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COMMUNICATION FROM THE COMMISSION

Guidelines for State aid in the fishery and aquaculture sector

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PART I

COMMON PROVISIONS

Chapter 1

1. INTRODUCTION

- (1) Article 107(1) of the Treaty on the Functioning of the European Union ('TFEU') 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.' Although TFEU lays down the principle that State aid is prohibited, in certain cases such aid may be compatible with the internal market on the basis of Articles 107(2) and 107(3) TFEU.
- (2) In accordance with Article 107(2), point (b), TFEU, State aid to make good the damage caused by natural disasters or exceptional occurrences, including in the fisheries and aquaculture sector, is compatible with the internal market. Secondly, on the basis of Article 107(3), point (c), TFEU, the Commission may consider to be compatible with the internal market aid to facilitate the economic development of the fishery and aquaculture sector, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Thirdly, aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349 TFEU, in view of their structural, economic and social situation may be considered compatible with the internal market under Article 107(3), point (a), TFEU.
- (3) In these Guidelines, the Commission sets out the criteria for identifying areas that fulfil the conditions of Article 107(3) TFEU and that can therefore be considered compatible with the internal market. As regards aid granted pursuant to Article 107(2), point (b), TFEU, these Guidelines set out the conditions under which a measure constituting aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the internal market.
- (4) State aid to facilitate the economic development of the fishery and aquaculture sector is embedded in the broader Common Fisheries Policy ('the CFP') established by Regulation (EU) No 1380/2013 of the European Parliament and the Council¹. Within that policy, the Union provides financial support to the fishery and aquaculture sector through Regulation (EU) 2021/1139 of the European Parliament and of the Council ('Regulation (EU) 2021/1139')², which established the European Maritime, Fisheries and Aquaculture Fund ('the EMFAF'). The social and economic impact of State aid is the same, irrespective of whether it is (even partly) financed by the Union budget or by a Member State. The

¹ 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).

² Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (OJ L 247, 13.7.2021, p. 1).

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 through the EMFAF. In applying and interpreting these Guidelines, the Commission takes into account the rules of the CFP and those governing the EMFAF. Consequently, the use of State aid can only be justified if it is in line with the objectives of the CFP.

- (5) The CFP, the objectives of which are set out in Article 2 of Regulation (EU) No 1380/2013 aims, in particular, at ensuring that fishery 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. In particular, the CFP is to:
- (a) gradually eliminate discards, on a case-by-case basis, taking into account the best available scientific advice, by avoiding and reducing, as far as possible, unwanted catches, and by gradually ensuring that catches are landed;
 - (b) where necessary, make the best use of unwanted catches, without creating a market for such of those catches that are below the minimum conservation reference size;
 - (c) provide conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity;
 - (d) provide for measures to adjust the fishing capacity of the fleets to levels of fishing opportunities consistent with Article 2(2) of Regulation (EU) No 1380/2013, with a view to having economically viable fleets without overexploiting marine biological resources;
 - (e) promote the development of sustainable Union aquaculture activities to contribute to food supplies and security and employment;
 - (f) contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects;
 - (g) contribute to an efficient and transparent internal market for fisheries and aquaculture products and contribute to ensuring a level-playing field for fisheries and aquaculture products marketed in the Union;
 - (h) take into account the interests of both consumers and producers;
 - (i) promote coastal fishing activities, taking into account socio-economic aspects;
 - (j) be coherent with the Union environmental legislation, in particular with the objective of achieving a good environmental status by 2020 as set out in Article 1(1) of Directive 2008/56/EC of the European Parliament and of the Council³, as well as with other Union policies.
- (6) Overall, in line with the CFP objectives, State aid is not to lead to increase in fishing capacity of the fishing fleet, overfishing or displacement of fishing effort that could lead to such overfishing.

³ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

- (7) In the general architecture of the EMFAF, support covers interventions that contribute to the achievement of the objectives of the CFP, as set out in Article 2 of Regulation (EU) No 1380/2013. To this end the EMFAF identifies four priorities for support and sets specific objectives that an intervention should pursue. In the context of these Guidelines, under Article 3 of Regulation (EU) 2021/1139, the most relevant priorities of the EMFAF include: (i) fostering sustainable fisheries and the restoration and conservation of aquatic biological resources (Priority 1); and (ii) fostering sustainable aquaculture activities, and processing and marketing of fisheries and aquaculture products, thus contributing to food security in the Union (Priority 2).
- (8) Regarding Priority 1, the specific objectives⁴ are as follows: (a) strengthening economically, socially and environmentally sustainable fishing activities; (b) increasing energy efficiency and reducing CO2 emissions through the replacement or modernisation of engines of fishing vessels; (c) promoting the adjustment of fishing capacity to fishing opportunities in cases of permanent cessation of fishing capacity and contributing to a fair standard of living in cases of temporary cessation of fishing activities; (d) fostering efficient fisheries control and enforcement, including fighting against illegal, unreported and unregulated (IUU) fishing, as well as reliable data for knowledge-based decision-making; (e) promoting a level-playing field for fishery and aquaculture products from the outermost regions; and (f) contributing to the protection and restoration of aquatic biodiversity and ecosystems.
- (9) Regarding Priority 2, the specific objectives are as follows: (a) promoting sustainable aquaculture activities, especially by strengthening the competitiveness of aquaculture production while ensuring that the activities are environmentally sustainable in the long term; and (b) promoting marketing, quality and value added of fisheries and aquaculture products, as well as processing of those products.
- (10) In 2019, the Commission launched an evaluation of the Guidelines for State aid to the fishery and aquaculture sector⁵, which showed that overall the State aid framework for the fishery and aquaculture sector is effective, it minimised the distortion of competition and effect on trade, it increased transparency, consistency and legal certainty, and it contributed to the achievement of the CFP objectives⁶. Some targeted adjustments are, however, necessary for the development of the economic activities in the fishery and aquaculture sector in order to align State aid rules for this sector with the EMFAF and with the horizontal State aid rules, and for taking into account related policies stemming from the European Green Deal,⁷ including a sustainable blue economy, under the balancing test (Part I, Section 3.2.6 of these Guidelines).

⁴ For the attainment of such objectives, and in particular those under points (d) and (f) of Priority 1, Member States may use the EU Space-based data and services.

⁵ OJ C 217, 2.7.2015, p 1.

⁶ [Reference to SWD]

⁷ Communication (COM(2019) 640 final) on the European Green Deal.

