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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector

Commission Regulation (EU) .../... of XXX declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union

and

Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector

{C(2022) 9139 final} - {SEC(2022) 441 final} - {SWD(2022) 408 final}

Executive Summary Sheet
Impact assessment on the revision of the State aid rules for the fishery and aquaculture sector
A. Need for action
What is the problem and why is it a problem at EU level?
The problems that have been identified for the revision of the State aid rules for the fishery and aquaculture sector (comprised of a sector-specific block exemption Regulation known as “FIBER”, the Guidelines for the examination of State aid in the sector of fisheries and aquaculture, and public aid granted under the Regulation on <i>de minimis</i> aid in the fisheries and aquaculture sector) are: (i) unnecessary administrative burden with regard to measures where the Commission has gained sufficient experience; (ii) the <i>de minimis</i> individual ceiling and national cap are no longer adapted to market developments and inflation, and there is a differentiated treatment to the processing and marketing industry; (iii) non-alignment with the EMFAF; and (iv) lack of transparency in State aid control. The stakeholders most affected by the revision are aid-granting authorities in the Member States, and fisheries and aquaculture undertakings across the EU (indirectly, as eligible or actual beneficiaries).
What should be achieved?
The general objective is to have in place State aid rules for the fishery and aquaculture sector, which can contribute to achieving CFP and Green Deal objectives, while optimising the framework to bring further efficiencies in a non-distortive manner between competing undertakings across Member States. To this end, the revision will pursue four specific objectives: (i) ensuring administrative simplification; (ii) adapting the <i>de minimis</i> framework to latest market developments; (iii) ensuring coherence of the State aid rules in the fishery and aquaculture sector with the EMFAF and CFP objectives; and (iv) increasing transparency and market discipline. In relation to these objectives, there are operational objectives and criteria against which success can be measured in the future: (i) non-distortion of competition; (ii) administrative simplification through reduction of the burden.
What is the value added of action at the EU level (subsidiarity)?
The subsidiarity principle does not apply as the Commission has an exclusive competence in this field.
B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?
The impact assessment report sets out five policy options (the available policy options address the identified problems separately due to their nature, making a division into three sections, relating to <i>the de minimis</i> ceiling and national cap; the alignment to the EMFAF and unnecessary costs; and the publication thresholds): 1) raise the <i>de minimis</i> individual ceiling and national cap; 2) raise the <i>de minimis</i> ceiling for processing and marketing to mirror that applicable in the agricultural sector; 3) align the framework to EMFAF but adapt to State aid control; 4) align the framework to EMFAF, adapt to State aid control and revise; 5) lower the publication thresholds for individual aid awards. The preferred policy option is a combination of option 1 with option 4 and option 5 (as these deal with different problems, they have independent impacts and may be combined and their impacts cumulated).
What are different stakeholders' views? Who supports which option?
Member States' authorities, who will be the most affected by the proposed policy options, voiced their concern about the additional administrative burden to be expected from the proposed lowering of

publication thresholds (option 5) and the deletion of aid to start-up support for young fishermen from the FIBER (option 4). At the same time, they welcomed the envisaged extension of the scope of the FIBER, foreseen by option 4, and the rise of the *de minimis* national cap and individual ceiling (option 1). Other stakeholders (businesses and producer organisations operating in the sector) advocated for an increase of the individual ceiling and national caps (option 1), and even for an increase of the individual ceiling to the same level as the one applying to the processing and marketing of agricultural products (option 2).

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

The preferred option would adjust the *de minimis* national cap and individual ceiling to the economic developments (option 1), increase transparency in State aid control (option 5) and it would align the State aid framework in the sector to the EMFAF, while furthering efficiencies (option 4). This, in turn, would increase the effectiveness of State aid rules in fisheries and aquaculture. The preferred option would contribute better to attaining the objectives of the CFP and the Green Deal (through the alignment to EMFAF). It would bring about considerable administrative simplification, in particular for Member States' authorities but also for the Commission.

What are the costs of the preferred option (if any, otherwise of main ones)?

