

# Revision of the Fisheries and Aquaculture State Aid Guidelines and FIBER

## ClientEarth's reply to the public consultation

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ClientEarth has long been engaged in the streamlining of State aid rules with environmental protection objectives. In the Fisheries and Aquaculture sectors, our activities notably aim at pushing for better fisheries management and responsible fishing practices.<sup>1</sup> To name but some examples, these activities include ClientEarth's advocacy on the implementation of the Common Fisheries Policy, on the enforcement of the obligation to reach the MSY objective for all stocks by 2020 at the latest, on the implementation of the European Maritime, Fisheries and Aquaculture Fund, on fisheries aspects of the EU-UK Trade and Cooperation Agreement and on the revision of the EU Fisheries Control Regulation; and its activities around the organisation of sustainable seafood coalitions in Spain and the UK. In those contexts, as well as in the context of the ongoing revision of the Energy Taxation Directive, ClientEarth is advocating for the phase out of harmful subsidies<sup>2</sup> – in which State aid rules have a paramount role to play.

ClientEarth welcomes the opportunity to provide comments on the Commission's draft for revised Fisheries and Aquaculture Aid Guidelines (the 'Guidelines'), the Fisheries Block Exemption Regulation ('FIBER') and the *de minimis* rules, in the context of the public consultation open from 11 January to 13 March 2022. Our observations will focus on the revision of the Guidelines and of the FIBER and will follow the order of the relevant provisions in each act.

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<sup>1</sup> ClientEarth 2020 Annual Report, pp. 8, 11, 13, 18, 17, 18; 2019 Annual Report, pp. 17-18

<sup>2</sup> See e.g. recently "Why eliminating fuel subsidies from fisheries is good for public finances, the marine environment and the climate" (November 2021); "15 Recommendations for spending the European Maritime Fisheries and Aquaculture Fund (EMFAF)" (November 2021)

## The FIBER

1. In recital (7) of the draft FIBER, the last sentence should be amended (see in bold italics) to require that “***In particular, Member States should ensure that beneficiaries of State aid comply with the rules of the Common Fisheries Policy, **Union environmental law and the ban of electric pulse fishing pursuant to Regulation (EU) 2019/1241*****”, pursuant to the Judgment in C-594/18P *Austria v. Commission*. Moreover, in order for the FIBER to support the fight against overfishing and illegal fishing, it must explicitly state that aid cannot be granted to fishers who have exceeded the fishing opportunities allocated by Member States in compliance with Articles 16 and 17 of the CFP Basic Regulation. In that respect, effective remedies should apply:
  - The last sentence in Article 4(2) of the current FIBER providing that “*if during that period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the aid shall be reimbursed in proportion to the gravity of the infringement*” should be maintained (the draft proposes to delete it) and extended to Union environmental law. In any case, we welcome the Commission’s proposal to expand the compliance period up until five years after the final payment.
  - Article 10 pursuant to which the Commission may withdraw the benefit of an exemption should notably be triggered when the aid beneficiary breaches the rules of the CFP or environmental law.
2. Article 14(1) would now specify that aid for innovation “aims at developing or introducing new or substantially improved products and equipment, new or improved processes and techniques, and new or improved management and organization systems, including at the level of processing and marketing”. ClientEarth recommends to add safeguards to this provision in order to ensure its consistency with the CFP and European Green Deal objectives<sup>3</sup>:
  - The innovations must not increase the fishing capacity of the aid beneficiary.
  - The innovation may not directly nor indirectly support the use of fossil fuels.
  - The innovations must be in line with the European Green Deal objectives relating to zero pollution, biodiversity protection and decarbonisation. Notably, the eligible products, equipment, processes and techniques under this provision must support the transition to **more selective and less damaging fishing techniques**. In accordance with the EU Biodiversity Strategy, the use of fishing gear most harmful to biodiversity, including on the seabed, and in particular the use of bottom-contacting fishing gear<sup>4</sup> shall not be supported. In addition, fishers and aquaculture producers should transform their production methods more quickly to methods that are environmentally sustainable in the long term, and make the best use of nature-based, low-impact, selective, low-carbon and space-based solutions to deliver better climate and environmental results, increase climate resilience and reduce and modernise the use of inputs.
  - Lastly, to ensure that fishing vessels are in line with the European Green Deal and the future Battery Regulation, the FIBER should specify that aid for innovative fishing vessels that use batteries as energy storage technologies can only be granted if the batteries fulfil sustainability and transparency requirements, in compliance with the requirements under Chapter II and III of the

