

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

## COMMUNICATION FROM THE COMMISSION

**Guidelines for the examination of State aid to the fishery and aquaculture sector**

(2015/C 217/01)

## 1. INTRODUCTION

- (1) Article 107(1) of the Treaty on the Functioning of the European Union ('the Treaty') stipulates that 'Save as otherwise provided in the Treaties, 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, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (2) Article 107(2) of the Treaty lists types of aid that are compatible with the internal market, including aid to make good the damage caused by natural disasters or exceptional occurrences referred to in point (b) of paragraph 2 of that Article. Article 107(3) of the Treaty enumerates types of aid that may be considered to be compatible with the internal market, including aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest referred to in point (c) of paragraph 3 of that Article.
- (3) Under Article 108(1) and (2) of the Treaty the Commission, in cooperation with the Member States, has to keep under constant review all systems of aid existing in the Member States. Under Article 108(3) of the Treaty each Member State has to inform the Commission of any plans to grant or alter aid. Detailed procedural rules for the application of Article 108 of the Treaty are set out in Council Regulation (EC) No 659/1999 <sup>(1)</sup> and Commission Regulation (EC) No 794/2004 <sup>(2)</sup>.
- (4) Article 42 of the Treaty stipulates that the provisions of the Treaty relating to the rules on competition, which include those on State aid, apply to production of and trade in agricultural products, which include products of the fishery and aquaculture sector, to the extent determined by the European Parliament and the Council. The extent to which provisions of the Treaty 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 <sup>(3)</sup>, which establishes the European Maritime and Fisheries Fund (EMFF).
- (5) Article 8(1) of Regulation (EU) No 508/2014 sets out that Articles 107, 108 and 109 of the Treaty apply to aid granted by the Member States to the fishery and aquaculture sector. Article 8(2) of that Regulation provides for an exception to this general rule and foresees that Articles 107, 108 and 109 of the Treaty do not apply to payments to the fishery and aquaculture sector made by Member States pursuant to and in conformity with that Regulation. However, under Article 8(3) of that Regulation, the provisions of the Treaty on State aid apply, if national provisions set up public financing as regards the fishery and aquaculture sector that goes beyond the provisions of that Regulation. In that case, the State aid rules apply to the public financing as a whole.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

<sup>(2)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

<sup>(3)</sup> 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).

- (6) Some payments made by Member States under Regulation (EU) No 508/2014 do not constitute payments to the fishery and aquaculture sector and fall outside the sector, for example, payments under Chapter VIII of Title V of that Regulation, which relates to Integrated Maritime Policy (IMP) measures financed under shared management. Further, payments under Chapter III of Title V of that Regulation, which relates to 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 of Title V of that Regulation, as set out in Article 63(2) of that Regulation, they fall within the fishery and aquaculture sector.
- (7) Payments under Regulation (EU) 508/2014 that fall outside the fishery and aquaculture sector are subject to the State aid rules of the Treaty. Where those payments constitute State aid, they should be assessed under the relevant State aid instruments. In that case, these Guidelines, Commission Regulation (EU) No 1388/2014<sup>(1)</sup>, and Commission Regulation (EU) No 717/2014<sup>(2)</sup> do not apply.
- (8) These Guidelines set out the principles that the Commission will apply when assessing whether aid to the fishery and aquaculture sector can be considered compatible with the internal market under Article 107(2) or Article 107(3) of the Treaty.
- (9) State aid to the fishery and aquaculture sector is embedded within the broader framework of the Common Fisheries Policy (CFP). Within this policy the Union provides financial support to the fishery and aquaculture sector through the EMFF. The social and economic impact of public support is the same, irrespective of whether it is (even partly) financed by the Union or by a Member State alone. The Commission therefore considers that there should be consistency and coherence between its policy of State aid control and the support which is granted under the CFP. Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP. When the Commission applies and interprets the rules of these Guidelines, it therefore takes the rules of the CFP into consideration.
- (10) The CFP, the objectives of which are set out in Article 2 of Regulation (EU) No 1380/2013 of the European Parliament and the Council<sup>(3)</sup>, aims, amongst others, at ensuring that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.
- (11) Under Article 5 of Regulation (EU) No 508/2014 the objectives of the EMFF are to promote competitive, environmentally sustainable, economically viable and socially responsible fisheries and aquaculture, to foster the implementation of the CFP, to promote a balanced and inclusive territorial development of fisheries and aquaculture areas, as well as to foster the development and implementation of the Union's IMP in a manner complementary to cohesion policy and to the CFP. Overall, the pursuit of those objectives is not to result in an increase in fishing capacity.
- (12) The EMFF provides financial support to various specific themes and areas identified in Regulation (EU) No 508/2014. Measures supported by the EMFF are implemented on the basis of either direct or shared management principles.
- (13) In its communication on EU State Aid Modernisation (SAM) of 8 May 2012 (Communication on SAM)<sup>(4)</sup> the Commission announced three broad objectives of the modernisation of State aid control: (a) to foster sustainable, smart and inclusive growth in a competitive internal market; (b) 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 (c) to streamline the rules and provide for faster decisions.

