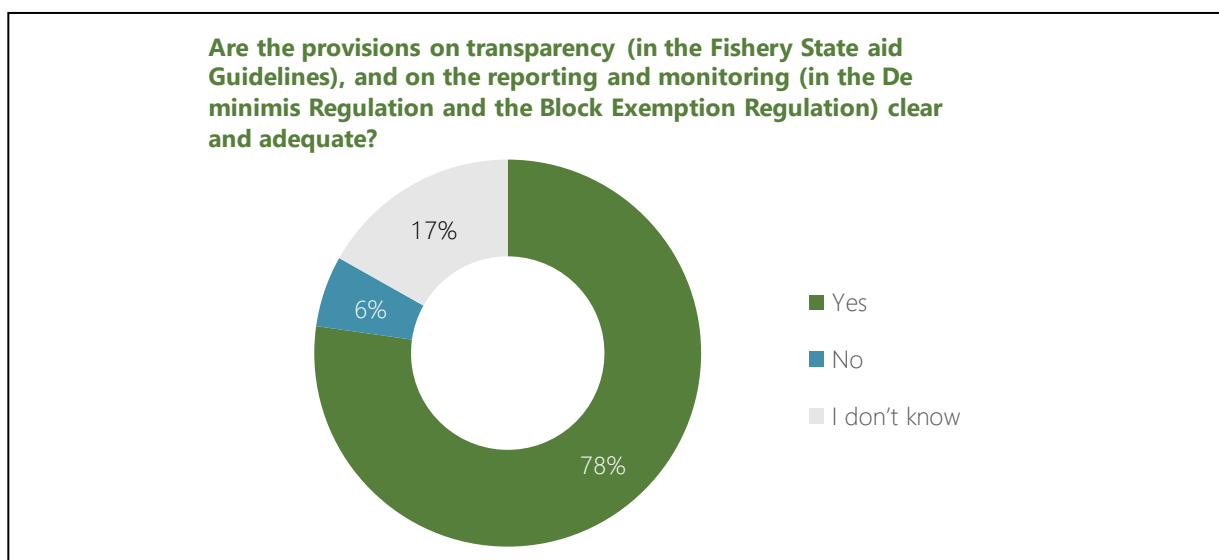
**Figure 19 - Burden of procedures related to block exemption**



Source: Coffey, Ipsos, Poseidon study, Consultation of granting authorities, including in the context of the public consultation (n=17-34)

Finally with regard to transparency, clarity and adequacy of the three aid instruments, the opinion of the stakeholders on the related provisions was overwhelmingly positive (Figure 20). The vast majority (78%) had a positive opinion about the relevant provisions of the instruments, while only 6% had a negative opinion. Among interviewees, NGO representatives were concerned about the low levels of control and scrutiny exercised on *de minimis* and block exempted aid granted. They highlighted that there is very little information on *de minimis* aid, and that therefore its effects are unknown.

**Figure 20 - Opinions on provisions on transparency and on the reporting and monitoring**



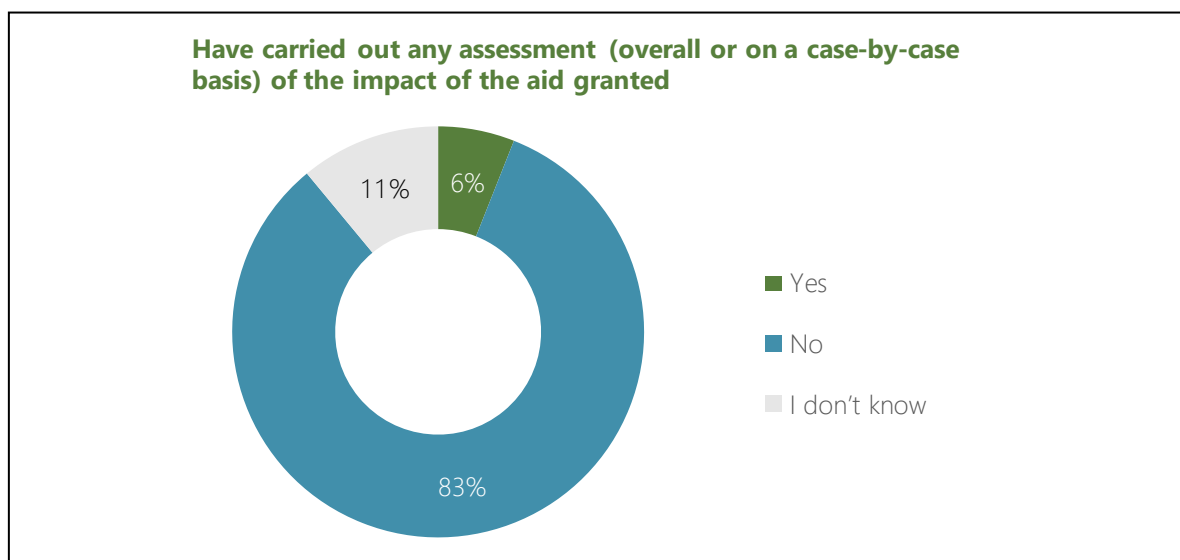
III.3. Based on your experience, are the provisions on transparency (in the Fishery State aid Guidelines), and on the reporting and monitoring (in the *De minimis* Regulation and the Block Exemption Regulation) clear and adequate?

%; Asked to Public authorities (n=18)

Source: Ipsos study, Public consultation

The survey and the public consultation also enquired whether granting authorities have conducted any evaluation of the aid granted (referring to any type of aid, including *de minimis*, block exempted and notified). Results show that evaluation is rare, since only 6% of the authorities reported having carried out such an exercise (Figure 21).<sup>100</sup> This finding was confirmed in the targeted interviews, as no evidence of an evaluative exercise emerged. Some authorities, however, had conducted other types of analysis (e.g. in Spain, they have estimated the volume of benefits generated per Euro spent).

**Figure 21 - Have Member States carried out any assessment of the impact of the aid granted?**



%; Asked to Public authorities (n=18)

Source: Ipsos study, Public consultation

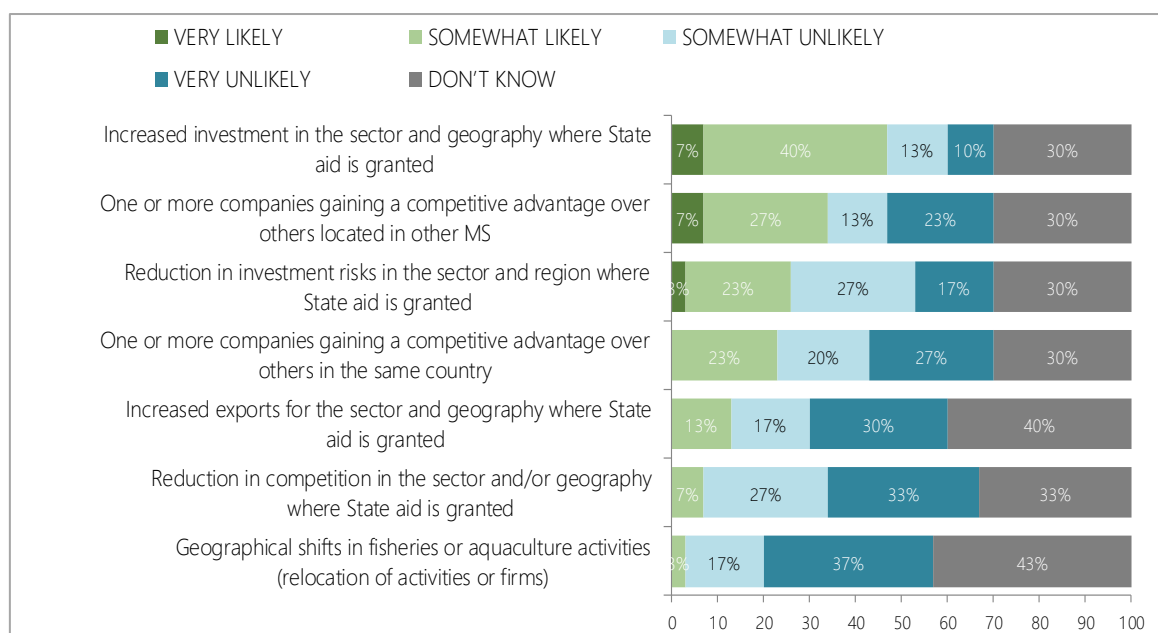
- **Effectiveness**

*First question addressed: are the aid rules fit to ensure effective State aid control in order to minimise the distortions of competition and effect on trade?*

In the context of the survey, granting authorities generally considered that the most serious negative effects of State aid on competition and trade were unlikely to materialise. None of the respondents considered relocation of activities or firms, or reduction in competition in the sector to be very likely, while only 3%, 7% and 13% respectively considered these negative impacts to be somewhat likely. Nonetheless, granting authorities considered that other negative effects were very likely or somewhat likely. This included companies gaining competitive advantage over others located in the same country (23% considered this was somewhat likely) or in other MS (27% considered this was somewhat likely and 7% very likely). A comparable percentage of respondents stated the reduction in investment risks as a likely risk (23% considered this was somewhat likely and 3% very likely). Among the possible negative effects, the one that was considered most likely to materialize was the increased investment where State aid was granted, with 40% considering it somewhat likely and 7% very likely.