<sup>3</sup> The same remarks apply to inland fishing under Article 28(3) of the draft FIBER.

<sup>4</sup> The EU Biodiversity Strategy, p. 11.

future EU Battery Regulation<sup>5</sup>, and if the batteries can be re-used, re-purposed or recycled (following the waste hierarchy principle)<sup>6</sup>.

3. Article 18 of the draft FIBER proposes to maintain a regime of aid for diversification of fishers' activities. On the opposite, ClientEarth considers that aid for the mere diversification of activities where the beneficiary fully or partially maintains a fishing activity (at sea or inland<sup>7</sup>) should not be considered compatible with the internal market and in any case should not be exempted under the FIBER. We struggle to see how the Commission can justify such a regime in light of the common assessment criteria: if a business plan for diversification of activities is viable (which is helped by the requirement that the fishers possess relevant professional skills), the aid to develop that activity would not have an incentive effect.

Furthermore, the draft Article 18 does not require that the revenues obtained from the new activities are kept separate from the fishing activities – whereas fishers may use their new sources of income to maintain or expand their primary fishing activities, in opposition with the CFP objectives to preserve natural resources and manage them in a sustainable manner.

Instead, the Guidelines and/or the FIBER should allow aid for the full conversion of fishers permanently exiting the fisheries sector. Examples of such a conversion can be ecotourism, participation to scientific cruises, or the activity of monitoring or patrolling protected areas – but not activities that consist in fishing or educating others to fish.

4. ClientEarth welcomes the Commission's intention to remove aid to start up support for young fishermen from the FIBER (former Article 18) because of its potential capacity enhancing effect, as indicated in the explanatory note. Such aid should indeed be subject to State aid scrutiny under the Guidelines. We refer to our proposals on the Guidelines in the next section.
5. We generally welcome Article 19 relating to investments to improve the health, safety and working conditions of fishers, in particular point 1(b) requiring that *"the aid does not support operations that increase the gross tonnage of a fishing vessel."* It is important that this criteria be maintained, and that general language is added to ensure that generally speaking the aid does not support end up creating more fishing capacity, as we are already in a situation of overcapacity in the EU. We simply suggest to include trainings in the list of eligible costs, in addition to the costs of guides, manuals and information campaigns, under points (3) to (5).
6. Clientearth welcomes the proposed Articles 22 and 23, but would like to point out that an additional safeguard should be integrated in the text, namely that this aid should respect the ban on electric pulse fishing pursuant to Regulation (EU) 2019/1241.
7. ClientEarth is **strongly opposed to aid for the collection of waste** under Article 24(2)(a) of the draft FIBER. This item should be removed for the following reasons. First, there is little means to control whether vessels would not leave waste at sea on purpose or by lack of attention whereas their obligations to reduce and collect their waste should be strictly enforced. State aid remunerating fishers

<sup>5</sup> The EU Battery Regulation has not been adopted yet. Chapter II and III of the Commission's proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (SWD(2020) 334, SWD(2020) 335, SEC(2020) 420) establishes requirements on sustainability, safety, labelling and information to allow the placing on the market or putting into service of batteries.