<sup>(1)</sup> 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).

<sup>(2)</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

<sup>(3)</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).

<sup>(4)</sup> Communication of 8 May 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), COM(2012) 209 final.

- (14) In particular, the Commission called for a common approach to the revision of the different guidelines and frameworks with a view to strengthening the internal market, promoting more effectiveness in public spending through a better contribution of State aid to the objectives of common interest, greater scrutiny of the incentive effect, limiting the aid to the minimum, and avoiding the potential negative effects of the aid on competition and trade. The principles and conditions set out in these Guidelines are based on the objectives established in the Communication on SAM.

## 2. SCOPE, DUTY TO NOTIFY AND DEFINITIONS

### 2.1. Scope

- (15) These Guidelines apply to all aid granted to the fishery and aquaculture sector. They apply to aid schemes and to individual aid.
- (16) These Guidelines apply to the components of regional aid that relate to the fishery and aquaculture sector<sup>(1)</sup>. They also apply to all other aid that is granted to the fishery and aquaculture sector within the framework of European Structural and Investment Funds (ESI Funds) other than the EMFF.
- (17) These Guidelines do not apply to aid granted as additional financing for the implementation of the compensation plans referred to in Article 72 of Regulation (EU) No 508/2014. Such aid is approved as part of those plans in accordance with Article 73 of that Regulation.

### 2.2. Duty to notify

- (18) The Commission reminds each Member State of its duty to notify any plans to grant new aid, as provided for in Article 108(3) of the Treaty and Article 2 of Regulation (EC) No 659/1999.
- (19) A Member State is, however, not obliged to notify to the Commission:
- (a) aid complying with one of the Regulations on group exemptions adopted on the basis of Article 1 of Council Regulation (EC) No 994/98<sup>(2)</sup>, if they apply to the fishery and aquaculture sector, in particular:
- i. aid complying with Regulation (EU) No 1388/2014; and
  - ii. training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, and aid for disadvantaged workers and workers with disabilities complying with Commission Regulation (EU) No 651/2014<sup>(3)</sup>;
- (b) *de minimis* aid complying with Regulation (EU) No 717/2014.
- (20) The Commission reminds each Member State that, when the system of financing of an aid measure, for example, by parafiscal levies, forms an integral part of the aid measure, it should also be notified<sup>(4)</sup>.
- (21) The Commission reminds the Member States that aid granted as additional financing for the implementation of the compensation plans referred to in Article 72 of Regulation (EU) No 508/2014 must be notified to the Commission as part of the compensation plans. Under Article 73 of that Regulation State aid thus notified will be regarded as notified within the meaning of the first sentence of Article 108(3) of the Treaty.

### 2.3. Definitions

- (22) For the purposes of these Guidelines, the following definitions apply:
- (a) 'aid' means any measure fulfilling the criteria laid down in Article 107(1) of the Treaty;
- (b) 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid may be granted to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

<sup>(1)</sup> Guidelines on regional State Aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1). Those guidelines do not apply to the fishery and aquaculture sector.

<sup>(2)</sup> Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

<sup>(3)</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).

<sup>(4)</sup> Judgment of the General Court of 16 October 2013, *Télévision française 1 (TF1) v European Commission*, T-275/11, ECLI:EU:T:2013:535, paragraphs 41-44.

- (c) '*ad hoc* aid' means aid not granted on the basis of a scheme;
- (d) 'individual aid' means *ad hoc* aid and awards of aid to individual beneficiaries on the basis of an aid scheme;
- (e) 'date of granting the aid' means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime;
- (f) 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;
- (g) 'fishery and aquaculture sector' means the sector of the economy which comprises all activities of production, processing, and marketing of fishery or aquaculture products;
- (h) 'fishery and aquaculture products' means the products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and the Council <sup>(1)</sup>;
- (i) 'SMEs' or 'small and medium-sized enterprises' means undertakings fulfilling the criteria set out in Annex I to Regulation (EU) No 1388/2014;
- (j) 'large undertaking' means any undertaking not fulfilling the criteria set out in Annex I to Regulation (EU) No 1388/2014;
- (k) 'outermost regions' means the regions referred to in Article 349 of the Treaty. Under European Council Decision 2010/718/EU <sup>(2)</sup>, Saint-Barthélemy ceased to be an outermost region from 1 January 2012 on. Under European Council Decision 2012/419/EU <sup>(3)</sup>, Mayotte became an outermost region on 1 January 2014;
- (l) 'operating aid' means aid that is aimed at or has the effect of increasing the business liquidity of an undertaking, reducing its production costs, or improving its income, in particular aid that is calculated solely on the basis of the quantity produced or marketed, product prices, units produced or the means of production.