<sup>100</sup> 76% have not conducted an evaluation or impact assessment and 18% do not know

**Figure 22 - Expected likelihood of negative effects on competition and trade**

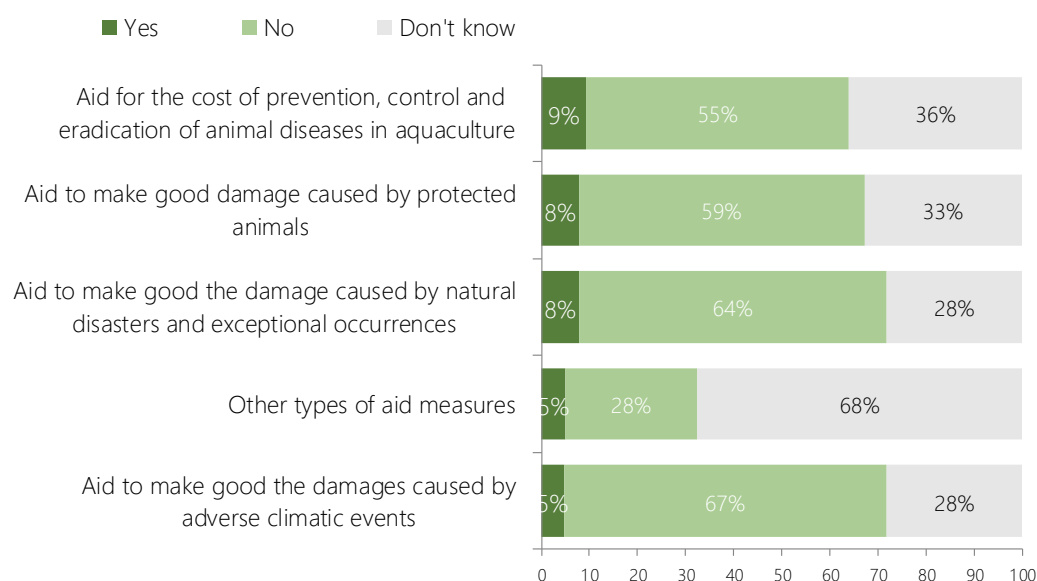


C2 – State aid may also have negative effects on competition and trade. What is the likelihood that State aid granted in the EU through the current legal framework has produced the following effects on competition and intra-EU trade? %; All respondents (n=30)

Source: Ipsos study, Survey to State aid granting authorities

In the public consultation, the majority of stakeholders did not regard State aid measures as distortive to trade. Among respondents, only 9% found that the measure ‘Aid for the cost of prevention, control and eradication of animal diseases in aquaculture’ distorted trade between Member States, which was in fact regarded as the most distortive. Along the same lines, most stakeholders expressed that State aid measures did not lead to unexpected or unintended results. ‘Aid for the cost of prevention, control and eradication of animal diseases in aquaculture’ was regarded by only 6% as having unintended results. That measure was, again, the one with relatively the most unexpected or unintended results. The complete picture of the results is depicted in the tables below:

**Figure 23 - Opinions on whether State aid measures have distorted trade**

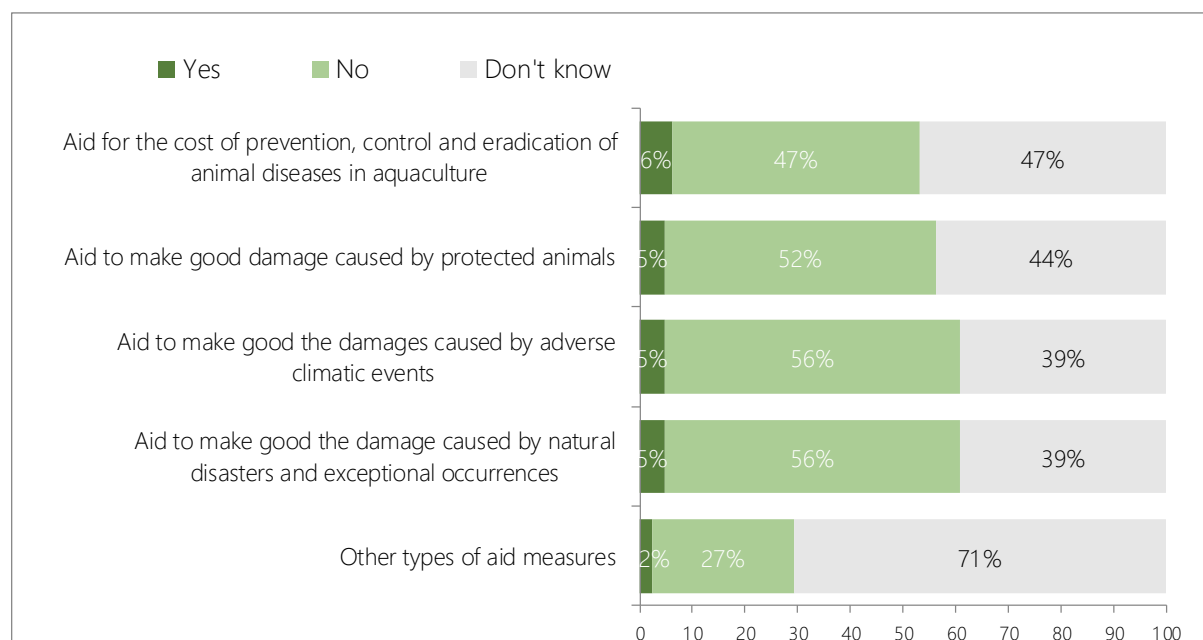


I.3. Do you consider that granting of aid under the following types of aid measures has distorted trade between Member States by giving some companies unfair advantage over others?

%; All respondents (n=64)

Source: Ipsos study, Public Consultation

**Figure 24 - Opinions on whether State aid measures led to unexpected or unintended results**



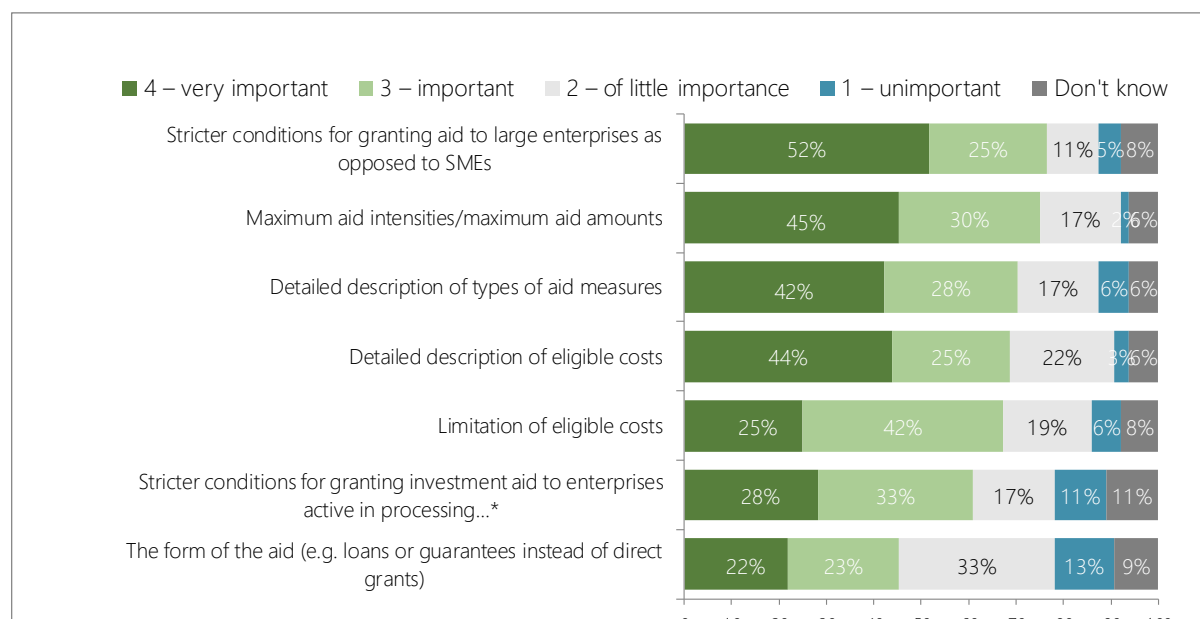
I.4. Do you consider that granting of aid under the following types of aid measures has led to any unexpected or unintended results?

%; All respondents (n=64)

Source: Ipsos study, Public Consultation

The public consultation also sought stakeholders' views about the importance of elements to limit undue distortive effects of aid. A majority of the respondents considered 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.

**Figure 25 - Views on importance of elements to limit undue distortive effects of aid**



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 4, 1 being 'unimportant', 2 – 'of little importance', 3 – 'important', and 4 - 'very important'. %; All respondents (n=64)

\*Full text item: Stricter conditions for granting investment aid to enterprises active in processing and marketing of fisheries and aquaculture products, as opposed to undertakings active in fishing/primary production

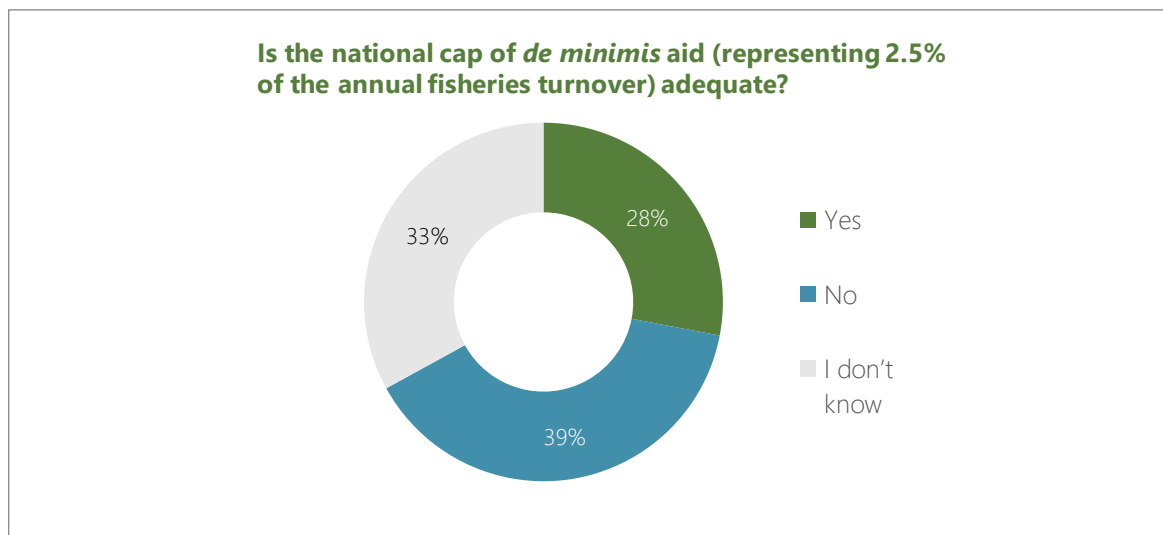
Source: Ipsos study, Public Consultation

### ***De minimis***

Concerning *de minimis*, the consultation mainly focussed on the setting of the aid ceilings. Stakeholders offered their insight on whether *de minimis* ceilings had been adequately defined to reduce the risks of distorting competition and trade whilst allowing Member States to address promptly short-term unexpected impacts in the fishery and aquaculture sector. The extent to which the implementation of the rules caused unexpected or unintended effects was also explored.