<sup>6</sup> The phase-out of non-rechargeable (or, otherwise, not sustainable) batteries is indeed coherent with the Commission's new Circular Economy Action Plan ([https://ec.europa.eu/environment/circular-economy/pdf/new\\_circular\\_economy\\_action\\_plan.pdf](https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf)) and with its proposal for the EU Battery Regulation (see fn. 5 above).

<sup>7</sup> See Article 28(4) of the draft FIBER.

for collecting waste coming from their own activity, in particular fishing gear, is actually an incentive to leave waste at sea in the first place. Second, such aid may create a market for litter (from fishing or other activities) and crowd out better incentives to reduce, collect and recycle waste.

8. We would like to make several observations on Article 25 of the draft FIBER relating to “Aid to improve energy efficiency and to mitigate the effects of climate change”<sup>8</sup>:
  - We welcome aid for investments aiming at reducing pollution and greenhouse gas emissions. Ideally this article should aim at mitigating climate change, not only the effects of it.
  - Aid for improving energy efficiency of vessels must not increase the vessels fishing capacity. When it does so, in accordance with recital 22 of Regulation (EU) n°2021/1139 of the European Parliament and of the Council of 7 July 2021, *“the increase in fishing capacity of the individual vessel should be compensated by the prior withdrawal of at least the same amount of fishing capacity without public aid (...)”*. This requirement should be included in the FIBER (in Article 25 and in the recitals).
  - Energy efficiency generators using natural gas or hydrogen produced from abated or non-abated fossil fuels (so-called grey and low-carbon hydrogen) should not be eligible to aid, in accordance with the objective to phase out fossil fuel subsidies and the very purpose of Article 25 of the FIBER that is mitigating the effects of climate change.
9. We welcome in principle the regimes of aid for damages caused by natural disasters or adverse weather conditions which can be assimilated to natural disasters, under Articles 44 and 45 of the draft FIBER.

However, it is unclear why large enterprises would be eligible to such aid whereas the principle is that only SMEs are eligible to aid under the FIBER; large enterprises are not eligible to aid to remedy damages caused by protected animals (Article 46); and large enterprises have the means to control and mitigate their damages to a large extent.

It is also important to ensure that operators are not dis-incentivised from investing into mitigation and adaptation measures to minimise the impact of adverse weather occurrences on their activity. As correctly stated by the Commission in draft recital (33), “Fishery and aquaculture are sectors where there is insufficient incentive for individual action to occur, despite the fact that the result of individual action combined would correspond to the common good of all users”. It is therefore important to provide and maintain incentives for those sectors to minimise the impact of future adverse weather events on their activity – the occurrence of which is likely to increase as a result of climate change. Therefore, we recommend to add a condition that the aid beneficiaries must put in place mitigation and adaptation measures. Apart from being in the public interest and in the own interest of the operators and their supply chains (as future losses would be mitigated), this would also lessen the fiscal burden on granting authorities and taxpayers. Such condition is being proposed by the Commission in its draft Agriculture and Forestry Aid Guidelines<sup>9</sup> and there is no clear reason why it should not apply to the fishery and aquaculture sectors as well. However, we recommend to make it a mandatory condition and not simply an encouragement (“endeavour”) for the aid beneficiaries.

<sup>8</sup> The same remarks apply for inland fishing, under Article 28(d) of the draft FIBER.

<sup>9</sup> Draft Agriculture and Forestry Aid Guidelines released for public consultation on 11 January 2022, point (150)(g): “(...) *In case of damage by adverse climatic events which can be assimilated to a natural disaster or by plant pests, if the damage can be linked to climate change, beneficiaries should endeavour to include in the restoration, adaptation measures to climate change, in order to minimise damage and losses produced by similar events in the future.*”

10. In relation to the regime of tax exemptions and reductions for the fisheries and aquaculture sectors: the Commission proposes, in its Explanatory Note, to remove that regime from the FIBER and subject the fisheries and aquaculture sectors to Article 44 GBER instead. This raises a number of concerns:

- We are calling for an end of tax exemptions and reductions for those sectors under Directive 2003/96/EC under revision.
- If the Commission plans on applying Article 44 GBER to the fishery and aquaculture sectors, Article 1(3) GBER excluding the fishery sector from the scope of the GBER with the exception of certain types of aid should be amended accordingly – that was not proposed in the draft GBER subject to public consultation.
- Under the current GBER and under the draft GBER, there is no notification threshold for schemes falling within the scope of Article 44. The current notification threshold in Article 2 of the FIBER<sup>10</sup> should at least be maintained for fisheries and aquaculture.
- The exclusions in Article 1(3) FIBER should be maintained for the fishery and aquaculture sectors, in particular points (g) and (h).
- Article 9(2) GBER requiring the publication of information on schemes in the form of tax advantages for the fishery and aquaculture sectors from the range of 0,03 to 0,5 (in EUR million) should apply as well if the fishery and aquaculture sectors are to be covered by Article 44 GBER.

## Fisheries and Aquaculture Aid Guidelines

11. The change in the structure of the common assessment criteria (Part I, Chapters 1 and 3) to reflect the Commission's new practice and to ensure consistency with other recently revised guidelines does not call for comments. Nevertheless, we would like to make the following remarks on Chapter 1:

- Point (6) of the 2015 Guidelines was useful to determine the scope of the fishery and aquaculture sectors subject to the Guidelines and FIBER. Hence we propose to re-insert it with some amendments.<sup>11</sup> Likewise, point (7) of the 2015 Guidelines could be re-inserted in Chapter 1, in addition to the more detailed section 2.1.3 of the draft Guidelines.

<sup>10</sup> Article 2 FIBER: " This Regulation shall not apply to aid for any project with eligible costs in excess of EUR 2 million, or where the amount of aid exceeds EUR 1 million per beneficiary per year." Under the draft FIBER, Article 3 provides: "This Regulation shall not apply to individual aid for any project with eligible costs in excess of EUR 2 million, or where the gross grant equivalent of the aid exceeds EUR 1 million per beneficiary per year."

<sup>11</sup> We propose to amend point (6) of the 2015 Guidelines as follows:

"Some payments made by Member States under Regulation (EU) No 508/2014[ref. to EMFAF Regulation] do not constitute payments to the fishery and aquaculture sector and fall outside the sector, for example, payments under Chapter ~~VIII~~IV of Title ~~VII~~ of that Regulation, which relates to ~~Integrated Maritime Policy (IMP) measures financed under shared management~~the strengthening of international ocean governance and the enabling of safe, secure, clean and sustainably managed seas and oceans. Further, payments under Chapter ~~III~~IV of Title ~~VII~~ of that Regulation, which relates to ~~interventions that contribute to enabling a sustainable blue economy in coastal, island and inland areas, and to fostering~~ the sustainable development of fisheries and aquaculture areas, in general also fall outside the fishery and aquaculture sector. However, if those payments relate to measures provided for in Chapters I, II, and ~~IV~~III of Title ~~VII~~ of that Regulation, ~~as set out in Article 63(2) of that Regulation~~, they fall within the fishery and aquaculture sector."

- **Emphasising the importance of compliance** of aid measures and aid beneficiaries with the CFP, the EMFAF and Union environmental law is of paramount importance in light of the judgement in case C-594/18P *Austria v. Commission*. Whilst we appreciate that draft section 3.1.3 addresses this issue, it would be desirable to insert a statement in the introductory part of the Guidelines as well, taking inspiration from point (11) of the Climate, Environmental Protection and Energy Aid Guidelines.<sup>12</sup> We propose a wording in footnote.<sup>13</sup>
- We support the listing of the CFP objectives under the new point (5), in particular the last sentence reading *“Overall, in line with the CFP objectives, State aid should not lead to increase in fishing capacity of the fishing fleet, overfishing or displacement of fishing effort that could lead to such overfishing.”* We suggest to **place this sentence in a separate point** to make it more visible for granting authorities and market operators.
- After point (6) of the draft Guidelines, we suggest to **insert a reference to the IUU Regulation as well as to the Marine Strategy Framework Directive**, which are also relevant and must be respected.<sup>14</sup> **UN Sustainable Development Goal 14** is also a relevant objective to include in the Guidelines.
- In point (7), it would be desirable and clearer that the Commission specifies that the European Green Deal objectives that must guide State aid policy and the balancing test **include the preservation and restoration of ecosystems and biodiversity**.
- In November 2021, ClientEarth sent to the Commission additional proposals for amendments to Chapter 1 of the Guidelines (see points (17) to (24) of our proposal), which we reiterate.