### 3. PRINCIPLES

#### 3.1. Common assessment principles

- (23) To assess whether an aid measure notified to the Commission can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive impact of the aid on an objective of common interest exceeds its potential negative effects on trade and competition.
- (24) The Communication on SAM called for the identification and definition of common principles applicable to the assessment of compatibility of all the aid measures carried out by the Commission. Thus, the Commission will consider an aid measure compatible with the internal market only if it complies with each of the following principles:
  - (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 107(3) of the Treaty (Section 3.3);
  - (b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example, by remedying a market failure or addressing an equity or cohesion concern (Section 3.4);
  - (c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest (Section 3.5);

<sup>(1)</sup> Regulation (EU) 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).

<sup>(2)</sup> European Council Decision of 29 October 2010 amending the status with regard to the European Union of the island of Saint-Barthélemy (OJ L 325, 9.12.2010, p. 4).

<sup>(3)</sup> European Council Decision of 11 July 2012 amending the status of Mayotte with regard to the European Union (OJ L 204, 31.7.2012, p. 131).

- (d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location (Section 3.6);
  - (e) proportionality of the aid (aid limited to the minimum necessary): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned (Section 3.7);
  - (f) avoidance of undue negative effects on competition and trade between Member States: the negative effects must be sufficiently limited, so that the overall balance of the measure is positive (Section 3.8);
  - (g) transparency of the aid: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder (Section 3.9).
- (25) Certain categories of aid schemes may further be made subject to an *ex post* evaluation as set out in points (118) to (121). The Commission may limit the duration of those schemes, normally to four years or less, with a possibility to re-notify their prolongation afterwards.
- (26) If an aid measure or any conditions attached to it, including its financing method when that method constitutes a non-severable part of the measure, entail a violation of Union law, the aid is incompatible with the internal market <sup>(1)</sup>.
- (27) Aid for 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 costs linked to the export activity and aid contingent upon the use of domestic over imported goods is incompatible with the internal market.
- (28) When assessing aid granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered <sup>(2)</sup>. This does not apply, however, to aid to make good the damage caused by natural disasters under Article 107(2)(b) of the Treaty.
- (29) The common assessment principles overall have to be applied taking into account the specific context of the CFP. They therefore apply to all aid under these Guidelines, unless Sections 4 and 5 provide for derogations due to particular considerations in the fishery and aquaculture sector.

### 3.2. Specific principles for the fishery and aquaculture sector

- (30) In addition to the common assessment principles set out in Section 3.1, the Commission also applies the specific principles for the fishery and aquaculture sector set out in this Section.
- (31) Each beneficiary of a State aid measure must comply with the rules of the CFP.
- (32) An application for aid or, if no application is foreseen, an equivalent act must be considered inadmissible, if the competent authority referred to in Article 10(1) of Regulation (EU) No 508/2014 has determined that the operator concerned has committed one or more of the infringements or offences set out in Article 10(1) of that Regulation or a fraud as set out in Article 10(3) of that Regulation. The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 10(4) of that Regulation apply. This principle does not apply in the case of aid that meets the specific conditions set out in Sections 4, 5.3, and 5.4 of these Guidelines.
- (33) Each undertaking, after submitting an application for aid or, if no application is foreseen, an equivalent act must continue to comply with the rules of the CFP throughout the period of implementation of the project and for a period of five years after the final payment to the beneficiary. Aid measures must explicitly provide that during those periods the beneficiary or beneficiaries must comply with the rules of the CFP. If it is determined by the competent authority that a beneficiary has committed one or more of the infringements set out in Article 10(1) of Regulation (EU) No 508/2014 during those periods and has as a consequence become inadmissible to apply for aid, the aid must be reimbursed by the beneficiary.

<sup>(1)</sup> See, for example, Judgment of the Court of Justice of 19 September 2000, *Germany v Commission*, C-156/98, ECLI:EU:C:2000:467, paragraph 78 and Judgment of the Court of Justice of 22 December 2008, *Régie Networks*, C-333/07, ECLI:EU:C:2008:764, paragraphs 94-116.

<sup>(2)</sup> Judgment of the General Court of 13 September 1995, *TWD v Commission*, Joined Cases T-244/93 and T-486/93, ECLI:EU:T:1995:160, paragraphs 53-63.

(34) An aid measure of the same kind as an operation that is eligible for funding under Regulation (EU) No 508/2014 can only be considered compatible with the internal market if it complies with the relevant provisions of that Regulation for that kind of operation, in particular, with the provisions on the intensity of public aid. If an aid goes beyond the criteria set out in that Regulation, the Member State must demonstrate the justification for and the indispensability of the aid.

(35) No aid must be granted for activities that correspond to ineligible operations under Article 11 of Regulation (EU) No 508/2014.

### 3.3. Contribution to a common objective

(36) An aid measure must contribute to achieving one or more of the objectives of common interest set out in Article 107(3) of the Treaty.