The results of the public consultation cast some doubts on the adequacy of the national caps for *de minimis* aid. Only 28% of the respondents found that it was adequate, while 39% thought it insufficient (33% could not answer this question).

**Figure 26 - Views on the adequacy of the national cap of *de minimis* aid**



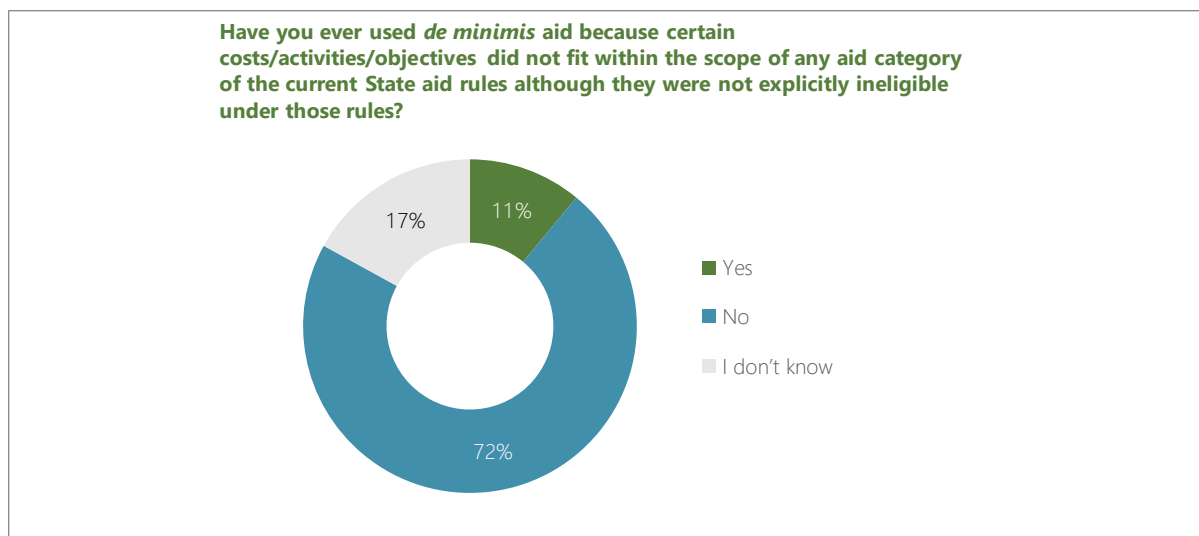
III.1. Based on your experience, is the national cap of *de minimis* aid (representing 2.5% of the annual fisheries turnover) adequate? In particular, does it allow the implementation of objectives of *de minimis* aid, while limiting distortion of competition and trade?

%; Asked to Public authorities (n=18)

Source: Ipsos study, Public Consultation

A majority of the granting authorities (72%), also expressed that they did not resort to *de minimis* aid because certain costs/activities/objects did not fit within the scope of any aid category of the current State aid rules. It should be noted that a considerable percentage (17%) of the authorities could not respond to this question. Along the same lines, only 11% of the granting authorities responded that they used *de minimis* aid although the same costs/activities/objects were eligible for aid under the Block Exemption Regulation. This is illustrated in the figures below.

**Figure 27 - Usage of *de minimis* aid because certain costs/activities/objectives did not fit within the scope of the current State aid rules**

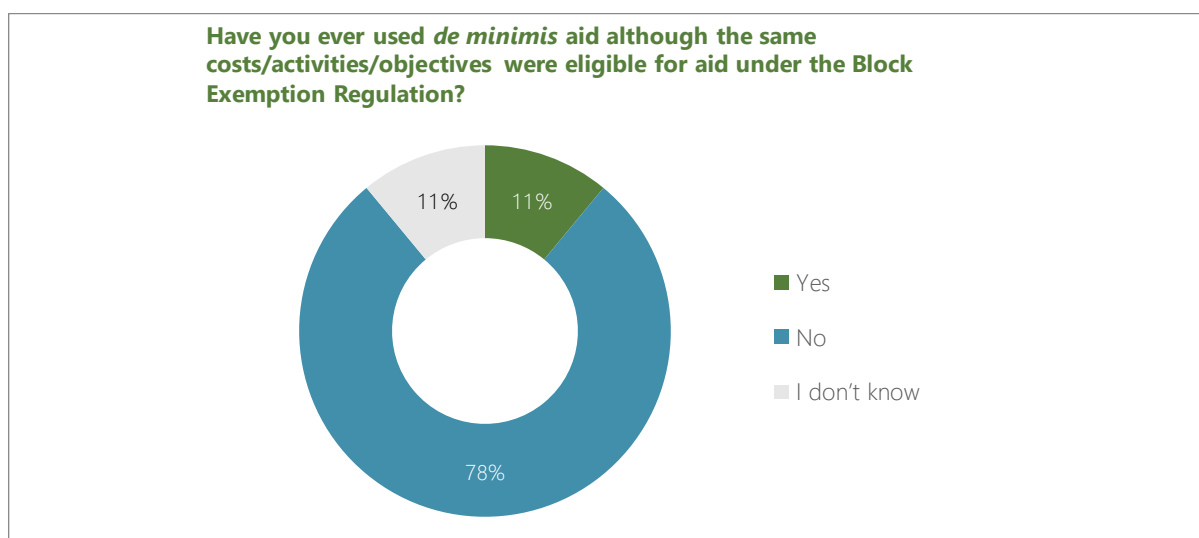


III.6. Have you ever used *de minimis* aid because certain costs/activities/objectives did not fit within the scope of any aid category of the current State aid rules although they were not explicitly ineligible under those rules?

%; Asked to Public authorities (n=18)

Source: Ipsos study, Public Consultation

**Figure 28 - Usage of *de minimis* aid although the same costs/activities/objectives were eligible for aid under the Block Exemption Regulation**



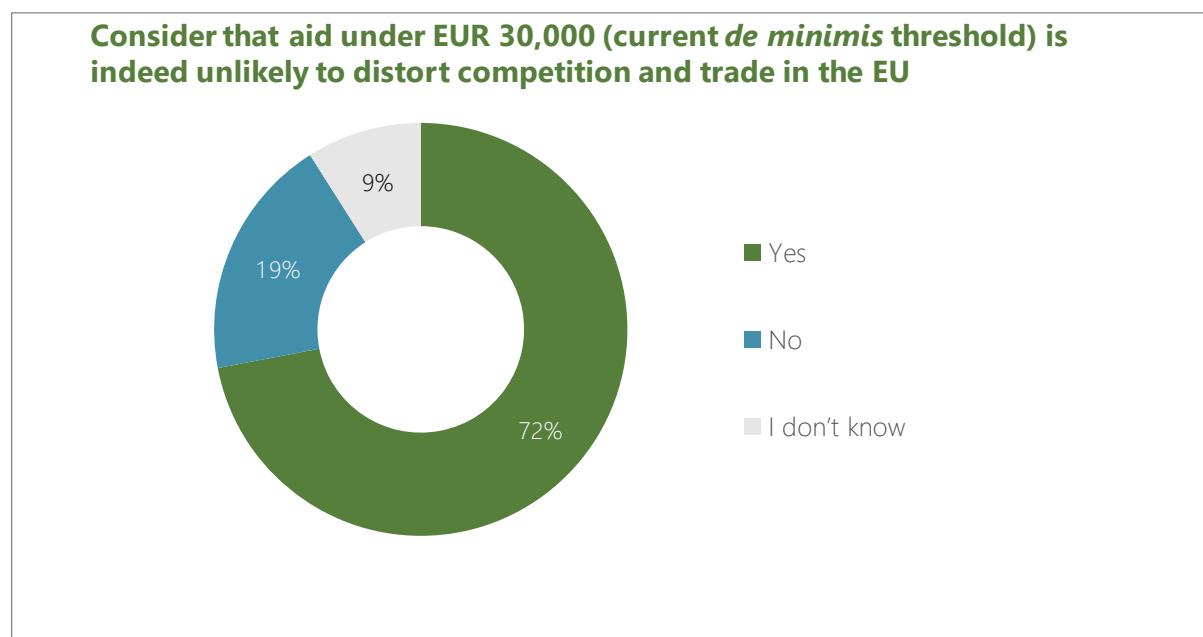
III.7. Have you ever used *de minimis* aid although the same costs/activities/objectives were eligible for aid under the Block Exemption Regulation?

%; Asked to Public authorities (n=18)

Source: Ipsos study, Public Consultation

With regard to the individual ceiling of EUR 30 000 in any 3-year period, the results of the public consultation confirm that the stakeholders acknowledge the limited impact of *de minimis* aid (Figure 29). Most stakeholders (72%) expressed that aid under the ceiling is indeed unlikely to distort competition and trade in the EU, while the remaining 19% disagreed. This group was mainly composed of NGOs, which argued that the ceiling was too high for the smallest companies in the fisheries and aquaculture sector. The majority of stakeholders however were of the view that the maximum of EUR 30 000 cannot in most cases help small companies to surmount financial difficulties.

**Figure 29 - Opinion on *de minimis* ceiling**



I.5. Do you consider that aid under EUR 30 000 (current *de minimis* ceiling) is indeed unlikely to distort competition and trade in the EU?

%; All respondents (n=64)

Source: Public Consultation, Ipsos study

### ***Non-EMFF type of measures under FIBER and the Guidelines***

As noted in Section 1 above, the present evaluation focuses on assessing the non-EMFF type of measures. In particular, the SWD examines those falling under Article 44 and 45 of the FIBER and Sections 4 and 5 of the Guidelines, for the reasons indicated *ut supra*.

