

Explanatory note accompanying the proposals for the revision of the State aid instruments applicable in the fishery and aquaculture sector

The purpose of this note is to clarify the objectives and scope of the proposals to revise the State aid instruments applicable in the fishery and aquaculture sector, which are meant to apply as of 1 January 2023:

- ▶ draft Guidelines for State aid in the fishery and aquaculture sector ('draft guidelines');
- ▶ draft Commission Regulation declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union and repealing Commission Regulation (EU) No 1388/2014 ('draft block exemption regulation'); and
- ▶ draft Commission Regulation amending Regulation (EU) No 717/2014 as regards its period of application and the maximum cumulative amounts of *de minimis* aid ('draft *de minimis* amending regulation').

This note accompanies the public consultation on those instruments, which will be open until 13 March 2022.

Citizens, organisations and public authorities are invited to provide their views on the Commission's proposals. In addition to the consultation, two meetings with Member States will be held to gather their feedback on the two above mentioned Regulations, as well.

The consultation on the Guidelines will be launched based on the English version of the draft. Translations into all EU languages will be added gradually to the website upon their completion. The consultation on the draft block exemption regulation and the amendments to the draft *de minimis* amending regulation is launched in all EU languages¹.

Stakeholders are invited to indicate which of the three instruments their comments concern.

Stakeholders are invited to provide their comments in electronic format and should clearly indicate if their reply is confidential. In the latter case, a non-confidential version of the reply, which can be published on the website of DG Competition, should also be provided.

1. Context

Public financing can facilitate the economic development of the different sectors of the economy. As concerns the fishery and aquaculture sector, State aid has been embedded in the broader Common Fisheries Policy ('CFP')². Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund ('EMFAF')³, which

¹ With the exception of Gaelic for this public consultation. However, the forthcoming State aid instruments will be available in Gaelic as well.

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, OJ L 354, 28.12.2013, p 22.

³ 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 ('Regulation (EU) 2021/1139').

applies as of 1 January 2021, has introduced new rules to the CFP. In short, State aid rules in the fishery and aquaculture sector should be by and large aligned with the Fund-specific rules⁴.

As a general rule, Member States have to notify any State aid they wish to grant. Following such a notification, the Commission assesses the aid and then decides whether it can authorise it. For this purpose, the Commission sets out its decision policy in guidelines. However, the Commission may exempt from this notification requirement types of aid measures with which it has gathered sufficient experience (laid down in block exemption regulations), or exempt measures from the scope of EU State aid control where the amount is so low that there is no risk of distortion of competition (laid down in *de minimis* regulations).

The Guidelines for the examination of State aid to the fishery and aquaculture sector currently in force⁵ (the ‘current guidelines’) set out the requirements and criteria to identify aid in the fishery and aquaculture sector that the Commission will authorise when notified by the Member States. The current guidelines were adopted in 2015 and were amended in 2018. They do not include a sunset clause and remain valid. However, the Commission may decide to review or change them at any time, if this is necessary for reasons related to competition policy, other Union policies or for any other justified reason.

Commission Regulation (EU) No 1388/2014 of 16 December 2014 (‘Regulation (EU) No 1388/2014’)⁶, i.e. the current block exemption regulation, applicable in the fishery and aquaculture sector, identifies a number of aid categories regarded as compatible with the internal market, which had been systematically approved by the Commission, and for which no prior notification to the Commission is required anymore. That Regulation relies on the requirements and criteria laid down by Regulation (EU) No 508/2014 to determine whether a given measure can be block exempted as administrative simplification. Regulation (EU) No 1388/2014 entered into force on 1 January 2015 and is currently set to expire on 31 December 2022.

Finally, Commission Regulation (EU) No 717/2014 of 27 June 2014 (‘Regulation (EU) No 717/2014’)⁷, i.e. the current *de minimis* regulation in the fishery and aquaculture sector, identifies the ceiling below which Article 107(1) of the Treaty can be considered not to apply, provided that the aid fulfils certain conditions. In such a case, a measure is not subject to the notification requirement. Regulation (EU) No 717/2014 entered into force on 1 July 2014 and, following a 2020 amendment, it is set to expire on 31 December 2022.

⁴ Regulation (EU) 2021/1139 and Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L 149, 20.5.2014, p. 1 (‘Regulation (EU) No 508/2014’).

⁵ OJ C 217, 2.7.2015, p. 1, as amended by OJ C 422, 22.11.2018, p. 1.

⁶ Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37, as amended by OJ L 414, 9.12.2020, p. 15.

⁷ OJ L 190, 28.6.2015, p. 45, as amended by OJ L 414, 9.12.2020, p. 15.

For the purpose of the revision of these State aid instruments, the Commission collected data through a public consultation⁸ in 2019. Based on the results of that consultation, other external data and in-house experience, the Commission conducted an evaluation of the current instruments. As already announced in the Inception Impact Assessment published by the Commission in May 2019, the Commission will consult the Advisory Committee on the draft State aid instruments to gather their feedback. The information gathered through the public consultation and the Advisory Committee will feed into the Impact Assessment on which the revision will be based.