(37) Furthermore, each aid measure must identify the objectives of the CFP to the achievement of which it contributes and clearly demonstrate how it will contribute to achieving those objectives without negatively affecting other CFP objectives. The objectives of the CFP are set out in Article 2 of Regulation (EU) No 1380/2013 and include, amongst others, to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies.

(38) The Commission considers that aid measures fulfilling the specific conditions set out in Sections 4, 5.1, 5.3, and 5.4 of these Guidelines contribute to achieving an objective of common interest.

### 3.4. Need for State intervention

(39) In order to assess whether State aid is necessary to achieve the objective of common interest, the problem to be addressed shall be identified first. State aid should be targeted towards situations where it can bring about a material improvement that the market cannot deliver on its own. This holds especially in a context of scarce public resources.

(40) State aid measures can under certain conditions correct market failures and thereby contribute to the efficient functioning of markets and to enhance competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from an equity or cohesion point of view, State aid may be used to obtain a more desirable, equitable market outcome.

(41) State aid must overall not be protective in its aim and effect and must promote the rationalisation and efficiency of the fishery and aquaculture sector. Any State aid must aim at permanent improvements in order for the sector to function on the basis of market factors.

(42) For the purposes of these Guidelines, the Commission considers that the market is not achieving the expected objectives without State intervention and that there is therefore need for State intervention in the case of aid fulfilling the specific conditions laid down in Sections 4, 5.1, 5.3, and 5.4 of these Guidelines.

### 3.5. Appropriateness of the aid measure

(43) The proposed aid measure must be an appropriate policy instrument to contribute to achieving the objectives concerned. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or other less distortive forms of aid make it possible to make the same positive contribution to the objectives of the CFP.

(44) The Commission considers that aid which meets the specific conditions set out in Sections 4, 5.1, 5.3, and 5.4 of these Guidelines is an appropriate policy instrument. In all other cases a Member State must demonstrate that no other less distortive policy instruments exist.

(45) The Commission will in particular take account of any impact assessments of the proposed aid scheme that the Member State may make available. Likewise, the results of *ex post* evaluations as described in Section 6 may be taken into account to assess whether no other less distortive policy instrument exists.

(46) Aid can be awarded in various forms. Each Member State must ensure that the aid is granted in the form that is likely to generate the least distortions of competition and trade.

- (47) Where the aid is granted in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges), the Member State must demonstrate why other potentially less distortive forms of aid such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, state guarantees, the purchase of a share-holding or an alternative provision of capital on favourable terms) are less appropriate.
- (48) The results of *ex post* evaluations as described in Section 6 may be taken into account to assess whether no other less distortive form of aid exists.

### 3.6. Incentive effect

- (49) Aid can only be found compatible with the internal market if it has an incentive effect. Aid has an incentive effect if it changes the behaviour of an undertaking in such a way that it engages in additional activity which it would not have carried out without the aid or would have carried out in a restricted or different manner. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity <sup>(1)</sup>.
- (50) Operating aid and aid to facilitate the achievement of obligatory standards is in principle incompatible with the internal market, unless exceptions are expressly provided for in Union legislation or these Guidelines and in duly justified other cases.
- (51) Aid which is granted in respect of an operation that the beneficiary has already begun to implement before the aid application was submitted by the beneficiary to the national authorities cannot be considered to have an incentive effect.
- (52) Aid that is compensatory in nature, such as aid that meets the specific conditions set out in Sections 4, 5.3, and 5.4, and aid that meets the conditions set out in Section 5.6 are not required to have an incentive effect.
- (53) Aid in the form of tax advantages will be deemed to have an incentive effect, if the measure establishes a right to the aid in accordance with objective criteria and without further exercise of discretion by the Member State and if the measure has been adopted and is in force before work on the aided project or activity has started. The latter requirement shall not apply in the case of fiscal successor schemes, if the measure was already covered by the previous schemes in the form of tax advantages.

### 3.7. Proportionality of the aid (aid limited to the minimum necessary)

- (54) Aid must be limited to the minimum needed to induce the beneficiary to carry out an activity.
- (55) As a general rule, aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of the aid (net extra cost approach).
- (56) The aid must therefore not exceed the minimum amount necessary to render the project profitable. The aid must, for example, not increase the project's internal rate of return (IRR) <sup>(2)</sup> beyond the normal rates of return applied by the undertaking concerned in other similar investment projects. If such rates are unavailable, the aid should not increase the project's IRR beyond the costs of capital of the company as a whole or beyond the rates of return commonly observed in the industry concerned.
- (57) Where an aid measure is of the same kind as an operation that is eligible for funding under Regulation (EU) No 508/2014, the principle of proportionality of the aid is deemed to be respected if the amount of the aid does not exceed the applicable maximum intensity of public aid set out in Article 95 of and Annex I to that Regulation. Where the maximum aid intensity for public aid of a measure goes beyond that set out in those provisions, the principle of proportionality of the aid is deemed to be respected if the Member State demonstrates the justification for and the indispensability of the aid.