12. We welcome the new Section 2.1.3 in principle. This section clarifies the interaction between the EMFAF and State aid rules and is therefore a useful addition to the Guidelines.

13. In point (21), the reference to the Environmental Protection and Energy Aid Guidelines 2014-2020 should be updated with the Climate, Environmental Protection and Energy Aid Guidelines 2022.

14. In point (41), the Commission proposes that *“Member States should rely on the information provided by the applicant for aid where the positive effects of the investment must be described.”* We

<sup>12</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022, C/2022/481, OJ C 80, 18.2.2022, p. 1–89

<sup>13</sup> Our wording proposal is the following: “State aid policy and rules should be entirely consistent with, and actively support Article 37 of the Charter of Fundamental Rights of the European Union<sup>13</sup>, Article 11 of the Treaty<sup>13</sup> and Article 3(3) of the Treaty on the European Union<sup>13</sup>. Systematically controlling that activities (including in the fishery and aquaculture sectors) benefitting from aid comply with all their environmental law obligations is a basic prerequisite for ensuring that aid measures contribute to environmental protection. Aid, granted individually or pursuant to a scheme, to an activity (or undertaking) that does not comply with all its EU environmental law obligations cannot be found compatible with the internal market. When notifying an aid measure or scheme, Member States must provide all relevant justification of compliance of the potential beneficiaries with their EU environmental law obligations. This justification is reviewed by the Commission, which performs a control of the veracity of the check and of the beneficiary’s compliance with environmental obligations, and notably includes extracts of the national register of infringements provided for in Article 93 of the Control Regulation<sup>13</sup> that show that no serious infringements have been registered with regard to the undertaking to which the aid beneficiary belongs for as long as records are to be kept under Article 93(4) of the said Regulation. Breach of EU environmental law by the beneficiary after aid was granted will constitute a misuse of aid and will trigger recovery of the aid.”

<sup>14</sup> Our wording proposal is the following: “Moreover, the use of State aid in the fishery and aquaculture sector must be in line with Council Regulation (EC) No 1005/2008 (‘IUU Regulation’), and in particular with the objectives as stated under its Article 1. The use of State aid in the fishery and aquaculture sector shall also be in line with the objectives of Directive 2008/56/EC (‘Marine Strategy Framework Directive’), as set out under its Article 1, of: “i) *protecting and preserving the marine environment, preventing its deterioration or, where practicable, restoring marine ecosystems in areas where they have been adversely affected; and ii) preventing and reducing inputs in the marine environment, with a view to phasing out pollution, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.*”

recommend to strengthen this provision by requiring Member States to perform verifications and the Commission to control that the aid does have a positive effect – not relying only on the operator's statements.

