

## COMBINED EVALUATION ROADMAP/INCEPTION IMPACT ASSESSMENT

This combined evaluation roadmap/Inception Impact Assessment aims to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are, in particular, invited to provide views on the Commission's understanding of the current situation, problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	<i>De minimis</i> aid in the fishery and aquaculture sector Block-exempted aid in the fishery and aquaculture sector Amendment to the State aid Guidelines for fisheries
<b>LEAD DG – RESPONSIBLE UNIT – AP NUMBER</b>	DG MARE – UNIT E.4 – Legal affairs
<b>LIKELY TYPE OF INITIATIVE</b>	Review of the framework of rules on State aid in the fishery and aquaculture sector, in view of adopting new/revised <i>De minimis</i> Regulation, Block Exemption Regulation, and State aid Guidelines for the period 2021 to 2027
<b>INDICATIVE PLANNING</b>	Q4 2020
<b>ADDITIONAL INFORMATION</b>	<a href="https://ec.europa.eu/fisheries/cfp/state_aid_en">https://ec.europa.eu/fisheries/cfp/state_aid_en</a>

**This combined roadmap/Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.**

### A. Context, Evaluation, Problem definition and Subsidiarity Check

#### Context

In accordance with Article 107 of the Treaty on the Functioning of the European Union (the Treaty), State aid is in principle prohibited but can be authorised for the reasons of economic development and common good. Before giving aid, Member States are obliged to notify the planned measure to the Commission and to wait for its authorisation.

The Treaty defines only the general principles that guide the Commission in its assessment of proposed aid measures. Without further rules, State aid control based directly on the Treaty provisions would be difficult in practice. The procedures would be lengthy and cumbersome even for the lowest amounts of aid. It would be hard to ensure transparency, legal certainty and consistency in the Commission's decisions on State aid or coherence between those decisions and other policy choices. This is why more specific rules underlying State aid control are needed. To this end, the Commission adopts two types of instruments:

- Guidelines, defining as to how the Commission interprets existing legal provisions when assessing planned aid and
- Regulations exempting certain categories of aid from the notification requirement, in particular *de minimis* regulations and block-exemption regulations.

Such a framework of instruments has also been set up for the State aid control in the fishery and aquaculture sector. The current instruments were adopted in 2014-2015 and comprise: [De minimis Regulation](#)<sup>1</sup>, [Block Exemption Regulation \(FIBER\)](#),<sup>2</sup> [State aid Guidelines \(Guidelines\)](#)<sup>3</sup>.

The objectives of these instruments are two-fold. First, as part of the State aid control framework, they seek to simplify State aid clearance procedures and to ensure transparency, consistency and legal certainty. Second, being embedded in a wider context of the Common Fisheries Policy (CFP), they aim to ensure that State aid contributes to the achievement of the CFP objectives. This is why the State aid rules in the fishery and aquaculture sector should be closely aligned to the rules governing the European Maritime and Fisheries Fund (EMFF)<sup>4</sup> - a structural tool for the support of the CFP.

The EMFF Regulation for the period 2021-2027 (post-2020 EMFF) [is currently being revised](#). The State aid rules for the same period will have to be reviewed in order to ensure coherence with the post-2020 EMFF rules.

What is more, in recent years, the Commission has gained further experience in State aid control in the fishery and aquaculture sector. This creates potential either to simplify the current State aid rules by widening the scope of the current FIBER and to enhance transparency, consistency and legal certainty by updating the provisions of

the Guidelines.

In the light of the above, the Commission proposes to review the State aid framework for 2021-2027 to ensure that it serves its objectives in the optimal manner. The revision should take place during 2019-2020, as the regulations will expire on 31 December 2020. The validity of the Guidelines is not limited in time, but they will need to be adapted to remain consistent and coherent with other relevant rules.

#### **Evaluation**

The evaluation will assess to what extent the State aid framework achieved its objectives (i.e., effectiveness), in particular:

- 1) to ensure effective State aid control in order to minimise the negative effects on internal market;
- 2) to simplify the State aid rules and increase transparency, consistency, and legal certainty;
- 3) to contribute to the achievement of the CFP objectives.

It will also analyse the relevance, efficiency, coherence and EU-added value of the State aid framework.

The evaluation will take into account the period from the entry into force of the relevant State aid instrument (2014 or 2015) until the end of 2018. It will cover all Member States.

