

# NOTE FROM THE BELGIAN AUTHORITIES TO THE EUROPEAN COMMISSION DG COMP - Unit H6

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Subject: Proposals from the Belgian authorities in the context of the forthcoming revision of the guidelines on State aid in the fisheries and aquaculture sector and the Regulation exempting aid to enterprises active in the production, processing and marketing of fishery and aquaculture products and the de minimis Regulation.

In this context, this note makes proposals:

- on the guidelines (I);
- de minimis (II)
- on the draft Fishery block exemption regulation on aid (FIBER) (III)

## **I. Guidelines**

Belgian authorities would like to know if doubling the (fuel) costs, which is a major cost factor in fishing vessels, can be viewed as a "duly justified case" (point 44) for the sake of a war. Or if it's possible to provide something like this directly as an exception in the guidelines (or perhaps even better in the new FIBER), by clearly stating which event may be considered among others as a "duly justified" case, or possibly by a construction like EMFAF Regulation e.g. by adding "in case of exceptional events causing a significant disturbance of markets if the Commission has established an exceptional event by implementing decision".

Or perhaps an even better solution would be, to regulate this in the new FIBER by inserting a new article for which inspiration can be drawn from art 26 EMFAF (Regl. (EU), Nr 2021/1139) (see also art . 39 and Annex III of the EMFAF Regulation, ninth line, which justifies 100% compensation of the costs). Then one would have an easily manageable and conclusive construction: when an exceptional significant disturbance of (supply or sales) markets occurs, this is followed by a decision of the Commission to recognize this as a "duly justified" case (the decision may also contain a number of rules regarding the calculation of the damage or additional costs) and on this basis the new FIBER would then allow for 100% compensation from state resources, regardless of where the state aid comes from.

## **II. Draft de minimis**

Considering that EU regulations governing aids (EMFF, EMFAF, state aids in fishery sector) are often published after the date of entering into force of the concerned regulations, that member states need time to formulate and vote their own legal basis on their territory, that the EMFAF regulation (Regulation (UE) 2021/1139) and the CPR (Regulation (UE) 2021/10160) allow the payment of aids until 31/12/2029 and that regulations of EMFF/EMFAF and state aids are linked, Belgian authorities propose to extend the period of validity of the new de

minimis regulation in fisheries, the new FIBER and the new guidelines on state aid in fisheries until 31/12/2029 (instead of 31/12/2027).

If a new regulation would be needed before that date, the one which is valid at that moment could be repealed.

We have no comment on the change of the maximum amount of aids for Belgium (from 11 300 000 to 24 540 750 EUR)

### **III. Draft State aid block exemption regulation in the fishery and aquaculture sector (FIBER) and repealing Commission Regulation (EU) No 1388/2014**

#### **1. General comment**

EMFF, EMFAF and FIBER are all suffering from a clear identification to which processing companies those regulations are referring, leading to potential conflict between them. For example the application of art. 14 and 42 of the proposal for a new FIBER Regulation. Many processing companies (a majority in number) process fishery products and at the same time other products. How can Belgian authorities know which block exemption regulation (FIBER or GBER) is applicable for those companies processing multiple products.

How to know which company can be supported by FIBER or by general exemption (regulation 651/2014 currently)? It would be helpful to fix e.g. that companies processing 50% or more (in € ? or in volume ?) fishery products are covered by FIBER, if less they are covered by general block exemption regulation (GBER) (all sectors).

#### **2. Suggestions**

Belgian authorities suggest to

- include a pertinent improvement that has been included in the EMFEAF regulation : art. 26 § 2 related to *the case of exceptional events causing a significant disruption of markets*, and allowing *compensation to operators of the fishery and aquaculture sector for their income foregone or additional costs*.

It sounds pertinent to include a similar possibility in FIBER and to make it subject to the same condition : *“eligible only if the Commission has established, by means of an implementing decision, the occurrence of an exceptional event. Expenditure shall be eligible only during the duration set out in that implementing decision”*.

Such possibility (for all fishery sector, incl. Aquaculture, processing, marketing), to be activated on a case by case basis by COM, looks better and easier to be organised and more transparent and easier to implement than a temporary state aid framework. We suppose it could also allow to speed up such aid in case of an exceptional event which causes a serious disturbance of (supply or sales) markets, like we recently have had covid, war in Ukraine, ... and possible but even probable future events...

- Such additional case could find its place in chapter III, section 4, of FIBER.

#### **3. - Tax exemption**

The explanatory note states that the exemptions under Article 45 Tax exemptions and reductions in accordance with Directive 2003/96/EC (on tax exemptions on fuels, which are

exempted from notification under Article 45) are not necessary in the FIBER, because you can also use Article 44 of Regulation 651/2014 for this.

Article 44 is part of section 7 of the Regulation 651/2014. On an interpretation question, we have been told that we could not provide support under that section for aid granted in the fishery and aquaculture sector.

Belgian authorities also believe that the two articles don't have the same content. Art 44 GBER deals with environmental taxation of fuels, Art 45 FIBER deals with fuel taxation in general.