Chapter 2

2. SCOPE, DUTY TO NOTIFY AND DEFINITIONS

2.1. Scope of application of these Guidelines and the effect of EMFAF

2.1.1. *The scope*

- (11) 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 within the meaning of Article 107(2) or (3) TFEU.
- (12) These Guidelines apply to all aid granted to the fishery and aquaculture sector. This includes the components of regional aid that relate to the fishery and aquaculture sector. They also apply to all other aid that is granted to the fishery and aquaculture sector within the framework of the Union funds. Where aid falls under a horizontal or other aid instrument as set out in Part I, Section 2.2 of these Guidelines, the conditions set out in point (23) of this Chapter apply to such aid.
- (13) These Guidelines apply to all undertakings. Large enterprises tend to be less affected by market failures than micro, small and medium-sized enterprises ('SMEs'). Moreover, large enterprises in the fishery and aquaculture sector are more likely to be significant players on the market and, consequently, in specific cases, aid granted to large enterprises may particularly distort competition and trade in the internal market. As aid to large enterprises in the fishery and aquaculture sector can potentially cause distortions of competition, State aid rules for large enterprises in these Guidelines are harmonised with the general State aid rules, and are subject to the compatibility assessment under Article 107(3), point (c), TFEU which are expanded upon in detail in Part I, Chapter 3, of these Guidelines.
- (14) Undertakings in difficulty are excluded from the scope of these Guidelines, unless an exception set out in this point applies. The Commission considers that when an undertaking is in difficulty, given that its very existence is in danger, it cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured. Therefore, where the beneficiary of the aid is considered to be an undertaking in difficulty within the meaning of point (34)(x) of these Guidelines, the aid will be assessed in accordance with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁸. The following are exceptions to the general principle:
 - (a) aid to compensate for loss or damage caused by natural disasters and exceptional occurrences referred to in Part II, Chapter 1, Section 1.1, of these Guidelines, provided that the aid is compatible with the internal market under Article 107(2), point (b), TFEU;
 - (b) aid to compensate for loss or damage caused by adverse climatic events which can be assimilated to a natural disaster, animal diseases and infestations by invasive alien species and protected animals referred to in Part II, Chapter 1, Section 1.2, 1.3 or 1.4 of these Guidelines, where the financial difficulty of an undertaking active in the fishery and aquaculture sector was caused by those risk

⁸ OJ C 249, 31.7.2014, p. 1.

events, provided that aid is compatible with the internal market under Article 107(3), point (c), TFEU;

- (c) aid for the prevention, control and eradication of animal diseases in aquaculture referred to in point (185)(a), (b) and (d) to (g) of Part II, Chapter 1, Section 1.3, of these Guidelines, where the economic situation of the undertaking should not be taken into consideration due to an emergency situation and the need to protect public health, provided that the aid is compatible with the internal market under Article 107(3), point (c), TFEU;
 - (d) aid relating to information actions and for promotion measures which are generic in character, provided that they fall under Part I, Chapter 2, Section 2.3, of these Guidelines.
- (15) When assessing aid granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered⁹. This does not apply to aid to make good the damage caused by natural disasters and exceptional occurrences under Article 107(2), point (b), TFEU (Part II, Chapter 1, Section 1.1, of these Guidelines) and to aid for the costs of prevention, control and eradication of animal diseases in aquaculture under point (185)(a), (b) and (d) to (g) of Part II, Chapter 1, Section 1.3, of these Guidelines.

2.1.2. *Aid for other measures*

- (16) [Where aid does not correspond to one of the types of aid referred to in Part II, Chapters 1, 2 or 3, and Part I, Chapter 2, Sections 2.2 and 2.3, of these Guidelines, it is in principle not compatible with the internal market. If a Member State nevertheless intends to provide such aid or provides such aid, the Commission will assess it on a case-by-case basis directly on the basis of Article 107(3) TFEU, taking into account the rules laid down in Articles 107, 108 and 109 TFEU, and by analogy these Guidelines. Member States must clearly demonstrate that the aid complies with the principles set out in Part I, Chapter 3, of these Guidelines. The Commission will only approve such aid if the positive contribution to the development of the sector clearly outweighs the risks of distorting competition in the internal market and affecting trade between Member States.]

2.1.3. *The effect of Regulation (EU) 2021/1139*

- (17) Article 42 TFEU, provides that the Chapter of the TFEU relating to rules on competition, which includes those on State aid, applies to production of and trade in agricultural products – which include products of the fishery and aquaculture sector – only to the extent determined by the European Parliament and the Council.
- (18) Article 10(1) of Regulation (EU) 2021/1139 lays down that Articles 107, 108 and 109 TFEU apply to aid granted by Member States to undertakings in the fishery

⁹ See in this respect Joined Cases T-244/93 and T-486/93, *TWD Textilwerke Deggendorf GmbH v Commission*, ECLI:EU:T:1995:160.

and aquaculture sector. However, Article 10(2) of Regulation (EU) 2021/1139 provides for an exception to that general rule, laying down that Articles 107, 108 and 109 TFEU do not apply to payments made by Member States pursuant to Regulation (EU) 2021/1139 and falling within the scope of Article 42 TFEU. Pursuant to Article 10(3) of Regulation (EU) 2021/1139 Articles 107, 108 and 109 TFEU apply, if national provisions set up public financing as regards the fishery and aquaculture sector that goes beyond the provisions of Regulation (EU) 2021/1139. In that case, State aid rules apply to that public financing as a whole. Therefore, State aid rules apply: (a) within EMFAF Regulation to (i) any public financing that goes beyond the provisions of Regulation (EU) 2021/1139 and (ii) payments under Regulation (EU) 2021/1139 that fall outside the fishery and aquaculture sector within the meaning of Article 42 TFEU; and (b) to national payments made outside of the Regulation (EU) 2021/1139.

- (19) The EMFAF is based on a simple architecture without any predefined measures or detailed eligibility rules at Union level in a prescriptive manner, save for certain support measures. It describes broad specific objectives under each priority. Member States should thus indicate in their programme the most appropriate means for achieving the priorities of the EMFAF. A variety of measures identified by the Member States in those shared management programmes might be supported under the rules set out in Regulation (EU) 2021/1139 and in Regulation (EU) 2021/1060 of the European Parliament and the Council¹⁰.
- (20) Some payments made by Member States under Regulation (EU) 2021/1139 may not constitute payments to the fishery and aquaculture sector as they can fall outside of Article 42 TFEU. This can be the case, for example, for certain payments regarding operations under Articles 14, 23, 25, 29, 30, 31, 32, 33 and 34 of Regulation (EU) 2021/1139.
- (21) Payments under Regulation (EU) 2021/1139 that fall outside the fishery and aquaculture sector are subject to the State aid rules of the TFEU. Where those payments constitute State aid, they should be assessed under the relevant State aid instruments.
- (22) These Guidelines do not apply to aid granted as additional financing for the implementation of the compensation referred to in Articles 24, 35, 36 and 37 of Regulation (EU) 2021/1139. Where Member States grant additional financing to support compensation for additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions referred to in Article 24 of Regulation (EU) 2021/1139, Member States are to notify the State aid to the Commission which may approve it in accordance with Regulation (EU) 2021/1139 as part of that compensation. Such State aid is therefore deemed as notified within the meaning of the first sentence of Article 108(3) TFEU.

¹⁰ Regulation (EU) 2021/1060 of the European Parliament and the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p 159).