For aid to make good the damage caused by natural disasters (Article 44 FIBER) and exceptional occurrences (Section 4 of the Guidelines) and aid to make good the damages caused by adverse climatic events (Section 5.3 of the Guidelines), the in-depth interviews with granting authorities have shown that the reason to set up this type of *ex ante* schemes is that these catastrophic events need immediate reactions. These would not be possible if they were not already in place and beneficiaries had to go through the whole notification process on top.

With regard to aid for the cost of prevention, control and eradication of animal diseases in aquaculture (Section 5.4 of the Guidelines), some respondents to the survey for granting authorities and public consultation (a minority, one surveyed granting authority and six other stakeholders, which constitute, respectively, 6% and 9% of the total replies) considered that this measure may cause negative effects to competition and distort the market. The dissenting granting authority, which is also an insurance company, expressed the need to provide State aid only for those diseases for which vaccines do not exist or where other measures cannot prevent contagion. However, the Guidelines, in their point (107), already require that no aid should be granted if it is established that the beneficiary caused the disease deliberately or by negligence.

*Second set of questions: assessment of the adequacy of the current State aid framework through the appraisal of its transparency, consistency, and legal certainty, and its scope for simplification*

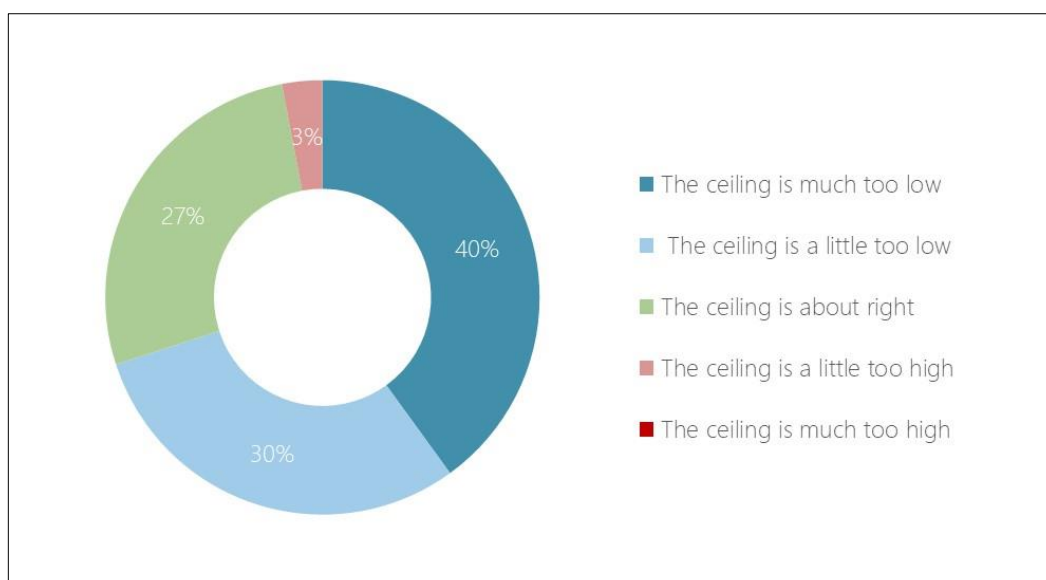
### ***De minimis aid***



The survey conducted with the granting authorities gives the appearance that the expenditure in *de minimis* aid does not come close to the ceiling not because it is considered adequate or high, but because its narrow margin of manoeuvre – as perceived by the granting authorities - is deemed unsuitable to support the fisheries and aquaculture sectors. Nonetheless, this should be taken with caution and no conclusion can be drawn for the whole group of granting authorities, as the participation in the survey was limited. This is particularly true given that this finding may have been deduced from the specific case study of Denmark, which accounts for the highest *de minimis* expenditure per beneficiary and where most aid was used for start-up support to young fishers (which is one of the fleet measures for which targeting to conservation objectives has proved not to be optimal).

The results of the survey to the granting authorities are presented in Figure 30 below. About 70% of respondents expressed that the *de minimis* ceiling is a little or much too low (30% and 40%, respectively). Conversely, 27% felt that the ceiling is about right, and only one granting authority felt that the ceiling is a little too high, and only one granting authority felt that the ceiling is a little too high.

**Figure 30 - Adequacy of the *de minimis* ceiling**



D6 – As part of the State aid framework, the *de minimis* rules aim to provide authorities with a legal basis to promptly address short-term shocks in the fisheries and aquaculture sector. It sets a maximum ceiling of EUR 30 000 per beneficiary in any 3-year period to prevent any market distortions. In your experience, is this ceiling appropriate?

%; All respondents (n=30)

Source: Survey to State aid granting authorities

A related but still different opinion to that expressed by some granting authorities during the survey, that the EUR 30 000 limit per beneficiary over three years renders the majority of the envisaged measures impractical, was later echoed by other stakeholders during the consultation phase. These did not refer to the narrow margin of manoeuvre or the impossibility to design practical measures, but to the fact the fisheries and aquaculture sectors are capital-intensive and that the EUR 30 000 cap is too low for the sectors.

Recognizing that *de minimis* aid, although limited, might have negative effects on the market, most granting authorities (82%) recognized in the survey that maximum aid amounts (and aid intensities) are important to limit said distortive effects. Two granting

authorities even expressed in the interview stage that they opposed to increasing the maximum *de minimis* ceiling in the fisheries sector for this reason.

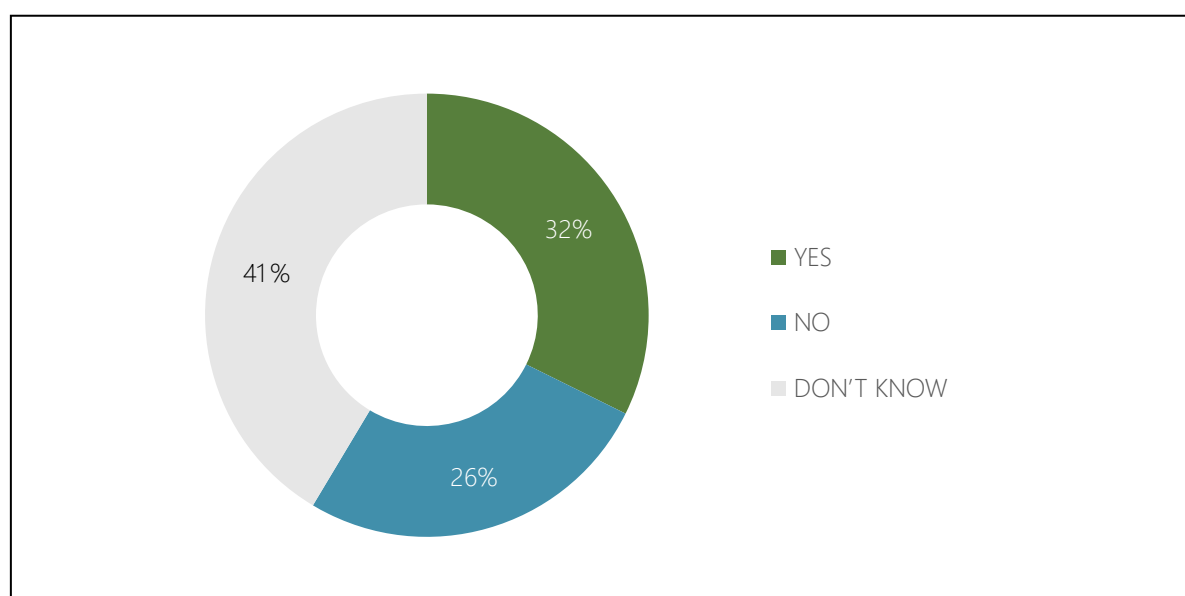
In any case, most granting authorities, producer organisations and advisory councils advocate for increasing the individual ceiling of *de minimis* aid and the overall national caps, to a range between EUR 40 000-200 000 per three fiscal years. The maximum of EUR 200 000 was suggested to bring the *de minimis* ceiling in fisheries and aquaculture to the same level as the one for agricultural processing and marketing.

Diverging from the opinion of most granting authorities and other stakeholders, NGOs suggested lowering the *de minimis* ceiling of EUR 30 000, pointing out that it may have detrimental side effects for sustainability, such as capacity increases.

### ***Block exempted aid***

The results of the specific survey revealed a division of opinions between granting authorities on the extent that block exemptions had been accurately defined and relevant categories of aid had been included, while it is also noteworthy that many of them were not able to answer the questions posed. 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” (see Figure 31 below). The results were similar 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 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.

**Figure 31 - Are there State aid measures that should be included in a revised Block Exemption Regulation?**



D9a - 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?

%: All respondents, including from OPC\* (n=34)

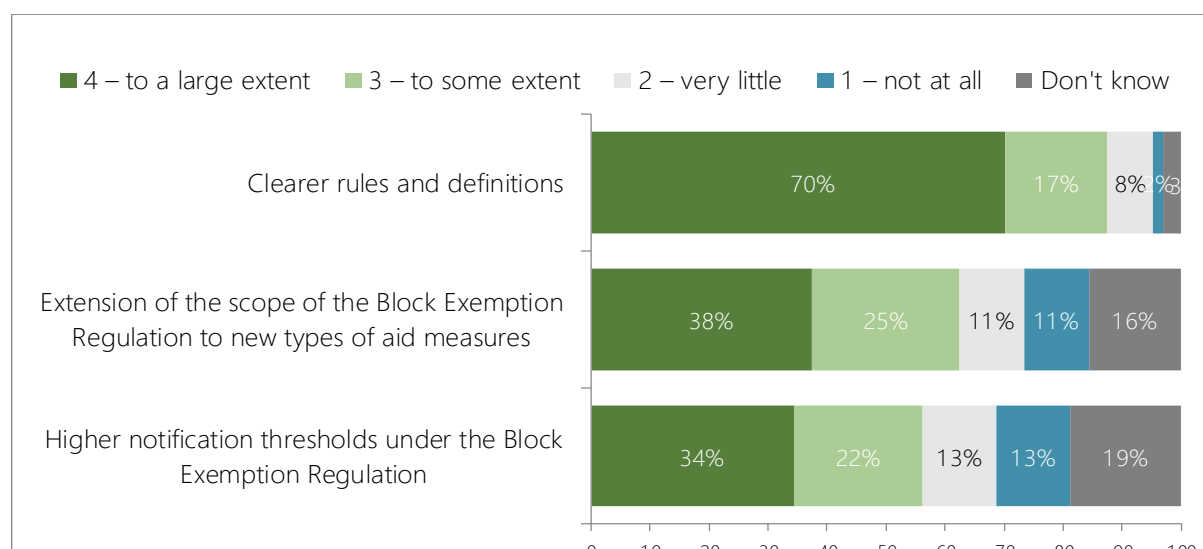
Source: Survey to State aid granting authorities

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. 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 (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); (iii) specific measures for the aquaculture sector to combat droughts or other types of water shortages.