The preferred option would result in higher administrative costs for Member States' authorities to comply with new transparency requirements, and through the need to notify measures for aid to start-up support for young fishermen, after its deletion from FIBER. These costs should, however, be by far offset by the benefits expected from the extension of the FIBER to include three new measures and the rise of the *de minimis* individual ceiling and national cap.

What are the impacts on SMEs and competitiveness?

The preferred option would have a positive impact on SMEs, namely through the introduction of three new measures under FIBER. Faster State aid procedures means faster access to aid. This is in particular relevant for SMEs, whose access to finance is often limited. SMEs will benefit to a higher extent from the envisaged extension of the scope of the FIBER than large undertakings, as many of the measures included in the FIBER are limited to SMEs. SMEs would also benefit from faster support through *de minimis* aid under option 1.

Proportionality?

The preferred options effectively and proportionately address the identified problems.

D. Follow up

When will the policy be reviewed?

The new FIBER and *de minimis* Regulation would have a validity until 2029, which means that an evaluation of the FIBER (and also the Guidelines) would be carried out before the end of 2028. Enhanced transparency under the preferred option 5 should have a positive impact on State aid control and should improve data availability at the level of individual beneficiaries. The introduction of a *de minimis* register should lead to the same results. The Commission services perform a yearly ex-post monitoring based on a sample of existing aid schemes. Furthermore, the Commission endeavours to carry out ex post evaluations of State aid schemes with high risks of potential distortions of competition. The State Aid Scoreboard, which provides information on the overall situation of State aid in each Member State, is another important tool. Finally, a future evaluation should assess the success of the initiative in relation to the operational objectives set out above (minimising the risk of competition distortions and ensuring administrative simplification).

Executive summary evaluation
A. Context and objectives
<p>State aid control is a key instrument of the EU’s competition policy, as enshrined in the Treaty on the Functioning of the European Union. Its objective is to safeguard the internal market by preventing undue distortions of competition and trade. The Treaty generally prohibits State aid unless it is justified for reasons of economic development or for the common good. The European Commission monitors Member States’ use of national aid and lays down rules governing the assessment of its compatibility with the smooth functioning of the internal market.</p> <p>The specific State aid framework for fisheries and aquaculture comprises the Fisheries Block Exemption Regulation (FIBER)¹, the <i>de minimis</i> Regulation² and sectoral guidelines³. This evaluation assesses how that framework has performed against its main objectives:</p> <ul style="list-style-type: none"> - minimising distortion of competition and trade in the fisheries and aquaculture sector, thus providing predictability and legal certainty for Member States and beneficiaries of State aid; - allowing for better prioritisation of State aid enforcement activities and greater simplification; - enhancing transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels; and - the contribution to the achievement of the CFP objectives. <p>The evaluation is motivated by the expiration of the FIBER and the <i>de minimis</i> Regulation on 31 December 2022. The Guidelines themselves do not include a sunset clause. However, their complementarity with the FIBER and the <i>de minimis</i> Regulations and their link to the European Maritime and Fisheries Fund (EMFF) dictate their revision in light of the review of these Regulations and the adoption of EMFF’s successor, the European Maritime Aquaculture and Fisheries Fund (EMFAF) for 2021-2027.</p> <p>The evaluation examines the performance of the current framework against five criteria: effectiveness, efficiency, relevance, coherence and EU added value. It looks back to gauge how the rules have performed and where there is scope for improvement.</p> <p>The evaluation takes into account in-house data, experience from case-handling practice and the outcome of an open public consultation. It is supported by an external evaluation study.</p>
Main findings
The evaluation concludes that the State aid framework for fisheries and aquaculture has worked well overall

¹ 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. 37–63.

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

³ Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1–15.

and achieved its objectives. Nonetheless, it also identifies some weaknesses and opportunities for improving the framework.

The analysis suggests that the objectives of the framework remain to a large extent **relevant** vis-à-vis the EU policy goals and priorities. The case-handling practice shows that the contribution to the wider CFP objectives is tangible, which is further corroborated by the feedback received in the consultation phase. Even when the analysis was carried out before the COVID-19 outbreak and the adoption of major priorities like the Green Deal, the relevance of competition policy in supporting the EU growth strategy is acknowledged.