2.2. Horizontal and other aid instruments applicable to the fishery and aquaculture sector

- (23) Where aid falls within the scope of certain horizontal guidelines or other instruments adopted by the Commission, the Commission will assess such aid on the basis of the principles set out in the relevant Sections of those horizontal and other State aid instruments jointly with the conditions set out in Part I, Chapter 3, Sections 3.1.3 and 3.2.6 of these Guidelines.
- (24) Those horizontal guidelines and other instruments include the Criteria for the analysis of the compatibility of State aid for training subject to individual notification¹¹, the Guidelines on State aid to promote risk finance investments¹², the Framework for State aid for research and development and innovation¹³, Guidelines on State aid for climate, environmental protection and energy 2022¹⁴, the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty¹⁵, the State aid rules for the deployment of broadband networks¹⁶ and the Criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification¹⁷.
- (25) The Guidelines on regional State aid for 2022-2027¹⁸ do not apply to the fishery and aquaculture sector, save where State aid is granted in that sector as part of a horizontal regional operating aid scheme.

2.3. Aid for categories of measures covered by Regulations on block exemptions

- (26) Where aid benefitting SMEs or large enterprises 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 block exemptions referred to in point (31)(a), the Commission will assess the aid taking into account the compatibility assessment under Article 107(3), point (c), TFEU which are expanded upon in detail in Part I, Chapter 3, this Section and the criteria laid down for each category of aid set out in those Regulations.
- (27) The Commission will assess on a case-by-case basis aid that does not fulfil all the criteria in the relevant Regulation on block exemptions. If aid goes beyond the provisions set out in the relevant Regulation, the Member State must demonstrate the justification for and the indispensability of the aid.
- (28) In relation to points (26) and (27) :

¹¹ Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification (OJ C 188, 11.8.2009, p. 1).

¹² Communication from the Commission — Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

¹³ Communication from the Commission — Framework for State aid for research and development and innovation (OJ C 198, 27.6.2014, p. 1).

¹⁴ OJ C 80, 18.2.2022, p. 1.

¹⁵ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

¹⁶ Communication from the Commission – EU Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1).

¹⁷ Communication from the Commission — Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (OJ C 188, 11.8.2009, p. 6).

¹⁸ Communication from the Commission – Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

- (a) aid of the same kind as aid falling within the category of aid to make good the damage caused by natural disasters set out in Article 49 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.1, of these Guidelines;
- (b) aid of the same kind as aid falling within the category of aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster set out in Article 51 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.2, of these Guidelines;
- (c) aid of the same kind as aid falling within the category of aid for the costs of prevention, control and eradication of animal diseases set out in Article 42 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.3, of these Guidelines;
- (d) aid of the same kind as aid falling within the category of aid to make good the damage caused by protected animals set out in Article 53 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.4, of these Guidelines;
- (e) aid of the same kind as aid falling within the category of aid to prevent and mitigate the damage caused by animal diseases, natural disasters, adverse climatic events which can be assimilated to a natural disaster and protected animals set out in Articles 43, 48, 50 and 52 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 1, Section 1.5, of these Guidelines; and
- (f) aid of the same kind as aid falling within the category of aid for the first acquisition of a fishing vessel set out in Article 20 of Regulation (EU) [NEW FIBER] is compatible with the internal market, if it meets the specific conditions set out in Part II, Chapter 3, Section 3.1, of these Guidelines.

2.4. Duty to notify

- (29) These Guidelines apply to aid schemes and to individual aid.
- (30) The Commission reminds each Member State of its duty to notify any plans to grant new aid, as provided for in Article 108(3) TFEU and Article 2 of Council Regulation (EU) 2015/1589¹⁹.
- (31) The Commission also reminds Member States of those cases where a notification to the Commission is not required:
 - (a) aid complying with one of the Regulations on block exemptions adopted on the basis of Article 1 of Council Regulation (EU) 2015/1588²⁰, if they apply to the fishery and aquaculture sector, in particular:

¹⁹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

²⁰ Council Regulation (EU) 2015/1588 of 13 July 2015 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 248, 24.9.2015, p. 1).

- (i) aid complying with Regulation (EU) [NEW FIBER] 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 TFEU; and
 - (ii) training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, aid for disadvantaged workers and workers with disabilities, [aid in the form of reductions in taxes under Directive 2003/96/EC], regional investment aid in outermost regions, regional operating aid schemes, aid to European Territorial Cooperation projects, and aid involved in financial products supported by the InvestEU Fund, except for operations listed in Article 1(1) of Commission Regulation (EU) No 717/2014²¹, complying with the Commission Regulation (EU) No 651/2014²²;
- (b) *de minimis* aid complying with Regulation (EU) No 717/2014.
- (32) Member States are reminded that the system of financing, for example, by parafiscal levies, forms an integral part of the aid (see paragraphs 41 to 44 of Case T-275/11)²³.
- (33) 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 Part I, Chapter 3, and the conditions of the applicable Section of these Guidelines. Only aid that equally benefits domestic and imported products may be considered compatible with the internal market.

2.5. Definitions

- (34) For the purposes of these Guidelines, the following definitions apply:
- (a) 'aid' means any measure fulfilling all the criteria laid down in Article 107(1) TFEU;
 - (b) '*ad hoc* aid' means aid not granted on the basis of an aid scheme;
 - (c) 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;
 - (d) '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

²¹ 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, 28.06.2014, p. 45).

²² 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).

²³ Case T-275/11, *Télévision française 1 (TF1) v Commission*, EU:T:2013:535. See also Case C-174/02, *Streekgewest Westelijk Noord-Brabant*, EU:C:2005:10; Case C-526/04, *Laboratoires Boiron*, ECLI:EU:C:2006:528; Joint Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 et C-83/90, *Compagnie commerciale de l'Ouest v. Receveur principal des douanes de La Pallice-Port*, EU:C:1992:118; and Case C-234/99, *Niels Nygård v Svineafgiftsfonden, and Ministeriet for Fødevarer*, EU:C:2002:244.

aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;

- (e) ‘control and eradication measures’ means measures regarding animal diseases for which a competent authority has formally recognised an outbreak, or regarding plant pests or invasive alien species for which a competent authority has formally acknowledged their presence;
- (f) ‘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;
- (g) ‘evaluation plan’ means a document covering one or more aid schemes and containing at least the following minimum aspects: the objectives to be evaluated, the evaluation questions, the result indicators, the envisaged method to conduct the evaluation, the data collection requirements, the proposed timing of the evaluation including the date of submission of the interim and the final evaluation reports, the description of the independent body that will carry out the evaluation or the criteria that will be used for its selection and the modalities for making the evaluation publicly available;
- (h) ‘fishery and aquaculture products’ means the products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and the Council²⁴;
- (i) ‘fishery and aquaculture sector’ means the sector of the economy which comprises all activities of production, processing, and marketing of fishery or aquaculture products;
- (j) ‘gross grant equivalent’ means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charges;
- (k) ‘individual aid’ means *ad hoc* aid and awards of aid to individual beneficiaries on the basis of an aid scheme;
- (l) ‘inland fishing’ means fishing activities carried out for commercial purposes in inland waters by vessels or other devices, including those used for ice fishing;
- (m) ‘invasive alien species of Member State concern’ means an invasive alien species as defined in Article 3(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council²⁵;
- (n) ‘invasive alien species of Union concern’ means an invasive alien species as defined in Article 3(3) of Regulation (EU) No 1143/2014;
- (o) ‘large enterprises’ means any undertaking not fulfilling the criteria laid down in Annex I to Regulation (EU) [NEW FIBER];
- (p) ‘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

²⁴ Regulation (EU) No 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).