<sup>(1)</sup> Judgment of the Court of 13 June 2013, *HGA and others v Commission*, Joined Cases C-630/11 P to C-633/11 P, ECLI:EU:C:2013:387, paragraphs 103-123.

<sup>(2)</sup> The internal rate of return (IRR) is not based on accounting earnings in a given year, but takes into account the stream of future cash flows that the investor expects to receive over the entire lifetime of an investment. It is defined as the discount rate for which the net present value (NPV) of a stream of cash flows equals zero. The NPV of a project is the difference between the positive and negative cash flows over the lifetime of an investment, discounted to their current value (typically using the cost of capital).

- (58) Aid that is compensatory in nature, such as aid that meets the specific conditions set out in Sections 4, 5.3, and 5.4, and aid that meets the conditions set out in Section 5.6 are deemed to be proportional.
- (59) Aid may be granted concurrently under several schemes or cumulated with *ad hoc* aid, provided that the total amount of public funding for an activity does not exceed the relevant maximum aid intensities referred to in these Guidelines.

### 3.8. Avoidance of undue negative effects on competition and trade

- (60) For the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to achieving the objective of common interest.

#### 3.8.1. General considerations

- (61) In principle, aid to the fishery and aquaculture sector can cause product market distortions and have location effects. It may therefore lead to allocative inefficiencies, undermining the economic performance of the internal market, and to distributional concerns, distorting the distribution of economic activity across different geographical areas.
- (62) Due to its positive effects on the development of the sector the Commission considers that, where aid fulfils the specific conditions set out in Sections 4, 5.1, 5.3, and 5.4, the negative effects on competition and trade are limited to the minimum.
- (63) The Commission will in general consider the effects on competition and trade to be more limited if the aid is proportionate (aid limited to the minimum necessary) and the smaller the amount of aid as compared to the overall eligible costs.

#### 3.8.2. Aid schemes

- (64) Aid schemes must not lead to significant distortions of competition and trade. In particular, even where distortions may be considered limited at an individual level, a scheme should not lead to high levels of distortions on a cumulative basis.
- (65) The Member State therefore has to demonstrate that the negative effects of the aid will be limited to the minimum taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries, as well as the characteristics of the targeted sector. In order to enable the Commission to assess the effects of the aid, the Member State may submit any impact assessment at its disposal, as well as *ex post* evaluations carried out for similar predecessor schemes.

#### 3.8.3. Notified individual aid

- (66) When appraising the effects of notified individual aid, the Commission places particular emphasis on the negative effects linked to the prevention of exit from the market and the notion of substantial market power. These negative effects must be counterbalanced with the positive effects of the aid.
- (67) In order to identify and assess the potential distortions of competition and trade, each Member State should provide the Commission with evidence permitting to identify the relevant product market, that is, products affected by the change of behaviour of the aid beneficiary, the geographical market, the competitors, as well as the customers and consumers concerned.
- (68) The Commission will use various criteria to assess potential distortions of competition and trade, such as the market structure of the product concerned, the performance of the market (declining or growing market), the process for selecting the aid beneficiary, and the market strategy of the beneficiary.

### 3.9. Transparency

- (69) Each Member State must publish at least the following information on a comprehensive State aid website at national or regional level:
- (a) the full text of the aid scheme and its implementing provisions or legal basis for individual aid, or a link to it;
  - (b) the granting authority or authorities;



- (c) the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting the aid, the type of undertaking (SME/large enterprise), the region in which the beneficiary is located (at NUTS level II), and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such publication requirement can be waived with respect to individual aid awards not exceeding EUR 30 000 <sup>(1)</sup>.
- (70) In the case of aid schemes in the form of tax advantages the information on individual aid amounts can be provided in the following ranges (in EUR million): 0,03-0,5; above 0,5-1; above 1-2; above 2.
- (71) Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years, and be available for the general public without restrictions <sup>(2)</sup>. Member States are not required to publish the information before 1 July 2017 <sup>(3)</sup>.

#### 4. AID THAT IS COMPATIBLE WITH THE INTERNAL MARKET

##### 4.1. Aid to make good the damage caused by natural disasters and exceptional occurrences

- (72) Aid to make good the damage caused by natural disasters and exceptional occurrences is compatible with the internal market if it respects the principles set out in Section 3 and meets the specific conditions set out in this Section.
- (73) The notions of natural disasters and exceptional occurrences must be interpreted restrictively <sup>(4)</sup>.
- (74) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that exceptionally severe storms and floods may constitute natural disasters. In addition, Regulation (EU) No 1388/2014 permits to block exempt also the following types of natural disasters: earthquakes, avalanches, landslides, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.
- (75) The following events are examples of exceptional occurrences that have been recognised by the Commission in cases outside the fishery and aquaculture sector: war, internal disturbances, strikes, with certain reservations and depending on their extent, major industrial and nuclear accidents, and fires resulting in widespread loss. The outbreak of an animal disease or a plant pest does in general not constitute an exceptional occurrence. The Commission has, however, in specific cases concerning the fishery and aquaculture sector accepted the very widespread outbreak of a new animal disease as an exceptional occurrence.
- (76) The Commission will continue to assess proposals to grant aid in accordance with Article 107(2)(b) of the Treaty on a case-by-case basis, having regard to its previous practice in the field.
- (77) Aid granted under this Section must additionally meet the following conditions:
- (a) the competent authority of the Member State has formally recognised the character of the event as a natural disaster or as an exceptional occurrence;
  - (b) there is a direct causal link between the natural disaster or the exceptional occurrence and the damage suffered by the undertaking.