15. Point (44) indicates that “*in duly justified other cases*”, operating aid or aid to reach mandatory Union standards could be found compatible with the internal market. This phrase should be deleted. Indeed, this provision is a derogation to the general principle that operating aid and aid to reach mandatory Union standard are prohibited; therefore, the grounds for exception must be limited and the same for all market operators to avoid additional distortions of competition, as well as legal certainty. Therefore, point (44) should allow those types of aid **only when exceptions are provided for in Union legislation or in the Guidelines**; not “*in duly justified other cases*”.
16. ClientEarth welcomes the new point (57). Point (58) should add that in respect of ensuring compliance with the CFP: “*To this end, Member States considering awarding State aid to the fisheries and aquaculture sector need to ensure that their national registers of infringements do not record any judged or sanctioned serious infringement by an undertaking to which the aid beneficiary belongs for as long as records are kept by the Member State in question (Article 93(4) Control Regulation*” (our wording proposal). Moreover, point (58) should provide that the aid measure and aid beneficiary also must comply with the EMFAF and Union environmental law. Similar to point (11) of the Climate, Environmental protection and Energy Aid Guidelines 2022, point (58) should also add that “*Member State authorities should also ensure that the public concerned has the opportunity to be consulted in decision-making on aids. Finally individuals and organisations should be given the opportunity to challenge the aid or measures implementing the aid before national courts where they can adduce evidence that the Union environmental laws are not complied with.*”
17. Points (61) and (71) to (73) leave the possibility to demonstrate that no other less distortive policy instrument exists, thus to potentially seek approval even for ineligible measures under the EMFAF. ClientEarth is strongly opposed to such possibility since the measures prohibited under the EMFAF are extremely damaging for the marine environment. states that some operations ineligible to EU funding may be eligible to aid.
18. In addition to points (129) and (130), we recommend to add the following safeguards:
  - The grant of aid must also be considered incompatible if fishers have exceeded the fishing opportunities allocated by Member States in compliance with Articles 16 and 17 of the CFP Basic Regulation.
  - Other than as set out in the following two Points, State aid to finance the construction of new fishing vessels shall be considered incompatible with the internal market.
  - Any aid for fishing vessels, other than aid to finance the construction of new fishing vessels that do not use fossil fuel can only be granted if the fishing vessels are subject, for at least five years after receiving the aid, to regular inspections to control that the vessels comply with the CFP rules and that they do not fish over capacity (i.e. quotas or efforts limits). In any event, aid for fishing vessels can only be granted upon condition that vessels are not transferred or reflagged outside the Union during at least the five years from the final payment of the aid.
  - Aid for innovative fishing vessels that use batteries as energy storage technology can only be granted if the batteries fulfil sustainability and transparency requirements, in compliance with the requirements



under Chapters II and III of the EU Battery Regulation,<sup>15</sup> and if the batteries can be re-used, re-purposed or recycled (following the waste hierarchy principles).<sup>16</sup>

- Aid to pay fishing vessels' energy costs must be considered incompatible with the internal market – as it prevents aid beneficiaries from being exposed to the cost of their energy consumption and thus dis-incentivises them from reducing it. In any event, in compliance with the European Green Deal, no State aid for fossil fuels may be considered compatible with the internal market.

19. Similar to what we propose for the FIBER, Part II, Section 1.2 relating to aid to remedy damages caused by weather conditions or climatic events, should require operators to put in place mitigation and adaptation measures to prevent and limit the impact of such future events – in the public interest, in their own interest and in order to minimise the fiscal burden on granting authorities and taxpayers over the longer term. This was proposed by the Commission in the draft revised Agriculture and Forestry Aid Guidelines<sup>17</sup> and could also apply to the fishery and aquaculture sectors.

20. In Part II, Section 2.2 of the draft Guidelines, the Commission proposes to maintain the regime of aid for the renewal of fleet in outermost regions with some amendments, whereas *“the construction, acquisition or importation of fishing vessels, unless otherwise provided for in Article 17 [first acquisition of a fishing vessel]”* are ineligible to funding under the EMFAF.<sup>18</sup> Consistency with the EMFAF should be ensured at all time and Member States should not be able to circumvent the legislator's intention not to contribute to increasing fishing capacity with EU funding, by granting State aid from national resources instead. Such type of aid should therefore be deemed incompatible with the internal market.