²⁵ Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

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;

- (q) ‘outermost regions’ means the regions referred to in Article 349 TFEU²⁶;
 - (r) ‘prevention measures’ means measures regarding an animal disease or invasive alien species that has not yet occurred;
 - (s) ‘processing and marketing’ means all operations, including handling, treatment, production and distribution, performed between the time of landing or harvesting and the end-product stage;
 - (t) ‘protected animal’ means any animal other than fish protected either by Union or by national legislation;
 - (u) ‘micro, small and medium-sized enterprises (‘SMEs’)' means undertakings fulfilling the criteria down in Annex I to Regulation (EU) [NEW FIBER];
 - (v) ‘small scale coastal fishing’ means fishing activities carried out by:
 - (a) marine and inland fishing vessels of an overall length of less than 12 metres and not using towed gear as defined in point (1) of Article 2 of Council Regulation (EC) No 1967/2006²⁷; or
 - (b) fishers on foot, including shellfish gatherers;
 - (w) ‘start of works on the project or activity’ means the earlier of, either the start of the activities, or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible; buying land and preparatory works such as obtaining permits and conducting feasibility studies are not considered start of works or activity;
 - (x) ‘undertaking in difficulty’ means an undertaking fulfilling the criteria laid in Section 2.2 of the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²⁸;
- (35) In addition to the definitions listed in point (34), the definitions contained in the respective instruments listed under points (24), (25), (31)(a) of these Guidelines and those provided for in Article 4 of Regulation (EU) No 1380/2013 and Article 2 of Regulation (EU) 2021/1139 apply, as relevant.

²⁶ Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands (OJ C 202, 7.6.2016, p. 195).

²⁷ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11)

²⁸ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

Chapter 3

3. COMPATIBILITY ASSESSMENT UNDER ARTICLE 107(3), POINT (C), TFEU

- (36) On the basis of Article 107(3), point (c), TFEU, the Commission may consider compatible with the internal market State 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.
- (37) Consequently, in order to assess whether State aid for fishery and aquaculture sector can be considered compatible with the internal market, the Commission will determine whether the aid measure facilitates the development of a certain economic activity (first condition) and whether it adversely affects trading conditions to an extent contrary to the common interest (second condition).
- (38) In this Chapter, the Commission clarifies how it will carry out the compatibility assessment. It establishes general compatibility conditions and, where applicable, lays down specific conditions for aid schemes and additional conditions for individual aid which is subject to the obligation of notification.
- (39) In order to make the assessment referred to in point (37), the Commission will consider the following aspects :
 - (a) first condition: the aid facilitates the development of an economic activity:
 - (i) identification of the economic activity concerned (Section 3.1.1 of this Chapter);
 - (ii) 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 which it would carry out in a restricted or different manner (Section 3.1.2 of this Chapter);
 - (iii) the aid does not contravene relevant provisions and general principles of Union law (Section 3.1.3 of this Chapter);
 - (b) second condition: the aid does not adversely affect trading conditions to an extent contrary to the common interest:
 - (i) need for State intervention: the aid must bring about a material improvement that the market cannot deliver by itself, for example by remedying a market failure or addressing an equity or cohesion concern, where applicable (Section 3.2.1 of this Chapter);
 - (ii) appropriateness of the aid: the proposed aid must be an appropriate policy instrument to facilitate the development of the economic activity (Section 3.2.2 of this Chapter);
 - (iii) proportionality of the aid (aid limited to the minimum necessary): the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned (Section 3.2.3 of this Chapter);
 - (iv) 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 granted thereunder (Section 3.2.4 of this Chapter).

(v) avoidance of undue negative effects of the aid on competition and trade (Section 3.2.5 of this Chapter);

(vi) weighing up the positive and negative effects that aid can have on competition and trade between Member States (balancing test) (Section 3.2.6 of this Chapter).

- (40) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in points (305) to (312). In such cases, the Commission may limit the duration of those schemes (normally to four years or less) with a possibility to re-notify their prolongation afterwards.
- (41) These general compatibility criteria apply to all aid under these Guidelines, unless derogations are provided for in Part I, Chapter 3, Sections 3.1 and 3.2 of these Guidelines, due to particular considerations applicable in the fishery and aquaculture sector.

3.1. First condition: the aid facilitates the development of an economic activity

3.1.1. Aided economic activity

- (42) The Commission will identify, based on information provided by the Member State, which economic activity will be supported by the notified measure.
- (43) The Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity.
- (44) The Commission considers that aid granted in compliance with Part II, Chapter 1, Sections 1.1, 1.2, 1.3 and 1.4 and Part II, Chapter 3, Sections 3.4 and 3.5 of these Guidelines can facilitate the development of the economic activities in the fishery and aquaculture sector as without aid such development may not take place to the same extent.

Additional conditions for individually notifiable aid on the basis of a scheme

- (45) When awarding aid to individually notifiable investment projects on the basis of a scheme, the granting authority must demonstrate that the selected project will contribute towards the objective of the scheme and thus towards the objectives of aid in the fishery and aquaculture sector. For this purpose, Member States should refer to information provided by the applicant for aid where the positive effects of the investment must be described.

3.1.2. Incentive effect

- (46) Aid in the fishery and aquaculture sector can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in such a way that it engages in additional activity contributing to the development of the sector which it would not have engaged in without the aid or in which it would only have engaged in a restricted or different manner. The aid must however 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.
- (47) Unless exceptions are expressly provided for in Union legislation or in these Guidelines, State aid measures which are simply intended to improve the financial

situation of undertakings but which in no way contribute to the development of the fishery and aquaculture sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production, are considered to constitute operating aid, which is incompatible with the internal market. Furthermore, by its very nature, such aid is also likely to interfere with the mechanisms regulating the organisation of the internal market.