<sup>(1)</sup> The threshold of EUR 30 000 corresponds to the threshold for the publication of information set out in Article 9 of Regulation (EU) No 1388/2014. It is appropriate to set the same threshold in both that Regulation and these Guidelines in order to ensure coherence between the various State aid instruments applicable to the fishery and aquaculture sector and to reduce the administrative burden of the Member States. In view of the protection of personal data, which might be at stake, the requirement of publishing information on individual aid exceeding the threshold of EUR 30 000 is proportionate to the legitimate aim it pursues, in particular as regards transparency with respect to the use of public funds.

<sup>(2)</sup> The information must be published within six months from the date of granting the aid (or, for aid in the form of tax advantage, within one year from the date when the tax declaration is due). In the case of unlawful aid, Member State must publish the information *ex post*, at least within a period of six months from the date of the Commission decision. The information must be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

<sup>(3)</sup> Publication of aid awards granted before 1 July 2017 and, for fiscal aid, publication for aid claimed or granted before 1 July 2017, will not be required.

<sup>(4)</sup> Judgment of the Court of Justice of 23 February 2006, *Giuseppe Atzeni and Others*, Joined Cases C-346/03 and C-529/03, ECLI:EU:C:2006:130, paragraph 79.

- (78) Aid must be paid directly to the undertaking concerned.
- (79) Aid schemes related to a specific natural disaster or exceptional occurrence must be established within three years from the date of the occurrence of the event. The aid must be paid out within four years from that date.
- (80) In order to facilitate rapid reaction, the Commission will authorize *ex ante* framework aid schemes to compensate for the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions, and wild fires of natural origin, provided that the conditions under which aid can be granted in such cases of natural disasters are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point (130).
- (81) The eligible costs are the costs of the damage incurred as a direct consequence of the natural disaster or exceptional occurrence, as assessed by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking. The damage may include:
- (a) material damage to assets (such as buildings, equipment, machinery, stocks, and means of production); and
  - (b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.
- (82) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the natural disaster or exceptional occurrence. It must not exceed the repair cost or the decrease in fair market value caused by the natural disaster or the exceptional occurrence, that is to say the difference between the asset's value immediately before and immediately after the natural disaster or exceptional occurrence.
- (83) The loss of income must be calculated by subtracting:
- (a) the result of multiplying the quantity of the fishery and aquaculture products produced in the year of the natural disaster or exceptional occurrence, or in each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year, from
  - (b) the result of multiplying the average annual quantity of fishery and aquaculture products produced in the three-year period preceding the natural disaster or exceptional occurrence or a three year average based on the five-year period preceding the natural disaster or exceptional occurrence, excluding the highest and lowest entry by the average selling price obtained.
- (84) The damage must be calculated at the level of the individual beneficiary.
- (85) 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.

## 5. AID THAT MAY BE CONSIDERED COMPATIBLE WITH THE INTERNAL MARKET

### 5.1. Aid for categories of measures covered by a block exemption regulation

- (86) Where aid benefitting SMEs or large undertakings is of the same kind as aid falling within a category of aid that can be considered compatible with the internal market under one of the Regulations on group exemptions referred to in point (19)(a), the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines, this Section, and the criteria laid down for each category of aid set out in those Regulations.
- (87) If aid does not fulfil all the criteria referred to in point (86), the Member State must demonstrate the justification for and the indispensability of the aid. The Commission will assess such aid on a case-by-case basis.
- (88) As an exception to point (86), aid of the same kind as aid falling with the category of aid to make good the damage caused by natural disasters mentioned in Article 44 of Regulation (EU) No 1388/2014 is be compatible with the Treaty if it meets the specific conditions set out in Section 4 of these Guidelines.

### 5.2. Aid falling within the scope of certain horizontal guidelines

- (89) Where aid falls within the scope of certain horizontal guidelines or other instruments adopted by the Commission<sup>(1)</sup>, the Commission will assess such aid on the basis of the principles set out in Section 3 of these Guidelines and the relevant Sections of those instruments.