With regard to the results of the public consultation with stakeholders, when asked about their views on measures that would simplify State aid rules, 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 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. This is illustrated in Figure 33 below:

**Figure 32 - Views on measures that would simplify State aid rules**



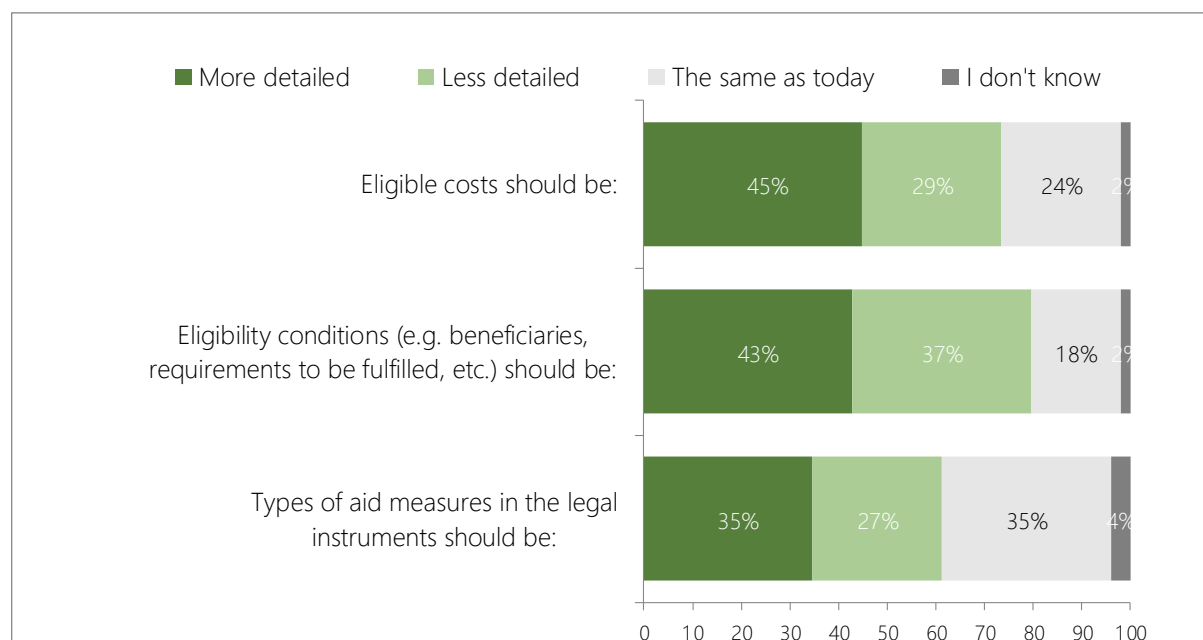
II.3. To what extent could the following measures simplify State aid rules, while still limiting the distortions of competition and trade to a minimum? Please rate from 1 to 4, 1 being 'not at all', 2 – 'very little', 3 – 'to some extent', and 4 – 'to a large extent':

%; All respondents (n=64)

Source: Public Consultation

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).

**Figure 33 - Views on the possible design of the future State aid rules**



II.5. What are your views on the possible design of the future State aid rules for the fishery and aquaculture sector?

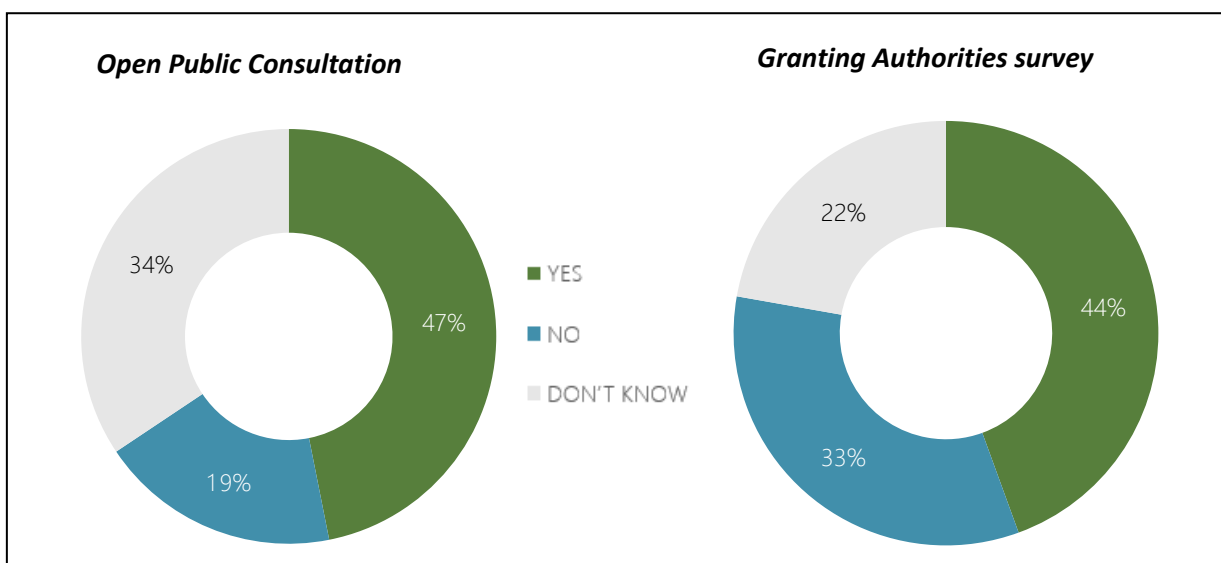
%; Respondents with experience in State aid matters (n=49)

Source: Public Consultation

### ***Notified aid***

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. This is depicted in Figure 34 below, where 44% of granting authorities have 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.

**Figure 34 - Is there a type of aid measure not covered by the current Fishery State aid Guidelines that should be included in the revised guidelines?**

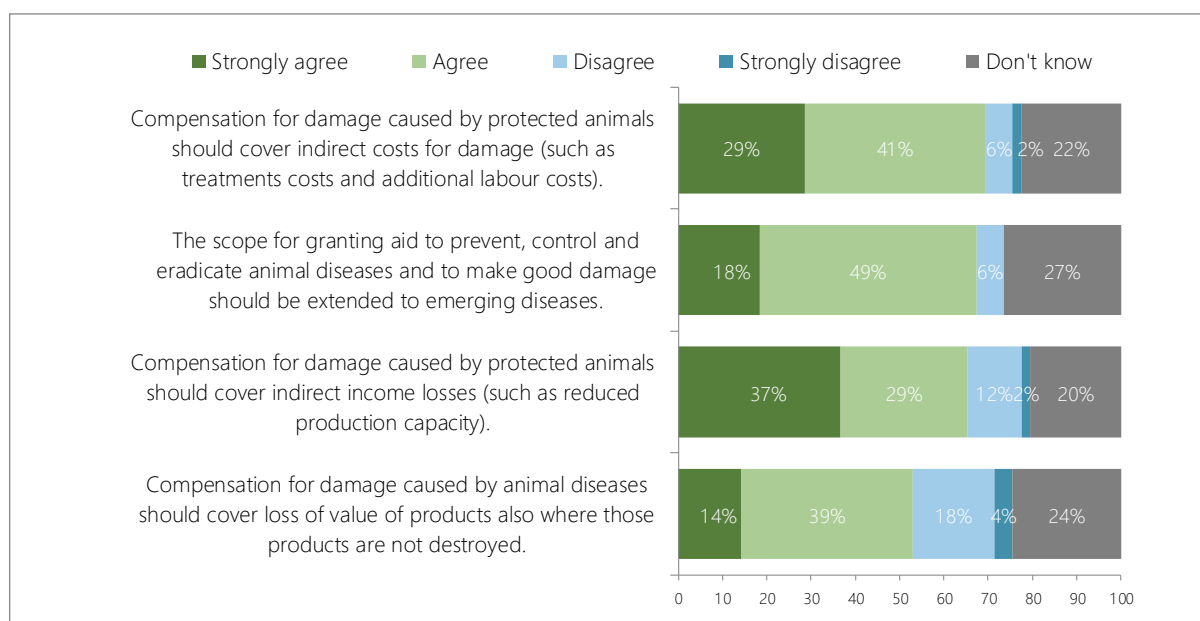


%; All respondents excluding public authorities responsible for granting de minimis aid and/or State Aid (n=46)

In general, notified aid is not the preferred tool for granting authorities, which describe the administrative procedure it involves as cumbersome and protracted. Granting authorities referred to the impossibility of resorting to *de minimis* aid in these cases, as the EUR 30 000 ceiling is too low to compensate larger firms in case of adverse events. Another granting authority pointed out that they opted for notified aid when storms were declared as an “adverse climatic event” and not a “natural disaster”, which meant that the aid to compensate for the event could not be block exempted.

It emerged during consultations 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. This is depicted in Figure 35 below, which also includes the question of whether aid should be extended to “emerging diseases”:

**Figure 35 - Compensation for damages caused by protected animals and animal diseases**



II.9. Do you agree with the following statements?