- (48) Operating aid and aid to facilitate the achievements of obligatory standards are 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.
- (49) Aid covered by Part II, Chapter 1, should be limited to helping undertakings which are active in the fishery and aquaculture sector facing various difficulties despite having undertaken reasonable efforts to minimise such risks. State aid should not have as an effect to entice undertakings into taking unnecessary risk. Undertakings active in the fisheries and aquaculture sector must themselves bear the consequences of imprudent choices of production methods or products. Where relevant, this principle applies to Part II, Chapter 3, Sections 3.4 and 3.5.
- (50) For the reasons explained in point (46), the Commission considers that aid does not present an incentive for the beneficiary wherever work on the relevant project or activity has already started, prior to the aid application by the beneficiary to the national authorities.
- (51) The aid application must include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (52) In addition, large enterprises must describe in the application, the situation without the aid, which situation is referred to as the counterfactual scenario or alternative project or activity and submit documentary evidence in support of the counterfactual described in the application. This requirement does not apply to municipalities, which are autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.
- (53) When receiving an application, the granting authority must carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect. A counterfactual is credible, if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the project or activity concerned.
- (54) By way of derogation from points (50) and (51), aid in the form of tax advantages granted to SMEs is deemed to have an incentive effect, if the aid scheme establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State and if the aid scheme has been adopted and in force before work on the aided project or activity has started. The latter requirement does not apply in the case of fiscal successor schemes, provided the activity was already covered by the previous schemes in the form of tax advantages.
- (55) Aid that is compensatory in nature, such as aid referred to in Part II, Chapter 1, Sections 1.1, 1.2, 1.3 and 1.4 and Part II, Chapter 3, Section 3.5, and aid that meets the conditions laid down in Part II, Chapter 2, Sections 2.1, 2.2 and 2.3 is not required to have or is deemed to have an incentive effect.

Additional conditions for individually notifiable investment aid

- (56) In addition to the requirements set out above in points (46) and (49) to (54) respectively, for individually notifiable investment aid, the Member State must provide clear evidence that the aid effectively has an impact on the investment choice. To allow for a comprehensive assessment, the Member State must provide not only information concerning the aided project but also a comprehensive description of the counterfactual scenario, in which no aid is granted to the beneficiary by any public authority.
- (57) Member States are invited to draw up genuine and official board documents, risk assessments, including the assessment of location-specific risks, financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Those documents need to be contemporary to the decision-making process concerning the investment or its location. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help the Member States demonstrate the incentive effect.
- (58) In this context, the level of profitability may be evaluated by using methods that are standard practice in the sector concerned and which may include methods to evaluate the net present value (NPV)²⁹ of the project, the internal rate of return (IRR)³⁰ or the average return on capital employed (ROCE). The profitability of the project is to be compared with normal rates of return applied by the beneficiary in other investment projects of a similar kind. Where these rates are not available, the profitability of the project is to be compared with the cost of capital of the undertaking as a whole or with the rates of return commonly observed in the sector concerned.
- (59) Where no specific counterfactual scenario is known, the incentive effect can be assumed when there is a funding gap. That is the case when the investment costs exceed the NPV of the expected operating profits of the investment on the basis of an *ex ante* business plan.
- (60) If the aid does not change the behaviour of the beneficiary by stimulating additional investment, it has no positive effects for development of the sector concerned. Therefore, aid will not be considered compatible with the internal market if it appears that the same investment would still be pursued without the aid.

3.1.3. No breach of relevant provisions and general principles of Union law

- (61) If a State aid measure, the conditions attached to it, including its financing method when the financing method forms an integral part of such measure, or the activity

²⁹ The net present value (NPV) of a project is the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value (typically using the cost of capital).

³⁰ 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 the investment. It is defined as the discount rate for which the NPV of a stream of cash flows equals zero.

it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market³¹.

- (62) Member States must ensure that each beneficiary of a State aid measure complies with the rules of the CFP.
- (63) An application for aid or, if no application is required, an equivalent act must be considered inadmissible, if the competent authority referred to in Article 11(1) of Regulation (EU) 2021/1139 has determined that the operator concerned has committed one or more of the infringements or offences set out in that paragraph or a fraud as set out in Article 11(3) of that Regulation. The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 11(4) of that Regulation apply. This principle does not apply in the case of aid that meets the specific conditions set out in Part II, Chapter 1, Sections 1.1 and 1.2 of these Guidelines. The principle does not apply either to aid for the costs of prevention, control and eradication of animal diseases in aquaculture set out in Part II, Chapter 1, Section 1.3 of these Guidelines.
- (64) Each undertaking, after submitting an application for aid or, if no application is required, 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 11(1) of Regulation (EU) 2021/1139 during those periods and has as a consequence become inadmissible to apply for aid, the aid must be reimbursed by the beneficiary. This principle does not apply in the case of aid that meets the specific conditions set out in Part II, Chapter 1, Section 1.1 of these Guidelines.
- (65) No aid will be granted for activities that correspond to ineligible operations in accordance with Article 13 of Regulation (EU) 2021/1139 unless expressly provided otherwise in these Guidelines.

3.2. Second condition: the aid does not adversely affect trading conditions to an extent contrary to the common interest

- (66) Pursuant to Article 107(3), point (c), TFEU aid to facilitate the development of certain economic activities or of certain economic areas may be declared compatible with the internal market, but only “where such aid does not adversely affect trading conditions to an extent contrary to the common interest.”
- (67) This Section sets out the method of exercise of the Commission’s discretion in carrying out the assessment under the second condition of the compatibility assessment referred to in point (39)(b).
- (68) By its very nature, any aid measure generates distortions of competition and has an effect on trade between Member States. However, in order to establish, if the

³¹ See, for instance, Case C-156/98, *Germany v. Commission*, EU:C:2000:467, paragraph 78; Case C-333/07, *Société Régie Networks v. Rhône-Alpes Bourgogne*, EU:C:2008:764, paragraphs 94 to 116; Case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraph 44; and C-67/09 P, *Nuova Agricast v. Commission*, EU:C:2010:607, paragraph 51.

distortive effects of the aid are limited to the minimum, the Commission will verify whether the aid is necessary, appropriate, proportionate and transparent.

- (69) The Commission will then assess the distortive effect of aid in question on competition and trading conditions. The Commission will then balance the positive effects of the aid with its negative effects on competition and trade. Where the positive effects outweigh the negative effects, the Commission will declare the aid compatible with the internal market.
- (70) The compliance of aid with the conditions in Sections 3.2.1 to 3.2.6 of this Chapter must be assessed in the specific context of the rules of the CFP and those governing the EMFAF.

3.2.1. Need for State intervention

- (71) To assess whether State aid is necessary to achieve the intended outcome, it is first necessary to diagnose the problem. State aid must be targeted to situations, where aid can bring about a material development that the market cannot deliver, for example by remedying a market failure to the aided activity or investment in question.
- (72) State aid can indeed, under certain conditions, correct market failures, thereby contributing to the efficient functioning of markets and enhancing competitiveness. This holds especially in a context of scarce public resources.
- (73) For the purposes of these Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid fulfilling the specific conditions laid down in Part I, Chapter 2, Section 2.3 and Part II, Chapter 1, Sections 1.1, 1.2, 1.3 and 1.4 and Chapter 2, Section 2.2. Therefore, such aid will be considered necessary.