The evaluation conclusions will feed into the impact assessment of the reviewed State aid framework to be applicable as of 2021.

#### **Problem the initiative aims to tackle**

As explained above, the main developments that prompt the revision of State aid instruments are: (1) the reform of the EMFF rules and (2) new experience acquired by the Commission in the application of State aid rules in the fishery and aquaculture sector.

(1) The [Commission proposal](#) for the post-2020 EMFF, seeks to re-define the delivery model of Union financial support to the CFP. Instead of laying down prescriptive measures and detailed eligibility conditions, the proposal sets broad areas of support under each EMFF priority. It would be up to each Member State to define concrete measures for support by the EMFF and to set the eligibility rules. This is a significant shift away from the current EMFF logic and design. As the current FIBER and Guidelines to a large extent mirror the provisions of the current EMFF Regulation, a revision of these State aid instruments would involve alignment to the new logic of the EMFF delivery model. The exercise of alignment, however, will need to take into account potential effects by State aid on the competition and trade.

(2) Since 2014-2015, the Commission has authorised a good number of State aid schemes that are not currently falling within the scope of the FIBER or the Guidelines (e.g., aid to make good damage caused by protected animals). It has also gained further experience on aid measures that are defined in the Guidelines but fall outside the scope of the FIBER (e.g., aid to make good damage caused by adverse climatic events). It is opportune to evaluate the effect of such authorisations and, potentially, to consider if these types of aid measures could be block-exempted or included under the future Guidelines.

If no revision of the current State aid framework is carried out, starting with 2021 the State aid control would face the following problems:

- 1) State aid rules would no longer be aligned to the EMFF and this would likely result in inconsistencies between public funding under the EMFF and national funding under State aid rules. In other words, it would be difficult to ensure that State aid serves best the CFP objectives;
- 2) The potential for simplification, transparency, consistency and legal certainty would be underutilised. That also means that the administrative burden would remain at the current levels, despite the potential of reducing it.

The evaluation of the current State aid framework will help determine if the assumptions made in defining these problems are correct. In particular, the evaluation is likely to confirm that current *de minimis* thresholds are still appropriate.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

Articles 107 and 108 TFEU constitute the legal basis for State aid rules.

The initiative falls under the exclusive competence of the EU according to Article 3(1)(b) TFEU<sup>5</sup>. Therefore, the subsidiarity principle does not apply.

### **B. Objectives and Policy options**

The objectives of the review of the State aid framework are:

- 1) To align the State aid framework with the post-2020 EMFF Regulation;
- 2) To simplify the State aid control procedures, and to enhance transparency, consistency and legal certainty, in the light of the recent experience;
- 3) To balance these two objectives against the need to avoid undue distortive effects in the internal market.

Pending the results of the evaluation, it is too early to define possible options that could best serve the objectives of the review. Nevertheless, a preliminary set of options could be identified as follows (to be revised in the light of the evaluation results):

**Option 1 - “base-line scenario”:** prolong the current State aid rules as they are;

**Option 2 - “fully align”:** align the State aid framework (particularly the FIBER and Guidelines) to the post-2020 EMFF rules, setting broad areas of aid; keep current *de minimis* thresholds;

**Option 3 - “align but adapt”:** align the State aid framework (particularly the FIBER and Guidelines) to the logic of the post-2020 EMFF rules, setting detailed types of aid measures; keep current *de minimis* thresholds;

**Option 4 - “align, adapt, and revise”:**

- Align the State aid framework (particularly the FIBER and Guidelines) to the logic of the post-2020 EMFF rules, setting detailed types of aid measures;
- Revise the rules according to the Commission’s experience: notably, widen the scope of the FIBER by block-exempting additional types of measures and review the scope and conditions set in the Guidelines as needed;
- Keep current *de minimis* thresholds.

The option of discontinuation of the State aid instruments could be rejected at the outset on the basis of the arguments in Section A.

## C. Preliminary Assessment of Expected Impacts

### Likely economic impacts

Subject to the evaluation and impact-assessment results, it could be assumed that options envisaging the alignment with the EMFF Regulation (Options 2-4) are likely to be superior to the base-line option: they would ensure potentially higher contribution to the achievement of the CFP objectives through more aligned funding.