%; Respondents with experience in State aid matters (n=49)

Source: Public Consultation

*Third set of questions: contribution of the current State aid framework to the objectives of the CFP, potential and unintended effects.*

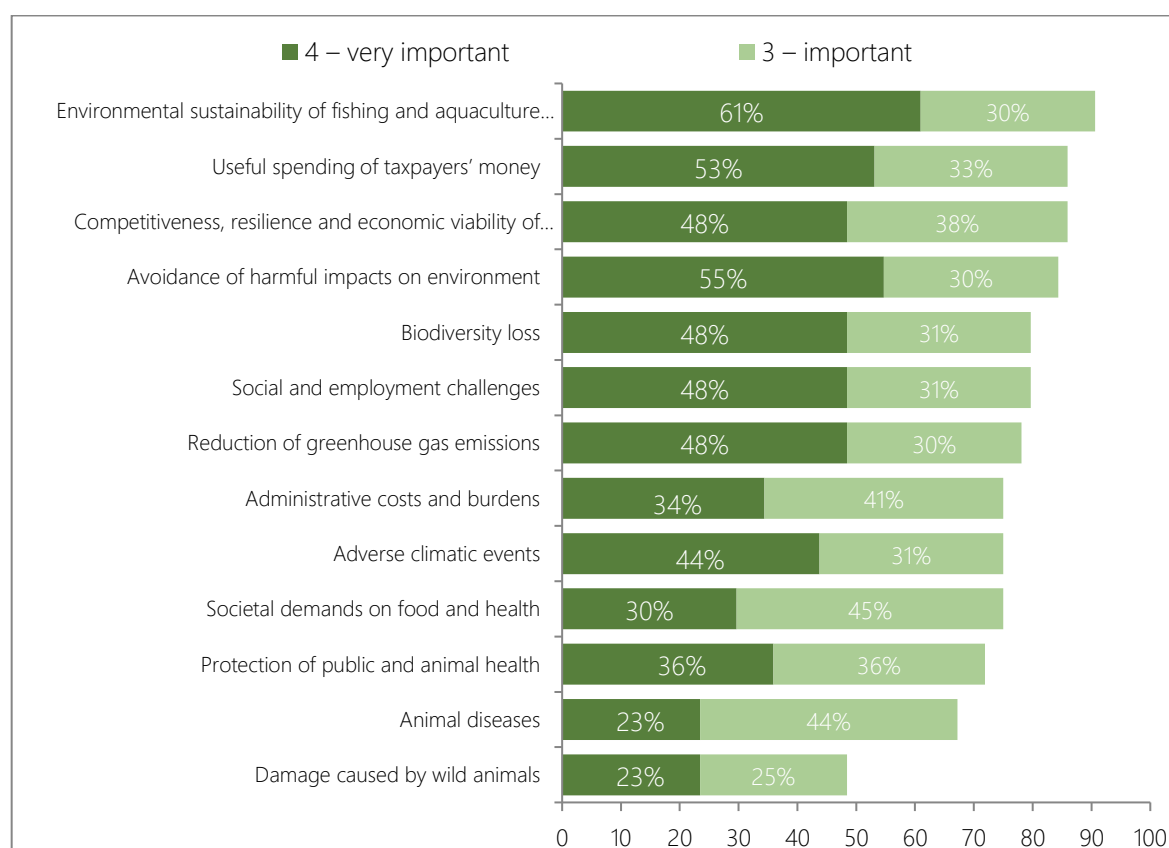
Both granting authorities and stakeholders were asked about their views on the contribution to the CFP objectives at the consultation phase of the evaluation. Further to the targeted questions, granting authorities and stakeholders were indirectly about the contribution to these objectives through a series of questions:

- *Have the ceilings for de minimis been adequately defined to allow Member States to address promptly short-term unexpected impacts in the fishery and aquaculture sector?*
- *Which types of measures received most funding? Was the concentration (distribution) of funding in certain measures determined by the Member States or by the beneficiaries?*

### ***CFP objectives and contribution of the State aid framework towards their achievement***

The public consultation posed the question to stakeholders on the importance of the problems State aid currently addressed or could potentially address. The environmental sustainability of fishing and aquaculture activities was rated as the most important problem to address by stakeholders, closely followed by the useful spending of taxpayers' money, guaranteeing the competitiveness and economic viability of enterprises and the avoidance of harmful impacts on the environment. Addressing animal diseases and the damage caused by wild animals were viewed as the least important problems.

**Figure 36 - Problems that State aid rules should address**



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'.

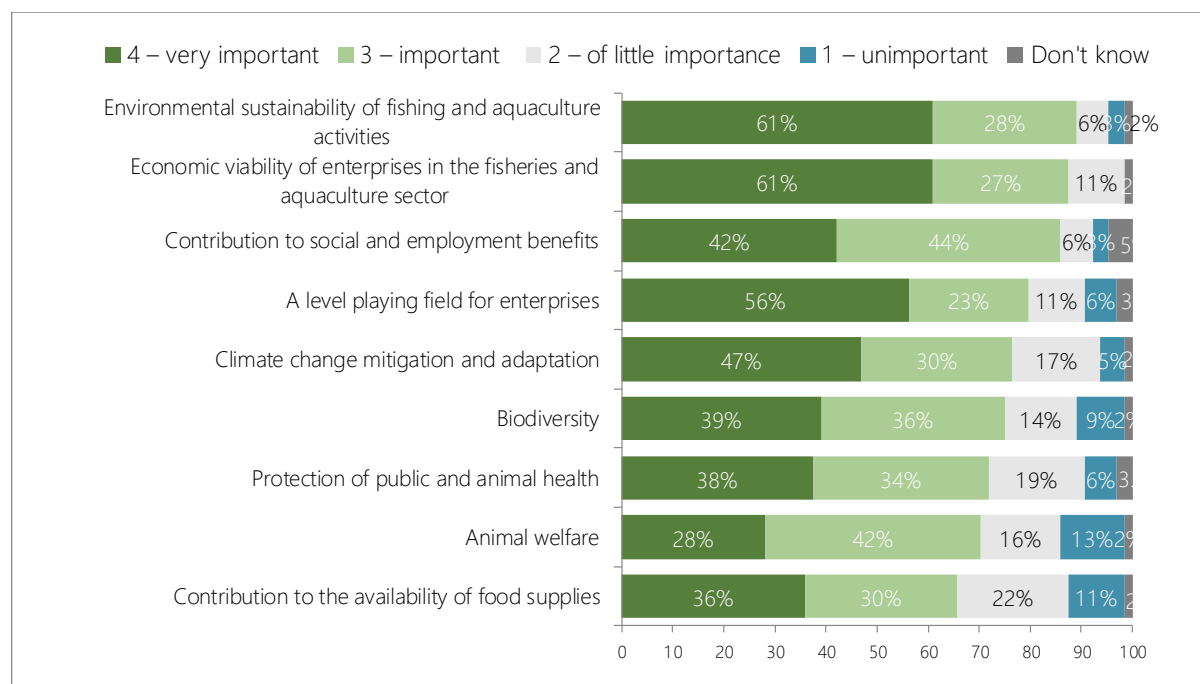
%; All respondents (n=64)

Source: Public Consultation

As well as the importance of the problems, the public consultation also asked stakeholders about the importance of the objectives pursued by the granting of State aid. These were generally regarded as of key importance by respondents, ranging from 89% for environmental sustainability of fishing and aquaculture activities (considered to be either important or very important), to the contribution to the availability of food supplies

and animal welfare, which were considered the least important objectives pursued by granting of State aid, with 70% and 66% (considering them very important or important), respectively.

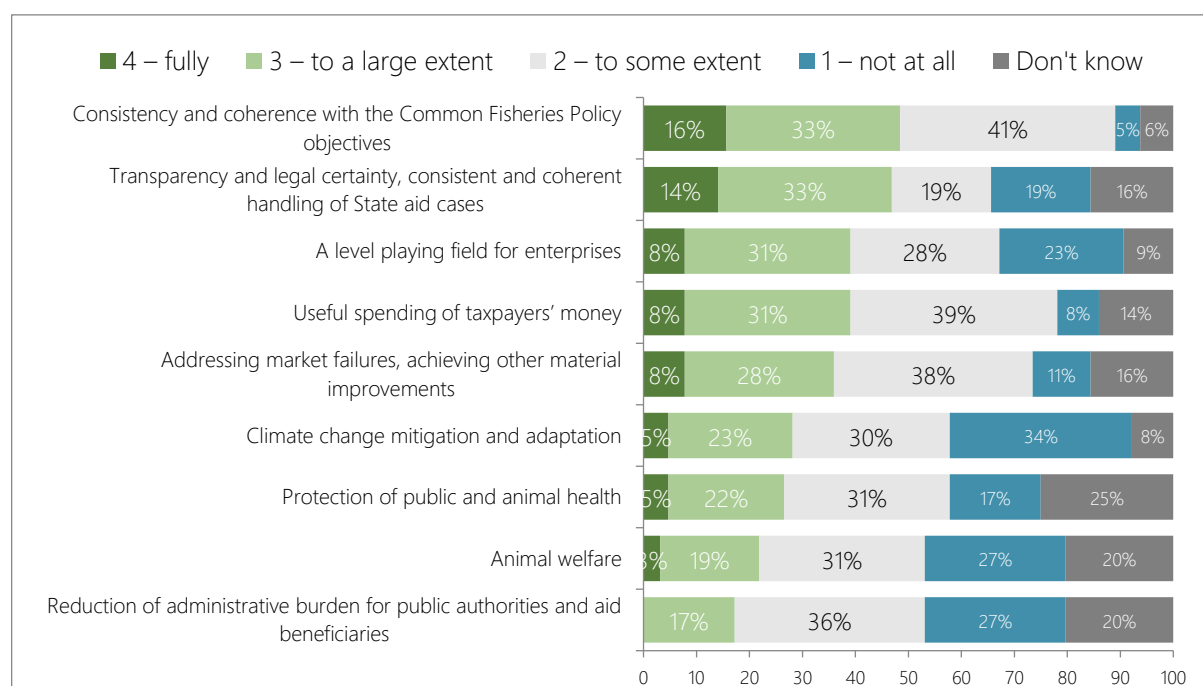
**Figure 37. Opinions on importance of the objectives pursued by granting of State aid**



I.1. From your perspective, how important are the objectives pursued by the granting of State aid? Please rate from 1 to 4, 1 being 'unimportant', 2 – 'of little importance', 3 – 'important', and 4 – 'very important' %; All respondents (n=64)  
Source: Public Consultation

Finally, participants in the public consultation were enquired about the extent to which they regarded current State aid rules had achieved the abovementioned objectives. In general, the replies were less positive, with only 53% of respondents feeling that the current State aid framework contributed (at least to some extent) to a reduction of the administrative burden for public authorities and aid beneficiaries. On the other side of the spectrum, 89% felt that the current State aid rules at least to some extent achieved consistency and coherence with the Common Fisheries Policy objectives, with 48% expressing this was achieved to a large extent.