This note provides an overview of the main changes that the Commission considers at this stage of the revision process. These concern aligning the State aid rules with the EMFAF, which in turn relates to the priorities of the Commission, in particular to the Green Deal. The sectoral review will follow the horizontal principles of State aid control. Overall, the proposed rules streamline and harmonise the sector specific State aid rules and, in addition, provide for administrative simplification allowing new types of aid to be block exempted.

The text of the draft instruments proposed is not definitive and will be reassessed in light of the feedback and evidence received from the present public consultation.

2. Proposed changes in the draft block exemption regulation

It is proposed to add two new measures to the draft block exemption regulation where the Commission can draw on experience from its case handling practice, not only in the fishery and aquaculture sector, but also in the agricultural sector where comparable issues have arisen. The following aid categories should be integrated into the draft block exemption regulation: (i) aid to make good the damage caused by adverse weather conditions and (ii) aid to compensate for the damage caused by protected animals.

The draft block exemption regulation no longer contains the measure for aid to start up support for young fishermen. While such support remains fully possible under the EMFAF rules, under conditions that are more favourable compared to Regulation (EU) No 508/2014, the Commission considers that this measure, due to its potential capacity enhancing effects, should in the future become subject to prior State aid scrutiny.

For alignment with State aid rules applicable to other economic sectors, the Commission also considers that block exempting tax exemptions and reductions in accordance with Directive 2003/96/EC is most appropriately addressed under the conditions laid down in Article 44 of the General Block Exemption Regulation.⁹ Therefore, it is proposed not to maintain such a provision separately in the fisheries block exemption regulation.

⁸ A public consultation for the review of the State aid instruments in the fisheries and aquaculture sector was held earlier from 28 June 2019 to 31 October 2019: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11543-De-minimis-aid-in-the-fishery-and-aquaculture-sector/public-consultation_en.

⁹ European Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, O.J. L 187, 26.6.2014, p 1; see also the public consultation until 8.12.2021: https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en.

3. Proposed changes in the text of the draft guidelines

a) Aid to compensate for the damage caused by protected animals

In addition to the draft block exemption regulation, the draft guidelines will also allow Member States to clear aid to compensate for the damage caused by protected animals, where aid measures do not benefit from the block exemption.

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

The current guidelines already provided for the possibility to clear aid for the costs of prevention, control and eradication of animal diseases in aquaculture. Under the draft guidelines, it is proposed to include the following costs related to (i) emerging diseases and (ii) infestation by invasive alien species of Union or Member State concern. This inclusion is made with a view to allowing Member States to address situations that were not previously covered.

c) Aid for the renewal of the fishing fleet in outermost regions

Aid for the renewal of the fishing fleet in outermost regions was introduced in 2018 through an amendment of the current guidelines. The draft guidelines continue to provide a legal basis for assessing the compatibility of such aid measures and maintain the pre-existing approach. This latter is based on the need for Member States to demonstrate, through the most recent national report prepared in accordance with Article 22(2) and (3) of Regulation (EU) No 1380/2013, that there is a balance between fishing capacity and fishing opportunities in the fleet segment of the outermost region to which the new vessel will belong. A limited set of modifications seems to be necessary to further clarify the requirements and criteria and the respective procedures.

d) Common assessment principles

The common assessment principles, introduced through the 2014 State aid modernisation initiative (“SAM”), need to be revised in the light of the judgement in case T-356/15 Austria v Commission (the Hinkley Point C judgement). In that judgement, the Court provided an important interpretation of Article 107(3)(c) TFEU. The proposed structural change reflects this interpretation.

The revision of the common assessment principles is subject to an overarching approach, common to all recently revised State aid instruments. The proposed changes are consistent with these other State aid instruments, while maintaining certain distinctions, which cater for the specificities of fishery and aquaculture sector.

4. Proposed changes in the draft *de minimis* amending regulation

The draft *de minimis* amending regulation makes a limited set of modifications to the existing *de minimis* regime in the fishery and aquaculture sector.

As noted above, Regulation (EU) No 717/2014 is currently set to expire on 31 December 2022. It is therefore proposed to extend its expiration until 31 December 2027. This extension would be congruent with the duration of the programming period laid down by Regulation (EU) 2021/1139 for the EMFAF,

as well as with the *de minimis* regime in the agricultural sector, which was also extended until 31 December 2027 by Commission Regulation (EU) 2019/316 of 21 February 2019¹⁰.

The maximum cumulative amounts of *de minimis* aid that can be allocated by each Member State are set out in Annex to Regulation (EU) No 717/2014 and are based on 2011 data. It is considered to be appropriate to carry out a technical update of those maximum cumulative amounts based on more recent sectoral data to reflect the evolution of the sector. For this reason, the maximum cumulative amounts contained in Annex to the draft *de minimis* amending regulation are based on a three-year average of the annual turnover of catching, processing and aquaculture activities in each Member State, obtained by excluding the highest and lowest entries across a five-year period, i.e. 2014-2018.

The draft *de minimis* amending regulation also clarifies that Regulation (EU) No 717/2014 will not cover aid to the temporary or permanent cessation of fishing activities, unless specifically provided for in Regulation (EU) 2021/1139.

¹⁰ Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, OJ L 51I , 22.2.2019, p. 1.