The analysis also confirms that the objectives of the instruments are relevant in the sense that they address market failures. In particular, the use of *de minimis* aid in the evaluation period seems to have responded to market failures or to material improvements that the market alone could not provide. The same conclusion was reached for aid granted for non-EMFF type of measures under the Guidelines and FIBER. With regard to EMFF type of measures under the Guidelines and the FIBER, the analysis shows that, despite improvements, market failures persist, in particular related to sustainability and enabling conditions to facilitate innovation and market development in the blue economy.

With regard to **efficiency**, the results of the analysis and the evidence obtained from the case-handling data of the Commission and consultations suggest that the administrative burden and costs inherent to the enforcement of the State aid instruments are, for the most part, considered appropriate and justified. However, there are several possibilities to reduce the administrative burden and to obtain further efficiencies. With regard to transparency, clarity and adequacy, the opinion of the stakeholders was overwhelmingly positive. This could be further improved with the ex-post monitoring of selected cases, also for *de minimis* aid. Moreover, taking into account that only around 20-25% of the total State aid spent in the EU is made transparent, it seems that the publication requirements for individual aid awards are not fully ensuring that relevant information is made publicly available.

The analysis conducted also seems to point out that the State aid framework in the fisheries and aquaculture sector is **effective**. The higher level of detail of the legal instruments has allowed for a more transparent and streamlined compatibility assessment as regards both the Commission's handling of notified aid and the Member States' use of the FIBER - State aid control has become more predictable and has thus brought enhanced legal certainty to Member States and aid beneficiaries. With regard to block-exempted aid, the current design is comprehensive and has contributed to the objectives of the CFP by enhancing Member States' EMFF Operational programmes and allowing for a coherent and consistent approach across the EU. Nonetheless, case-handling experience supported by the analysis in the external study points to the possibility of enlarging the scope of the FIBER and avoiding notifications where the Commission has gained sufficient experience and where there is no threat to competition and trade. As to *de minimis* aid, it can generally be said that the current design can promptly tackle exceptional events without producing competition or market distortions, but the results of the evaluation show that the individual ceiling and the national cap, which were set and last assessed back in 2007 and 2013, are not adequate for all Member States (on the other hand, raising the individual ceiling does not seem suitable given the already existing high risk of distorting competition in some EU Member States). Another point to consider is that the ceiling for the fish processing and marketing industry is currently aligned to that of the fish primary production sector (EUR 30,000) and greatly diverges from that of the processing and marketing of agricultural goods (EUR 200,000) – this, however, needs to be studied with caution, given the different

structure of the sector and sustainability concerns. Finally, the analysis shows that the Guidelines are generally relevant and adequate, with some exceptions, like the lack of guidance on schemes that aim to compensate the damage caused by protected species of animals.

The rules in the fisheries and aquaculture sector are **coherent** with other horizontal State aid instruments, as confirmed by the internal practice and by all the relevant stakeholders at the consultation stage. With regard to **external coherence**, the new Commission priorities for 2019-2024 (particularly the EU Green Deal) and other recent events do not yet have a definitive and quantifiable impact on the State aid instruments for the fisheries and aquaculture sector, and only a limited assessment can be performed at this stage. Nonetheless, the results of the public consultation already show the need to act and align the State aid framework with environmental policies (now accentuated by the needs of the Green Deal). While the current State aid measures are deemed to contribute to the objectives of the Green Deal, these should be “adapted” in the sense that the State aid framework should align to the changes introduced to the EMFAF.

Finally, the State aid architecture for the fisheries and aquaculture sector examined in this evaluation has an evident **EU added value**, given that both competition policy and the common fisheries policy are exclusive competences of the EU. The current framework demonstrates EU added value by safeguarding legal certainty and ensuring the observance of the policy objectives set in the CFP and the EMFF Regulation for the period 2014-2020.