**Figure 38. Opinions on to what extent current State aid rules achieved objectives**



I.2. How well have the current State aid rules achieved the following objectives? Please rate from 1 to 4, 1 being 'not at all', 2- 'to some extent', 3 – 'to a large extent', 4 - 'fully'.

%; All respondents (n=64)

Source: Public Consultation

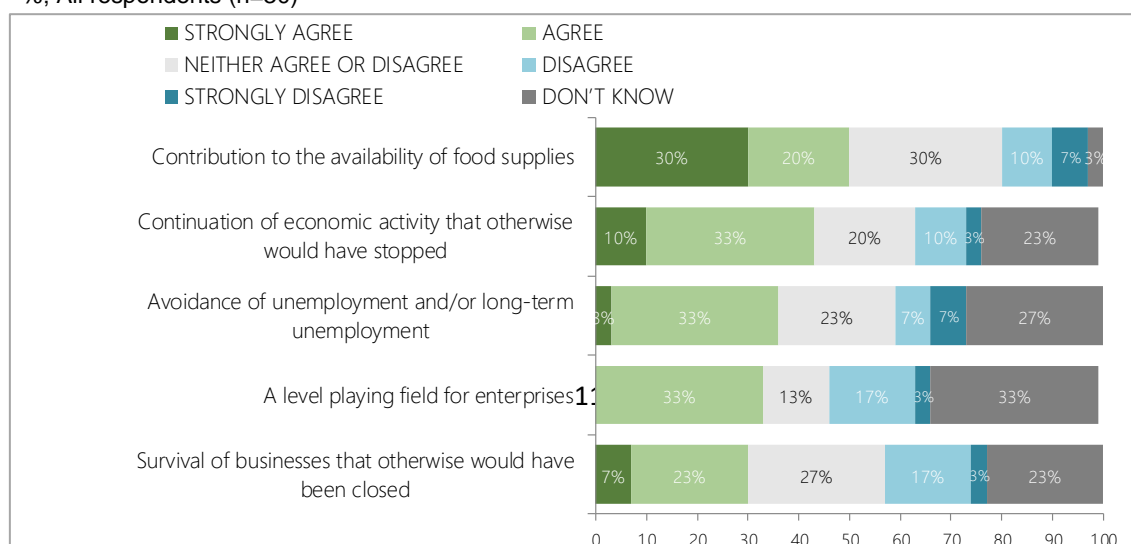
Similar questions were posed in the survey from granting authorities, where the representatives were asked about the contribution to certain CFP objectives (particularly, CFP(2)5 f: Contribute to a fair standard of living for those who depend on fishing activities) for beneficiaries or the local economies where State aid was granted. Around 50% of respondents agreed or strongly agreed that State aid granted since 2014 has contributed to the availability of food supplies, 43% to the continuation of economic activity that otherwise would have stopped, and 39% to avoiding long term unemployment.

The results of this specific question correspond to the trends observed in granted State aid, since this one of the main objectives that granting authorities support by *de minimis* aid.

**Figure 39 - Contribution to objectives for beneficiaries or the local economies where State aid was granted**

C1 - To what extent do you agree or disagree that the State aid granted since 2014 in the EU contributed to the objectives below for the beneficiaries or the local economies where State aid was granted?

%; All respondents (n=30)

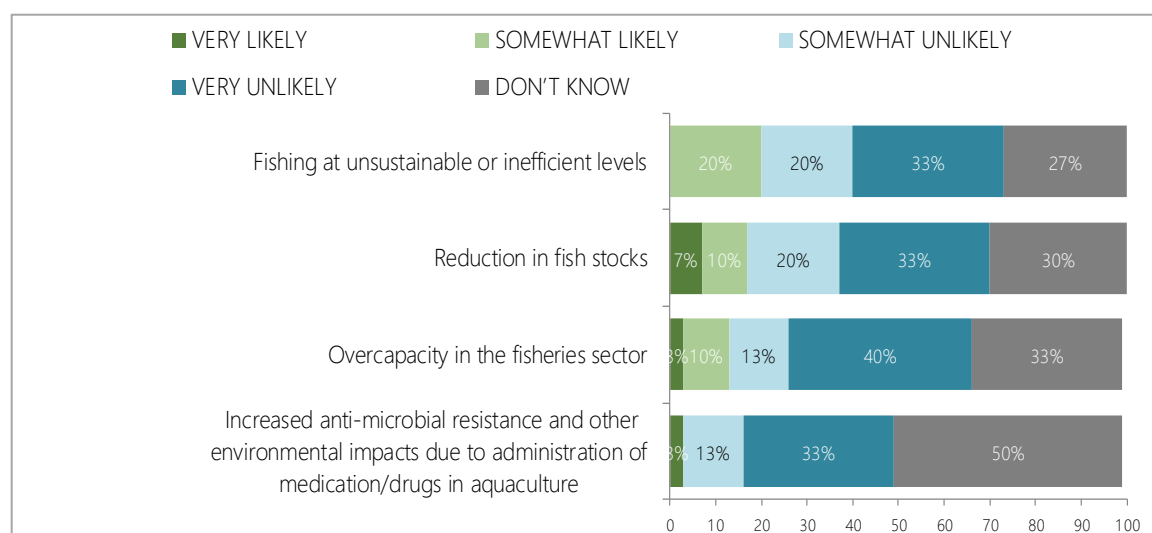




### ***Contribution to CFP objectives and unexpected or unintended effects: sustainability and environmental impact***

Both the survey for granting authorities and the public consultation explored the views of stakeholders on these potential unintended effects, and generally found that these are unlikely. In particular, around 50% of granting authorities considered that it was very or somewhat unlikely that State aid has these negative effects, against the 20% who thought it is likely that it may contribute to unsustainable or inefficient levels of fishing, 17% to reduction in fish stocks, and 13% to overcapacity in the fisheries sector.

**Figure 40. Likelihood that State aid has produced negative unintended effects**



What is the likelihood that State aid granted through the current legal framework has produced the following effects?

%; All respondents (n=30)

Source: Survey of State aid granting authorities

The results of the public consultation can be examined in Figure 24 above “*Opinions on whether State aid measures led to unexpected or unintended results*”, where most respondents also felt that State aid measures generally did not lead to unexpected or unintended results.

Apart from the survey of granting authorities and the public consultations, in-depth interviews were carried out with a number of stakeholders. In this regard, it is particularly important to highlight the concerns raised by NGOs in these interviews, where they noted that State aid might lead to the increase of fishing capacity, putting at risk fish stocks, and to the promotion of fishing at inefficient levels. NGOs pointed to the following measures for these unintended effects:

- Measure 5.6a. *Aid for the renewal of the fishing fleet in outermost regions*, introduced in 2018 in the Guidelines. Interviewees explained that there is not enough information on the status of fish stocks in outermost regions or on the capacity of the fishing fleet, so these measures might contribute to an increase in fishing capacity and put sustainability in peril.

- Investments to increase productivity. All interviewed NGOs raised this point, particularly with regard to investments in engines, which may increase the amount of time a vessel can be at sea and the distance it can travel, which in turn impacts fish populations.

- Marketing and promotion campaigns, which might be harmful to biodiversity if it promotes fish species with low population levels.

A particular case is that of aid to compensate for the temporary cessation of activities (a measure included in EMFF, but explicitly excluded from FIBER), where opinions were divided among both NGOs and granting authorities - some considered it a neutral measure and others a measure that would promote fishing at inefficient levels. One of the interviewees, ClientEarth, referred to their report of 2018, where they raised that “*aid for permanent cessation or temporary cessation of fishing activities, have been used in the past with no regard to the objectives of capacity reduction or the sustainability of fishing resources and have exacerbated the imbalance between available fishing resources and fishing capacity of the EU fleet*”<sup>101</sup>.

Nonetheless, NGOs and other stakeholders recognized the existence of positive effects for the environment also stemming from State aid measures. In particular, interviewees referred to the following measures: funding to acquire more selective gears; funding for diversification of economic activity; funding for sustainable practices (e.g. multi-traffic aquaculture systems); funding for management of protected marine areas; aid for data collection and research; aid to compensate for damage caused by protected species.

#### • Coherence

With regard to the internal coherence of the State aid architecture, this question was not addressed to stakeholders in the various consultations and targeted surveys and, as mentioned in this evaluation, the Commission has carried out an internal analysis with in-house data.