#### **4. Art. 1, §3 (d), art. 2 (10), Art. 44, 45**

Belgian authorities welcome the fact that droughts (between others) are now fully considered adverse weather conditions which can be assimilated to a natural disaster, and which can lead to aids to undertakings in difficulty still considered compatible with the internal market in application of Articles 107 and 108 of the Treaty.

With climate change, events of droughts are becoming more and more severe and with an increasing rate of appearance. Successive droughts in Wallonia have showed that those events can induce severe damage and lost in aquaculture, putting some undertakings in difficulty. We recall that water is THE element that allow aquaculture activities and hence the lack of water is the worst situation.

Droughts occur during several months and lead to progressive mortality in the fish stock, during a period exceeding 6 months, especially when drought is followed by sanitary problems, which is common as many fishes are globally in bad health and hence more sensitive to sanitary attack. We suggest to extend the period during which the damage can be considered to calculate the appropriate aid, or to change the wording 'occurrence' which can induce some problems of interpretation or of practical identification.

The most pertinent would be first to define 'occurrence' or to replace it by the 'start' or the 'end'. Practically, the Belgian authorities suggest that the aid should allow to cover damage minimum 6 months after the end of the drought.

As art.44 and 45 are similar, wouldn't it be more practical to include "adverse weather condition which can be assimilated to a natural disaster" in the definition of "natural disaster" (art. 2 (10)) ?

#### **5. Article 28: Aid to inland fishing and inland aquatic fauna and flora**

Belgian authorities regret that compatible aids having a positive impact on the Environment and the biodiversity is limited to areas linked to fishery activity. Similar ones are not foreseen in section 2.

First, this is not in line with the European strategies/policies putting environment as a priority, whatever the economic sector. Secondly, it must be recalled that other areas, without fishery activity, could be of great interest also for fishery, allowing some species – of economic interest for fishery (and/or aquaculture) – to better reproduce or grow. The compatible aids should not be limited to waters with fishery activities. They should be extended to internal waters and, at least, integrate also areas of interest/activities for aquaculture (to increase the compatible areas of such aids).

In art. 28, §1 and 2 should integrate ALSO objectives and investments having linked to aquatic fauna and flora without a link to fishery.

In §6, the terms ‘without prejudice to Article 24(2), point (e), of this Regulation ‘ should be erased.

## **6. Article 29**

Belgian authorities regret to see here that aquaculture is again suffering from limitative conditions that are not imposed in the fishery or processing sectors. These are coming from the (becoming soon ‘old’) regulation of EMFF and are no more present in the EMFAF regulation. There is no pertinent reason to impose those conditions to aquaculture only. The conditions imposed to entrepreneurs entering the sector, as well as those in § 2 (limiting all aids to the demonstration of market prospects) are representative of unjustified distortion of rules between fishery (or processing) and aquaculture. Why should this apply to aquaculture only ? Why is the condition fixed in art. 29, §2, pertinent, is not applicable also for aid in the fishery sector?

Those conditions are applicable for the all section 2 while some compatible aids of that section are of common interest, outside the direct economic interest of the producer (animal well fare, public health, environmental services, organic production, etc).

If the aid is directly related to the installation of a new producer, to check the economic viability of the production is understandable but not for the aid having other objectives.

Belgian authorities ask the Commission either to erase the conditions related to new entrepreneurs entering the sector as well as the paragraph 2, both not requested in fishery nor processing, either to limit those condition to article 35 only.

## **7. Article 41: Aid for marketing measures**

### **• Article 41, §1, (b)**

it should be specified that the conditions (i) to (vii) are not cumulative, in opposition to conditions (a) and (b)

In the Dutch translation this is specified.

## **8. Article 46**

Belgian authorities welcome this new article for the damage caused by protected species. We invite the Commission to consider including the aid in investments especially designated to prevent damage caused by protected species.

This has a an interest for the biodiversity as well as an economic justification (reducing the aid for damage on the long term).

## **9. Article 49**

Considering that regulations governing aids (EMFF, EMFAF, state aids in fishery sector) are most of the time voted after the date of entering into force of the concerned regulations, that MS need time to formulate and vote their own legal basis on their territory, that the EMFAF regulation (R (UE) 2021/1139) and the CPR (R (UE) 2021/10160) allow the payment of aids

until 31/12/2029 and that regulations of EMFF/EMFAF and state aids are linked, we propose to extend the period of validity of the regulation until 31/12/2029 (instead of 31/12/2027). If a new regulation would be needed before that date, it could be abrogated.

#### **10. Annex 2**

The annex refers here and there to FEAMP (in French at least) while it should refer to FEAMPA.

It would be appropriate to foresee in that annex the possibility to communicate that the aid is related to adverse weather condition which can be assimilated to a natural disaster (as such precision is already foreseen for natural disasters)

#### **11. Annex 4**

As already included in the similar annex in the EMFAF regulation, it could be more efficient to include in annex 3 that all compensations for loss of income and/or additional costs can be supported with a 100% rate, instead of fixing that rate in articles 44 to 46.