The information available at this stage allows considering that Option 2 (“fully align”) might represent the highest risks of distortion of competition and effect on trade, given that the proposal for the post-2020 EMFF Regulation defines broad areas of support as opposed to a detailed list of support measures.

### Likely social impacts

Subject to the evaluation and impact-assessment results, it could be assumed that any benefits deriving from the contribution to the achievement of the CFP objectives would include the contribution to the social objectives of the CFP, i.e., achieving social and employment benefits and contributing to the availability of food supplies.

### Likely environmental impacts

The environmental sustainability is part of the CFP objectives. The evaluation and impact-assessment results should be able to demonstrate if and how additional environmental benefits could derive from the review of conditions for aid (e.g. with regard to aid related to damage caused by protected animals or aid for the prevention of animal diseases).

### Likely impacts on fundamental rights

We do not expect the present initiative to have any significant impact on the fundamental rights.

### Likely impacts on simplification and/or administrative burden

Although it is early to make concrete estimates, it might be assumed that Option 2 (“fully align”) would result in a very “loose” definition of aid measures eligible for block exemption. This would widen the scope of block exemptions and generate significant gains in simplification and in reducing administrative burden. However, these benefits would need to be weighed against potential distortions of competition and trade that can be brought about by unclear limits of block exemptions.

Subject to the results of the evaluation and impact assessment, we could envisage that Option 3 (“align but adapt”) would have little impact on administrative burden since the level of detail in the future block exemption regulation and its scope would likely remain similar to what they are today. Option 4 (“align, adapt, and revise”) could potentially offer best results in terms of simplification and the reduction of administrative burden.

## D. Evidence base, Data collection and Better Regulation Instruments

## Impact assessment

An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision. The problem analysis in the impact assessment will depend largely on the evaluation results. According to the tentative planning, the impact assessment should be completed in the first half of 2020.

## Evidence base and data collection

Existing information and data:

Commission State aid decisions and information on aid being registered as exempted under the FIBER are available in the [Commission's competition case database](#).

Information on Member States' aid expenditures, based on Member States' annual reporting, is compiled in the [State aid Scoreboard](#).

The [State Aid Transparency Public Search](#) page gives access to State aid individual award data provided by Member States in compliance with the European transparency requirements for State aid.

Additional data collection:

The evaluation will collect evidence on the performance of the current State aid framework and the impact assessment aims to assess likely the impact of policy options for the future.

The Commission will seek further information on stakeholders' experience of State aid procedures, impact on the internal market and simplification potential, as indicated under "Consultation strategy" below.

## Consultation strategy

The consultation activities will seek information from stakeholders and the wider public on the experience drawn from the application of the current framework of State aid rules and on the possible design of the future State aid framework.

The consultation activities will target in particular national and regional public authorities responsible for granting State aid, aid beneficiaries and their competitors in the fishery and aquaculture sector, the producer organisations, as well as NGOs and the civil society and consumers in general.

In the third quarter of 2019, an internet-based public consultation will be made available on the [public consultation website](#) in all official EU languages for 12 weeks. The consultation questionnaire will address both the evaluation of the existing State aid framework and the impact assessment on the State aid framework for the period 2021-2027 (i.e., single consultation for both initiatives). At the end of the public consultation, a summary will be made available on the [consultation website](#).

In addition, in June – July 2019, targeted consultations will be carried out in order to gather data and opinions from the public authorities responsible for granting aid as well as from the producers organisations. The information will primarily be gathered via written targeted questionnaires and, where necessary, via follow-up interviews.

Results of the above-mentioned consultation activities will feed into the preparation of the Impact Assessment Report. The results will be summarised in a synopsis report, which will be published as an annex to the Impact Assessment Report.

Finally, the draft reviewed regulations will be published for stakeholder feedback and will be submitted twice to the Advisory Committee on State aid (ACSA), as required by [Council Regulation \(EU\) 2015/1588](#). The stakeholders, including via ACSA, will also be invited to express their views on the draft reviewed Guidelines.

## Will an Implementation plan be established?

As State aid rules are not transposed by the Member States there is no need for an implementation plan.

<sup>1</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.

<sup>2</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.

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<sup>3</sup> Communication from the Commission - Guidelines for the examination of State aid to the fishery and aquaculture sector (2015/C 217/01).

<sup>4</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.

<sup>5</sup> “[T]he establishing of the competition rules necessary for the functioning of the internal market”.