3.2.2. Appropriateness of the aid

- (74) The proposed aid must be an appropriate policy instrument to facilitate the development of the economic activity. An aid will not be considered compatible with the internal market, if other less distortive policy instruments or other less distortive types of aid make it possible to achieve the same positive contribution to the objectives of CFP. There may be other, better placed instruments, such as regulation, market-based instruments, infrastructure development and improvement in the business environment, to achieve those objectives.
- (75) The Commission considers that aid which meet the specific conditions laid down in Part I, Chapter 2, Section 2.3, and Part II, Chapter 1, Sections 1.1, 1.2, 1.3, 1.4 and 1.5 and Part I, Chapter 2, Section 2.2, are an appropriate policy instrument.
- (76) In all other cases, a Member State must demonstrate that no other less distortive policy instrument exists.

Appropriateness among different forms of aid

- (77) Aid can be granted in various forms. The Member State should however ensure that the aid is granted in the form that is likely to generate the least distortions of trade and competition.
- (78) The Commission considers that aid granted in the form provided for in these Guidelines or in the respective EMFAF intervention in accordance with Regulation (EU) 2021/1139 is an appropriate form of aid. An aid measure of the same kind as an operation that is eligible for funding under Regulation (EU) 2021/1139 is appropriate if it complies with the relevant provisions of that Regulation. If an aid measure goes beyond the provisions set out in Regulation (EU) 2021/1139, the Member State must demonstrate the justification for and the indispensability of the aid.
- (79) 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 or an alternative provision of capital on favourable terms) are less appropriate.
- (80) The compatibility assessment of an aid with the internal market is without prejudice to the applicable public procurement rules and to the principles of transparency and openness and non-discrimination in the selection process of a service provider.

3.2.3. Proportionality of the aid

- (81) Aid in the fishery and aquaculture sector is considered to be proportionate, if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided activity.

Maximum aid intensities and maximum aid amounts

- (82) In principle, in order for the aid to be proportionate, the Commission considers that the aid amount should not exceed the eligible costs.
- (83) In order to ensure predictability and a level playing field, in these Guidelines the application of maximum aid intensities for aid is foreseen.
- (84) If the eligible costs are correctly calculated and the maximum aid intensities or maximum aid amounts set out in the sections of Part II of these Guidelines are respected, the criterion of proportionality is deemed to be fulfilled.
- (85) For aid measure of the same kind as an operation that is eligible for funding under Regulation (EU) No 2021/1139 and aid for categories of measures covered by Regulation (EU) [NEW FIBER], as set out in Part I, Chapter 2, Section 2.3 of these Guidelines, 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 41(1) to (4) of Regulation (EU) 2021/1139 and Annex III thereto. If an aid measure goes beyond the provisions set out in Regulation (EU) 2021/1139 or Regulation (EU) [NEW FIBER], the Member State must demonstrate the justification for and the indispensability of the aid.

- (86) The maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which must be clear, specific and contemporary. For the purposes of calculating the aid intensity or aid amount and the eligible costs, all figures used must be taken before any deduction of tax or other charge.
- (87) Value added tax (VAT) is not eligible for aid, except where it is not-recoverable under national VAT legislation.
- (88) Where aid is granted in a form other than a grant, the aid amount is the gross grant equivalent of the aid.
- (89) Aid payable in several instalments is discounted to its value at the moment of granting the aid. The eligible costs are discounted to their value at the moment of granting the aid. The interest rate to be used for discounting purposes is the discount rate applicable on the date of granting the aid.
- (90) Where aid is granted by means of tax advantages, the discounting of aid tranches takes place on the basis of the discount rates applicable at the various times the tax advantage takes effect.
- (91) With the exception of Part II, Chapter 1 and Chapter 3, aid may be granted according to the following simplified cost options:
- (a) unit costs;
 - (b) lump sums;
 - (c) flat-rate financing.
- (92) The aid amount must be established in one of the following ways:
- (a) a fair, equitable and verifiable calculation method based on:
 - (i) statistical data, other objective information or an expert judgement; or
 - (ii) verified historical data of individual beneficiaries; or
 - (iii) the application of usual cost accounting practices of individual beneficiaries;
 - (b) in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation.
- (93) As regards EU co-financed measures, the amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) 2021/1060.
- (94) When assessing the compatibility of aid, the Commission will consider any insurance taken out, or which could have been taken out by the aid beneficiary. Regarding aid to compensate for losses caused by adverse climatic events which can be assimilated to a natural disaster, in order to avoid the risk of distorting competition, aid at the maximum aid intensity should be granted only to an undertaking that cannot be covered for such losses by insurance. This is why, in order to further improve risk management, beneficiaries must be encouraged to take out insurance wherever possible.

Additional conditions for individually notifiable investment aid and investment aid to large enterprises under notified schemes

- (95) As a general rule, for individually notifiable investment aid to be considered limited to the minimum, the aid amount must correspond to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid³², with maximum aid intensities as a cap. Likewise, in the case of investment aid granted to large enterprises under notified schemes, Member States must ensure that the aid amount is limited to the minimum on the basis of a ‘net extra cost approach’, with maximum aid intensities as a cap.
- (96) The aid amount should not exceed the minimum necessary to render the project sufficiently profitable, for example, it should not lead to an increase of its Internal Rate of Return (IRR) beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, if these rates are not available, to an increase of its IRR beyond the cost of capital of the undertaking as a whole or beyond the rates of return commonly observed in the sector concerned.
- (97) For investment aid to large enterprises under notified schemes, the Member State must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. The method explained in point (96) must be used together with maximum aid intensities as a cap.
- (98) As regards individually notifiable investment aid, the Commission will verify whether the aid amount exceeds the minimum necessary to render the project sufficiently profitable, as provided in point (96). Calculations used for the analysis of the incentive effect can also be used to assess if the aid is proportionate. The Member State must demonstrate the proportionality on the basis of documentation such as that referred to in point (57).
- (99) These additional conditions in points (95) to (98) do not apply to municipalities, which are autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants, referred in point (52).

Cumulation of aid

- (100) Aid may be granted concurrently under several schemes or cumulated with *ad hoc* aid, provided that the total amount of State aid for an activity or project does not exceed the aid intensity and aid amount laid down in these Guidelines.
- (101) Aid with identifiable eligible costs may be cumulated with any other State aid, as long as those aids concern different identifiable eligible costs. Aid with identifiable eligible costs may be cumulated with any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this type of aid under these Guidelines.
- (102) Aid without identifiable eligible costs under these Guidelines may be cumulated with any other State aid measure with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with other State aid without

³² When comparing counterfactual scenarios, the aid is to be discounted by the same factor as the corresponding investment and counterfactual scenarios.

identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by these Guidelines or other State aid guidelines, a regulation on block exemption or a decision adopted by the Commission.