### 5.3. Aid to make good the damage caused by adverse climatic events

- (90) Where aid aims to make good the damage caused by adverse climatic events, the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines and the specific conditions set out in this Section.
- (91) As an exception to point (90), the Commission will assess aid of the same kind as aid falling within the category of aid to mutual funds for adverse climatic events mentioned in Article 20 of Regulation (EU) No 1388/2014 under Section 5.1 of these Guidelines.
- (92) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that storms, gusts of wind causing exceptionally high waves, heavy and persistent rainfall, floods, and exceptionally elevated water temperatures over a longer period may constitute adverse climatic events. The Commission will continue to assess proposals to grant aid to make good the damage caused by adverse climatic events on a case-by-case basis, having regard to its previous practice in the field.
- (93) Aid granted under this Section must additionally meet the following conditions:
- (a) the damage caused by the adverse climatic event must amount to more than 30 % of the average annual turnover, calculated on the basis of the preceding three calendar years or a three year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry;
  - (b) there must be a direct causal link between the adverse climatic event and the damage suffered by the undertaking;
  - (c) in the case of losses caused by adverse climatic events referred to in Article 35(1) of Regulation (EU) No 508/2014, the Member State must justify why it intends to grant aid rather than financial compensation being paid through mutual funds for adverse climatic events under Article 35 of that Regulation.
- (94) The Commission will authorise *ex ante* framework aid schemes to compensate for the damage caused by adverse climatic events, provided that the conditions under which aid can be granted are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point (130).
- (95) The aid must be paid directly to the undertaking concerned.
- (96) Aid schemes related to adverse climatic events must be established within three years from the date of the occurrence of the event. The aid must be paid out within four years from that date.
- (97) The eligible costs are the costs of the damage incurred as a direct consequence of the adverse climatic event, as assessed either by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking. The damage may include:
- (a) material damage to assets (such as buildings, vessels, equipment, machinery, stocks, and means of production); and
  - (b) loss of income due to the full or partial destruction of fishery or aquaculture production or the means of such production.

<sup>(1)</sup> Horizontal guidelines and other instruments include, amongst others, the Criteria for the analysis of the compatibility of State aid for training subject to individual notification (OJ C 188, 11.8.2009, p. 1); the Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4); the Framework for State aid for research and development and innovation (OJ C 198, 27.6.2014, p. 1); the Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1); the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

- (98) In the case of material damage to assets, the damage must have resulted in a loss of production that amounts to more than 30 % of the average annual turnover, calculated on the basis of the preceding three calendar years or a three year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry.
- (99) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the adverse climatic event. It must not exceed the repair cost or the decrease in fair market value caused by the adverse climatic event, that is to say the difference between the asset's value immediately before and immediately after the adverse climatic event.
- (100) The loss of income must be calculated by subtracting:
- (a) the result of multiplying the quantity of the fishery and aquaculture products produced in the year of the adverse climatic event, or in each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year, from
  - (b) the result of multiplying the average annual quantity of fishery and aquaculture products produced in the three-year period preceding the adverse climatic event or a three year average based on the five-year period preceding the adverse climatic event, excluding the highest and lowest entry by the average selling price obtained.
- (101) The damage must be calculated at the level of the individual beneficiary.
- (102) 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.

#### 5.4. Aid for the costs of prevention, control and eradication of animal diseases in aquaculture

- (103) Where aid aims to support costs relating to the prevention, control and eradication of animal diseases in aquaculture, the Commission will assess the aid on the basis of the principles set out in Section 3 of these Guidelines and the conditions set out in this Section.
- (104) As an exception to point (103), the Commission will assess aid of the same kind as aid falling with the category of aid for animal health and welfare measures mentioned in Article 39 of Regulation (EU) No 1388/2014 under Section 5.1 of these Guidelines.
- (105) Aid under this Section may only be granted:
- (a) in respect of diseases included in the list of animal diseases of the World Organization for Animal Health, Annex II to Regulation (EU) No 652/2014 of the European Parliament and of the Council <sup>(1)</sup>, or Part II of Annex IV to Council Directive 2006/88/EC <sup>(2)</sup>; 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.

(106) The aid must be paid directly to the undertaking concerned.

(107) No aid should be granted if it is established that the beneficiary caused the disease deliberately or by negligence.

<sup>(1)</sup> Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC (OJ L 189, 27.6.2014, p. 1).

<sup>(2)</sup> Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (OJ L 328, 24.11.2006, p. 14).

- (108) Aid schemes must be established within three years from the date of the occurrence of the costs caused by the animal disease. Aid must be paid out within four years from that date.
- (109) The Commission will authorise *ex ante* framework schemes, provided that the conditions under which aid can be granted are clearly stipulated. The Member States must in such cases comply with the reporting obligation set out in point (130).
- (110) 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 them;
  - (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 them, 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.
- (111) 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.

#### 5.5. Aid financed through parafiscal charges

- (112) Where aid schemes are financed by special charges imposed on certain fishery or aquaculture products irrespective of their origin, in particular parafiscal charges, the Commission will assess the scheme on the basis of the principles set out in Section 3 and the conditions set out in this Section. Only aid that equally benefits domestic and imported products may be considered compatible with the internal market.