The possibility to grant aid for the acquisition of vessels above 24 meters, as proposed under point (203), is particularly inconsistent with the EMFAF objectives and rules. Article 17 EMFAF, which is an exception to Article 13 (c) and enables the funding of the acquisition of first vessels by young fishers, prohibits funding of vessels of more than 24 metres. Article 18 relating to the replacement or modernisation of engines also specifies that only vessels of no more than 24 metres are eligible to funding. The possibility to grant any aid to vessels longer than 24 metres should therefore be prohibited under point (203) of the draft Guidelines and in any other section.

21. As mentioned above under the section on the FIBER, aid to start up support for young fishermen should indeed be subject to State aid scrutiny. Curiously, whilst the Commission removed this regime from the draft FIBER, it did not include it in the Guidelines – adding a section in the Guidelines would be appropriate to avoid the legal uncertainty associated with an assessment under Article 107(3)(c) TFEU directly.<sup>19</sup>

As for the regime of compatibility, we would like to highlight the following: in accordance with Article 17 Regulation (EU) 2021/1139, aid for the acquisition of a first vessel by young fishers should be authorised only if it concerns a fishing vessel which is not longer than 24 meters in overall length and if the other conditions under Article 17 are respected. We also remind Regulation (EU) 2021/1139,

<sup>15</sup> The EU Battery Regulation has not been adopted yet. Chapter II and III of the Commission's proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 {SWD(2020) 420 final} - {SWD(2020) 334 final} - {SWD(2020) 335 final} establishes requirements on sustainability, safety, labelling and information to allow the placing on the market or putting into service of batteries.

<sup>16</sup> The phase-out of non-rechargeable (or, otherwise, not sustainable) batteries is indeed coherent with the Commission new Circular Economy Action Plan ([https://ec.europa.eu/environment/circular-economy/pdf/new\\_circular\\_economy\\_action\\_plan.pdf](https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf)) and with its proposal for the EU Battery Regulation (see fn.5 above).

<sup>17</sup> These revised guidelines are under public consultation until 13 March 2022.

<sup>18</sup> Article 13(c) of the EMFAF.

<sup>19</sup> See point 13 of the draft Guidelines reminding that if an aid measure is not included in the scope of the Guidelines, it would be assessed under Article 107(3)(c) TFEU.



recital 24, providing that *“It is necessary to establish specific eligibility rules for certain other investments supported by the EMFAF in the fishing fleet, so as to prevent those investments from contributing to overcapacity or overfishing. In particular, support for the first acquisition of a second-hand vessel by a young fisher and for the replacement or the modernisation of the engine of a fishing vessel should also be subject to conditions, including that the vessel belongs to a fleet segment which is in balance with the fishing opportunities available to that segment and that the new or modernised engine does not have more power in kilowatts (kW) than that of the engine being replaced.”* These conditions should be integrated into the Guidelines and all evidence that the conditions are met should be required in the notification form.<sup>20</sup>

22. We understand that aid for the improvement of working and safety conditions would be covered by the FIBER. We refer to our observations in this respect, notably the necessity to include **training** aid within the list of eligible costs. We also stress that when the amount of aid would exceed the FIBER threshold, the Commission should authorise this type of aid under the Guidelines, given their essential character for the fishers.
23. We also understand that rules for aid for the temporary and permanent cessation of fishing activities would be covered by the FIBER. We refer to our observations in this respect, notably our strong opposition to aid for any permanent and definitive cessation of activities and for full conversion. Aid must be limited, under strict conditions, to temporary cessation of activity, or diversification of activities.

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<sup>20</sup> For this purpose, in Regulation (EC) No 794/2004, Part III.14, under Section 18 on “Aid for other measures”, a new item 18.3 should be added, as follows: *“In the case of aid for the acquisition of a first fishing vessel for young fishers, please provide all evidence demonstrating that the acquisition concerns a fishing vessel which is not longer than 24 meters in overall length and complies with all the other conditions under Article 16(3) of Regulation (EU) No 2021/1139.”*

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