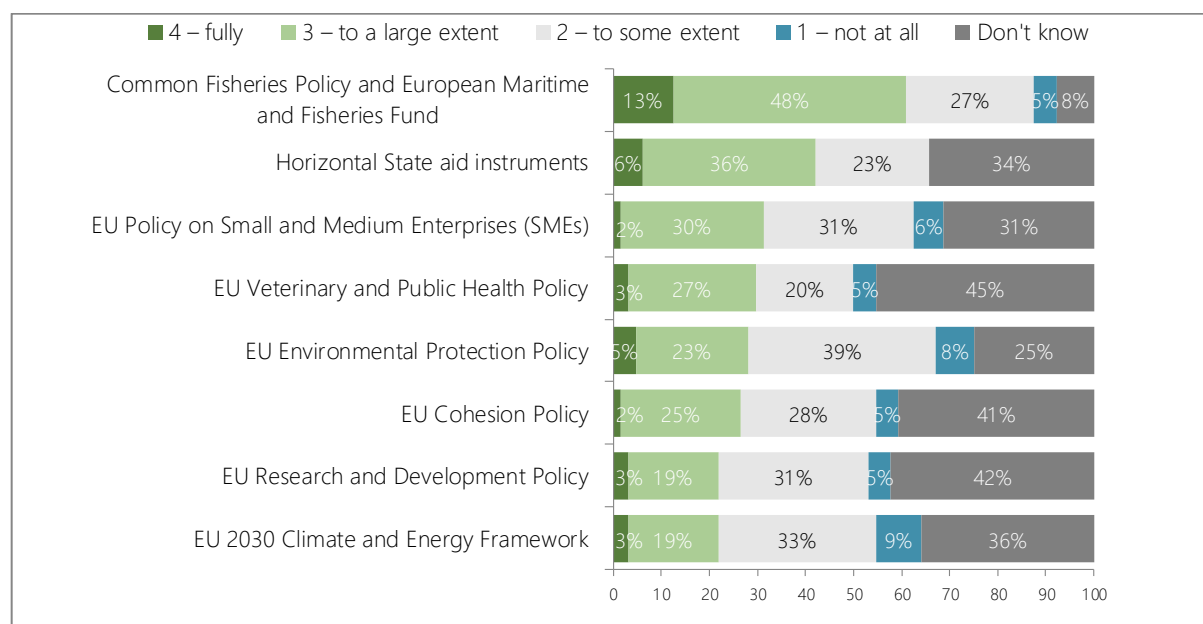
Nonetheless, with regard to the external coherence of the State aid framework in the fishery and aquaculture sector with other EU policies, most of the stakeholders agreed on the coherence with the CFP and the EMFF, with 61% regarding these policies as “fully” or “to a large extent” coherent.

This was however not the case with other policies, particularly with regard to the EU 2030 Climate and Energy Framework, the EU Environmental Protection Policy and the EU Veterinary and Public Health Policy, with just less than 30% of respondents considering these policies to be fully or largely coherent with State aid rules.

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<sup>101</sup> ClientEarth (2018) The post-2020 European Maritime and Fisheries Fund: how to ensure that EU financial aid serves the objectives of the Common Fisheries Policy?, available at: <https://www.europarl.europa.eu/cmsdata/149847/Presentation%20TACCONI%20point%2010.pdf>

**Figure 41 - Opinions on coherence of State aid rules with other EU policies and legislation**



I.6. Based on your experience, are the current State aid rules coherent with other EU policies and legislation? Please rate from 1 to 4, 1 being 'not at all', 2- 'to some extent', 3 – 'to a large extent', 4 – 'fully'.

%; All respondents (n=64)

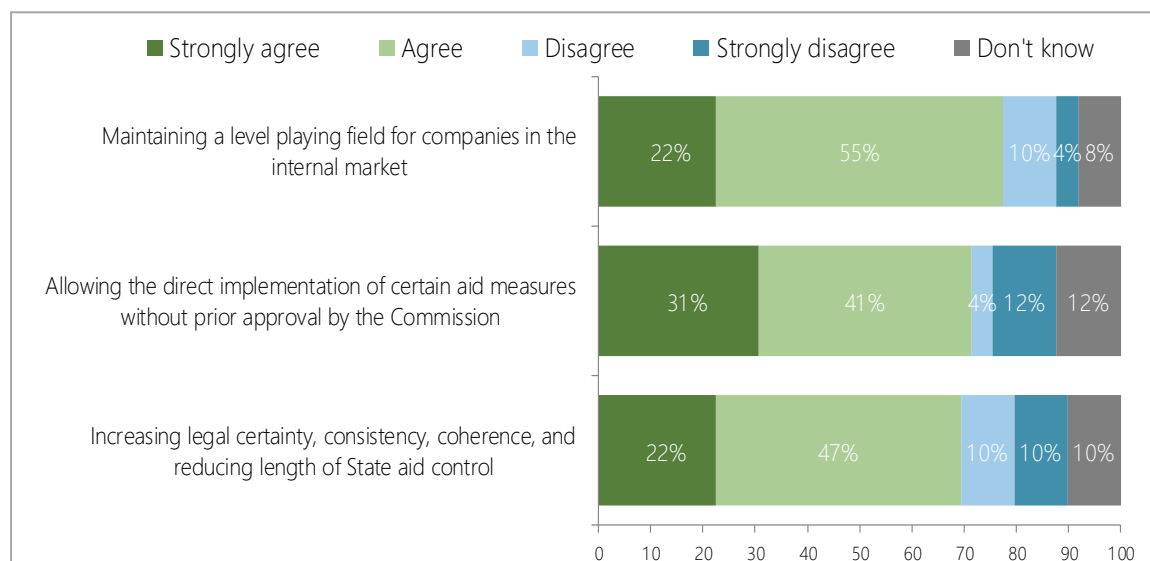
Source: Public Consultation

- **EU added value**

The public consultation, in order to evaluate said EU added value, asked to stakeholders whether they agreed that a common framework of rules on State aid in the fishery and aquaculture sector helped to contribute to the EU's policies more efficiently. As presented in detail in the figure below, the majority of respondents felt that a common framework of rules on State aid in the fishery and aquaculture sector helped contribute to the Union's policies more efficiently. In particular, 77% of surveyed stakeholders agreed or strongly agreed that the common framework of rules on State aid helps with maintaining a level playing field for companies in the internal market. Along the same lines, around 71%<sup>102</sup> stakeholders agreed or strongly agreed that the common framework of rules on State aid allows the direct implementation of certain aid measures without prior approval by the Commission. Finally, 69% of stakeholders agreed or strongly agreed that the State aid framework increases legal certainty, consistency, coherence, and reduces the length of State aid control.

<sup>102</sup> Not 72%, due to rounding of figures.

**Figure 42 - Do you agree that a common framework of rules on State aid in the fishery and aquaculture sector helps to contribute to Union's policies more efficiently, in particular by:**



%; All respondents (n=49)

Source: Public Consultation

The results of the public consultation were later confirmed by the targeted survey for granting authorities and in-depth interviews carried out by the external contractor, which expressed that the State aid framework for the fisheries and aquaculture sector has acted as a positive mechanism. In particular, they considered the framework to safeguard the internal market by limiting market distortions, to provide legal certainty, and to offer coherence between EU-financed measures and subsidies, and alignment with the Common Fisheries Policy.

**ANNEX 12. OVERVIEW OF ELIGIBLE MEASURES IN ACCORDANCE WITH THE STATE AID INSTRUMENTS IN FISHERIES AND AQUACULTURE**

INSTRUMENT			
FIBER		GUIDELINES	
EMFF TYPE	NON-EMFF TYPE	NON EMFF TYPE	EMFF TYPE
<b>CLUSTER A: R&amp;D, Consultancy, Partnerships</b> Art 13: Aid for innovation Art 14: Aid for advisory services Art 15: Aid for partnerships between scientists and fishermen Art 32: Aid to management, relief and advisory services for aquaculture farms Art 30: Aid for innovation in aquaculture Art 31: Aid to productive investments in aquaculture Art 33: Aid to promote human capital and networking in aquaculture	<b>CLUSTER F: Risk management</b> Article 44 - Aid to make good the damage caused by natural disasters	<b>CLUSTER F: Risk management</b> Aid to make good the damage caused by natural disasters and exceptional occurrences (Section 4 GL) Aid to make good the damages caused by adverse climatic events (Section 5.3 GL); Aid for the cost of prevention, control and eradication of animal diseases in aquaculture (Section 5.4 GL) “Aid for other measures” (Section 5.7 GL): the Commission may declare the aid compatible with the internal market on the basis of a case-by-case assessment	All measures eligible under FIBER and other Block exemption regulations
<b>CLUSTER B: Employment, Job Creation, Health &amp; Safety at Work</b> 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	<b>CLUSTER G: Fiscal &amp; Parafiscal measures</b> 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”)	<b>CLUSTER H: Measures falling within horizontal Guidelines</b> Aid falling within the scope of certain horizontal guidelines, such as the Guidelines on State aid for environmental protection and energy, or the Framework for State aid for research and development and innovation (Section 5.2 GL);	
<b>CLUSTER C: Climate, Environment and Biodiversity</b> 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		<b>CLUSTER G: Fiscal &amp; Parafiscal measures</b> Aid financed through parafiscal charges (Section 5.5 GL)	

<p>regimes in the framework of sustainable fishing activities</p> <p>Art 26: Aid to improve energy efficiency and to mitigate the effects of climate change</p> <p>Art 27: Aid to added value, product quality and use of unwanted catches</p> <p>Art 29: Aid to inland fishing and inland aquatic fauna and flora</p> <p>Art 35: Aid to encourage new aquaculture farmers practicing sustainable aquaculture</p> <p>Art 36: Aid for the conversion to eco-management and audit schemes and organic aquaculture</p> <p>Art 37: Aid to aquaculture providing environmental services</p>			
<p><b>CLUSTER D: Health measures</b></p> <p>Art 38: Aid for public health measures</p> <p>Art 39: Aid for animal health and welfare measures</p>		<p><b>CLUSTER I: Measures for the Outermost Regions</b></p> <p>Operating aid in outermost regions (Section 5.6 GL)</p> <p>Aid for the renewal of the fishing fleet in outermost regions (Section 5.6a GL)</p>	
<p><b>CLUSTER E: Productivity-building measures</b></p> <p>Art 28: Aid to fishing ports, landing sites, auction halls and shelters</p> <p>Art 34: Aid to increase the potential of aquaculture sites</p> <p>Art 43: Aid for data collection</p>		•	•
<p><b>CLUSTER F: Risk management</b></p> <p>Art 20: Aid to mutual funds for adverse climatic events and environmental incidents</p> <p>Art 40: Aid for aquaculture stock insurance</p>		•	•
<p><b>CLUSTER G: Processing and Marketing</b></p> <p>Art 41: Aid for marketing measures</p> <p>Art 42: Aid for the processing of fishery and aquaculture products</p>		•	•