#### 5.6. Operating aid in outermost regions

- (113) Where aid constitutes operating aid granted in outermost regions with a view to alleviating the specific constraints in those regions as a result of their isolation, insularity, and extreme remoteness, the Commission will assess such aid on a case-by-case basis, on the basis of the principles set out in Section 3, the conditions of this Section, and the specific legal provisions applying to those regions. It will also have regard to, if applicable, the compatibility of the aid with measures under the EMFF for the region concerned and its effects on competition both in the regions concerned and in other parts of the Union.
- (114) The aid must not go beyond what is necessary to alleviate the specific constraints in the outermost regions as a result of their isolation, insularity, and extreme remoteness. To avoid overcompensation, the Member State must take into account other types of public intervention, including, if applicable, the compensation of additional costs in outermost regions for fishery and aquaculture products under Articles 70 to 72 of Regulation (EU) No 508/2014 and aid for implementing compensation plans under Article 73 of that Regulation.

#### 5.7. Aid for other measures

- (115) Where aid does not correspond to one of the types of aid mentioned in Sections 4 and 5.1 to 5.6, it is in principle not compatible with the internal market.
- (116) If a Member State nevertheless intends to provide such aid or provides such aid, it must clearly demonstrate that the aid complies with the principles set out in Section 3. The Commission may declare the aid compatible with the internal market on the basis of a case-by-case assessment.

## 6. PROCEDURAL MATTERS

### 6.1. Maximum duration of aid schemes and evaluation

- (117) The Commission will only authorise aid schemes of limited duration. Aid schemes must in principle not apply for a period exceeding seven years.
- (118) To further ensure that distortions of competition and trade are limited, the Commission may require that certain schemes are subject to an additional time limitation of normally four years or less and to the *ex post* evaluation referred to in point (25). *Ex post* evaluations will be carried out for schemes in the case of which the potential distortions of competition are particularly high, that is to say, that may risk to significantly restrict or distort competition if their implementation is not reviewed in due time.
- (119) Given the objectives of the *ex post* evaluation and in order not to impose a disproportionate burden on Member States in respect of smaller aid amounts, the *ex post* evaluation requirement only applies to aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of a common methodology and must be made public. Each Member States must notify, together with the relevant aid scheme, a draft evaluation plan, which will be an integral part of the assessment of the scheme by the Commission.
- (120) In the case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility solely on the basis of the evaluation plan.
- (121) The *ex post* evaluation must be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid scheme and in any case upon its expiry. Any subsequent aid measure with a similar objective must take into account the results of the *ex post* evaluation.

### 6.2. Application of the Guidelines

- (122) The Commission will apply these Guidelines in the assessment of all aid to be granted on and after 1 July 2015, irrespective of the date of notification.
- (123) Individual aid granted on the basis of an approved aid scheme and notified to the Commission pursuant to an obligation to notify such aid individually will be assessed on the basis of the Guidelines that apply to the approved aid scheme.
- (124) Aid granted unlawfully will be assessed on the basis of the Guidelines in force at the time of granting the aid.
- (125) The Guidelines for the examination of State aid to fisheries and aquaculture adopted in 2008 will no longer apply after 30 June 2015, with the exception of the cases referred to in points (123) and (124).

### 6.3. Proposals for appropriate measures

- (126) In accordance with Article 108(1) of the Treaty, the Commission proposes that each Member State amends its existing aid schemes to conform with these Guidelines by 31 December 2015.
- (127) The Commission invites each Member State to give its explicit and unconditional agreement to the appropriate measures proposed in these Guidelines within two months from the date of publication of these Guidelines in the *Official Journal of the European Union*.
- (128) If a Member State does not give its explicit and unconditional agreement within the foreseen period, the Commission will assume that the Member State disagrees with the proposed measures. If a Member State disagrees with the proposed measures, the Commission will proceed in accordance with Article 19(2) of Regulation (EC) No 659/1999.

### 6.4. Reporting and monitoring

- (129) The Commission reminds each Member State of its duty to submit annual reports to the Commission, as set out in Article 21 of Regulation (EC) No 659/1999 and Articles 5, 6, and 7 of Regulation (EC) No 794/2004.

- (130) The annual report must also include meteorological information about the type, timing, relative magnitude, and location of the natural disaster or adverse climatic event under Sections 4 and 5.3 as well as on prevention, control, and eradication programmes under Section 5.4. This reporting obligation only relates to *ex ante* framework schemes.
- (131) Each Member State must maintain detailed records on all of its aid measures. Such records must contain all information necessary to establish that the conditions set out in these Guidelines regarding, where applicable, eligibility and aid intensity have been observed. These records must be maintained for 10 years from the date of granting the aid and must be provided to the Commission upon request.

#### 6.5. Revision

- (132) The Commission may decide to review or change these Guidelines at any time, if this is necessary for reasons related to competition policy, other Union policies, international commitments, developments in the markets, or for any other justified reason.
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