- (103) State aid in favour of the fishery and aquaculture sector should not be cumulated with payments referred to in Regulation (EU) 2021/1139 in respect of the same eligible costs, if such cumulation would result in an aid intensity or aid amount exceeding those laid down in these Guidelines.
- (104) Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter will be considered for determining whether notification thresholds and maximum aid intensities and aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate(s) laid down in the applicable rules of Union law.
- (105) Aid authorised under these Guidelines should not be cumulated with any *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity or aid amount exceeding that fixed in these Guidelines.

3.2.4. Transparency

- (106) Member States must ensure the publication of the following information in the Commission's transparency award module³³ or 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 identity of the granting authority/(ies);
 - (c) the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, 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 a requirement can be waived with respect of individual aid awards not exceeding the threshold of EUR 10 000³⁴.
- (107) 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): 0,01-0,03; above 0,03-0,5; above 0,5-1; above 1-2; above 2.

³³ 'State Aid Transparency Public Search', available at the following website: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

³⁴ The threshold of EUR 10 000 corresponds to the threshold for the publication of information set out in Article 9 of [NEW FIBER]. 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. 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 10 000 is proportionate to the legitimate aim it pursues, in particular as regards transparency with respect to the use of public funds.

- (108) Such information must be published after the decision to grant the aid has been taken, it must be kept for at least 10 years and be available for the general public without restrictions³⁵.
- (109) For reasons of transparency, Member States must carry out reporting as required in Part III, Section 4, of these Guidelines.

3.2.5. *Undue negative effects on competition and trade*

- (110) Aid for the fishery and aquaculture sector may potentially cause product market distortions. For the aid to be compatible with the internal market, the negative effects of the aid in terms of distortions of competition and impact on trade between Member States must be minimised or avoided. The Commission considers that, in principle, where aid fulfils the specific conditions set out in Part I, Chapter 2, Section 2.3 and Part II, Chapter 1, Sections 1.1, 1.2, 1.3, 1.4 and 1.5 and Part I, Chapter 2, Section 2.2 the negative effects on competition and trade are limited to the minimum.
- (111) Member States should provide evidence allowing the Commission to identify the product market(s) concerned, that is to say the market(s) affected by the change in behaviour of the aid beneficiary. In assessing the negative effects of the aid, the analysis of the distortions of competition will be focused on the predictable impact that the aid has on competition between undertakings in the product market(s) affected³⁶ in the fishery and aquaculture sector.
- (112) Firstly, if the aid is well targeted, proportionate and limited to the net extra costs, the negative impact of the aid is softened and the risk that the aid will unduly distort competition will be more limited. Secondly, the Commission is to establish maximum aid intensities or aid amounts. The aim is to prevent the use of State aid for projects where the ratio between aid amount and eligible costs is to be deemed very high and particularly likely to be distortive. In general, the greater the positive effects the aided project is likely to give rise to and the higher the likely need for aid, the higher the cap on aid intensity.
- (113) However, even where aid is necessary and proportionate, it may result in a change of the behaviour of the beneficiaries which distorts competition. This is more likely in the fishery and aquaculture sector which differs from other markets by the specific structure as it is characterised by a high number of small undertakings involved. On such markets the risk of distortion of competition is high even when only small amounts of aid are granted.

³⁵ This 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 of the tax declaration). In the case of unlawful aid, Member States will be required to ensure the publication of this 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.

³⁶ A number of markets may be affected by the aid, because the impact of the aid may not be restricted to the market corresponding to the activity that is supported but may extend to connected other markets, which are connected to that market either because they are upstream, downstream or complementary, or because the beneficiary is already present on them or may be present in the near future.

- (114) In certain situations, the negative effects manifestly outweigh any positive effects, meaning that aid cannot be found to be compatible with the internal market. In particular, according to the general principles of the TFEU, State aid cannot be declared compatible with the internal market, if the aid is discriminatory to an extent not justified by its State aid character. As explained in section Part I, Chapter 3, Section 3.1.3, point (61) of these Guidelines, the Commission will thus not declare compatible any measure where such measure or the conditions attached to it entail a violation of relevant Union law. This is particularly the case for aid where the award of aid is subject to the obligation for the beneficiary to use national products or services, as well as for aid restricting the possibility for the beneficiary to exploit the research, development and innovation results in other Member States.
- (115) The Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market in principle does not constitute export aid.

Investment aid schemes for the processing and marketing of fishery and aquaculture products

- (116) Because investment aid to undertakings active in the processing and the marketing of fishery and aquaculture products and to undertakings active in other sectors, for example in the food processing sector, tends to have similar distortive effects on competition and trade, the general competition policy considerations on the effect on competition and trade should apply equally to all those sectors. Therefore, the conditions described in points (117) to (127) must be respected as regards investment aid for the processing and marketing of fishery and aquaculture products.
- (117) Investment 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 (provided all conditions for investment aid are fulfilled), on a cumulative basis these schemes might still lead to high levels of distortion. In the case of an investment aid scheme focusing on certain sectors, the risk of such distortions is even more pronounced.
- (118) Therefore, the Member State concerned must demonstrate that any negative effects 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 sectors. In order to enable the Commission to assess the likely negative effects, the Member State concerned is encouraged to submit any impact assessment at its disposal as well as *ex-post* evaluations carried out for similar schemes.

Individually notifiable investment aid for the processing and marketing of fishery and aquaculture products

- (119) In appraising the negative effects of individual investment aid, the Commission places particular emphasis on the negative effects linked with the build-up of overcapacity in declining markets, the prevention of exit, and the notion of

substantial market power. These negative effects are described in points (120) to (127) and must be counterbalanced with the positive effects of the aid.

- (120) In order to identify and assess the potential distortions of competition and trade, Member States should provide evidence allowing the Commission to identify the product markets concerned (that is to say, products affected by the change in the behaviour of the aid beneficiary) and to identify the competitors and customers/consumers affected. The product concerned is typically the product covered by the investment project³⁷. When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. The relevant product market includes the product concerned and its substitutes considered to be such, either by the consumer (by reason of the product's characteristics, prices, or intended use) or by the producer (by reason of flexibility of production installations).
- (121) The Commission uses various criteria to assess those potential distortions, such as market structure of the product concerned, performance of the market (declining or growing market), process for selection of the aid beneficiary, entry and exit barriers, product differentiation.
- (122) A systematic reliance on State aid by an undertaking could indicate that the undertaking is unable to withstand competition on its own or that it derives undue advantages compared to its competitors.
- (123) The Commission distinguishes two main sources of potential negative effects on product markets:
 - (a) cases of significant capacity expansion which leads to or deteriorates an existing situation of overcapacity, especially in a declining market; and
 - (b) cases where the aid beneficiary holds substantial market power.
- (124) To evaluate whether the aid serves to create or maintain inefficient market structures, the Commission will take into account the additional production capacity created by the project and whether the market is underperforming.
- (125) If the market in question is growing, there is typically less cause for concern that the aid will negatively affect dynamic incentives or will unduly impede market exit or entry.
- (126) More concern is warranted when markets are in decline. The Commission distinguishes between cases for which, with a long-term outlook, the market is structurally in decline (that is to say, it is contracting), and cases for which the market is in relative decline (that is to say, it is still growing, but does not exceed a benchmark growth rate).
- (127) Underperformance of the market is typically measured against the EEA GDP over the three years before the start of the project (benchmark rate). It can also be measured on the basis of projected growth rates for the next three to five years. Indicators may include the expected future growth of the market concerned and the resulting expected capacity utilisation rates, and the likely impact of the capacity increase on competitors in terms of prices and profit margins.

³⁷ For investment projects that involve the production of several different products, each product must be assessed.

3.2.6. *Weighing up the positive and the negative effects of the aid (balancing test)*

- (128) The Commission assesses whether the positive effects of the aid outweigh the identified negative effects on competition and trading conditions. The Commission may conclude on the compatibility of the aid with the internal market only where the positive effects outweigh the negative ones.
- (129) In cases where the proposed aid does not address a well-identified market failure in an appropriate and proportionate way, the negative distortive effects on competition will tend to outweigh the positive effects of the aid hence the Commission is likely to conclude that the proposed aid is incompatible with the internal market.
- (130) [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 (see point (5) of these Guidelines).]
- (131) In principle, due to its positive effects on the development of the fishery and aquaculture sector, the Commission considers that for aid fulfilling the conditions laid down in Part I, Chapter 2, Section 2.3 and Part II, Chapter 1, Sections 1.1, 1.2 1.3, 1.4 and 1.5 and Chapter 2, Section 2.2, the negative effect on competition and trade between Member States is limited to the minimum.
- (132) With respect to State aid which is co-financed under the EMFAF or financed by the Union budget, the Commission will consider that the related positive effects have been established.
- (133) In addition, the Commission may also take into account, where relevant, whether the proposed aid brings about other positive effects. Where such other positive effects reflect those embodied in Union policies, such as European Green Deal, including a sustainable blue economy³⁸, Farm to fork Strategy³⁹, Circular Economy Action Plan⁴⁰, Biodiversity Strategy⁴¹, EU Action Plan: “Towards Zero

³⁸ Article 2, point (15), of Regulation (EU) 2021/1139 defines ‘sustainable blue economy’ as “all sectoral and cross-sectoral economic activities throughout the internal market relating to oceans, seas, coasts and inland waters, covering the Union’s insular and outermost regions and landlocked countries, including emerging sectors and non-market goods and services, aimed at ensuring environmental, social and economic sustainability in the long term and which are consistent with the SDGs, and in particular SDG 14, and with Union environmental legislation”. See also, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: On a new approach for a sustainable blue economy in the EU Transforming the EU’s Blue Economy for a Sustainable Future (COM/2021/240 final).

³⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

⁴⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM/2020/98 final).

Pollution for Air, Water and Soil”⁴², the Strategy on adaptation to climate change⁴³, energy efficiency⁴⁴, the initiative on Shaping Europe’s Digital Future Communication⁴⁵, then the proposed aid aligned with such Union policies can be presumed to have such wider positive effects.

- (134) Where aid is granted in favour of investments, the Commission will also pay attention to Article 3 of Regulation (EU) 2020/852 of the European Parliament and of the Council⁴⁶, including the ‘Do no significant harm’ principle, or other comparable methodologies.

⁴¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final)

⁴² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (COM/2021/400 final).

⁴³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Strategy on adaptation to climate change (COM/2013/0216 final).

⁴⁴ In particular concerning the energy efficiency first principle, as included in Article 1, paragraph 1 of Directive 2012/27/EU, as amended by Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency, OJ L 328, 21.12.2018, p. 210.

⁴⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Shaping Europe's digital future (COM/2020/67 final).

⁴⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

PART II

CATEGORIES OF AID

CHAPTER 1

1. AID FOR RISK AND CRISIS MANAGEMENT

1.1. Aid to make good the damage caused by natural disasters or exceptional occurrences

- (135) The Commission will consider aid to make good the damage caused by natural disasters or exceptional occurrences compatible with the internal market under Article 107(2), point (b), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (136) ‘Natural disaster’ and ‘exceptional occurrence’, as referred to in Article 107(2), point (b), TFEU, constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU. For that reason, the Commission has consistently held that those notions are to be interpreted restrictively. This has been confirmed by the Court of Justice of the European Union⁴⁷.
- (137) To date, in the field of State aid to the fishery and aquaculture sector, the Commission has accepted that exceptionally severe storms and floods, in particular floods brought about by waters overflowing river banks or lake shores, may constitute natural disasters. Moreover, in accordance with Regulation (EU) [NEW FIBER] it is possible to block exempt the following types of natural disasters: earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.
- (138) 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 not, in principle, constitute an exceptional occurrence.
- (139) The Commission will continue to assess proposals to grant aid in accordance with Article 107(2), point (b), TFEU on a case-by-case basis, having regard to its previous practice in the field.
- (140) Aid 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; and
 - (b) there is a direct causal link between the natural disaster or the exceptional occurrence and the damage suffered by the undertaking.

⁴⁷ See Case C-73/03, *Spain v Commission*, ECLI:EU:C:2004:711, paragraph 36; and Joined Cases C-346/03 and C-529/03, *Giuseppe Atzeni and others*, ECLI:EU:C:2006:130, paragraph 79.

- (141) Member States may, where appropriate, establish in advance criteria on the basis of which the formal recognition referred to in point (140)(a) is deemed to be granted.
- (142) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group and organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (143) Aid schemes must be established within three years from the date of the occurrence of the event, and the aid must be paid out within four years of that date. For a specific natural disaster or exceptional occurrence, the Commission will authorise separately notified aid that derogates from this rule in duly justified cases, for example due to the nature and/or extent of the event or delayed or continuing nature of the damage.
- (144) In order to facilitate rapid crisis management, the Commission will authorise *ex ante* framework aid schemes to compensate for the damage caused by exceptionally severe storms, floods, earthquakes, avalanches, landslides, tornadoes, hurricanes, volcanic eruptions, and wild fires of natural origin, 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 (321).
- (145) Aid granted to compensate for the damage caused by other types of natural disasters not mentioned in point (137) and for damage caused by exceptional occurrences, must be separately notified to the Commission.
- (146) 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.
- (147) 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.
- (148) The damage must be calculated at the level of the individual beneficiary.
- (149) 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.
- (150) 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.
- (151) That amount may be increased by other costs incurred by the beneficiary due to the natural disaster or exceptional occurrence, and it must be reduced by any costs not incurred because of the natural disaster or the exceptional occurrence which would otherwise have been incurred by the beneficiary.
- (152) The Commission may accept other methods for the calculation of damage provided that it is satisfied that those are representative, not based on abnormally high catches or yields and do not result in the overcompensation of any beneficiary.
- (153) Where an SME was set up less than three years from the date of the occurrence of the event, the reference to the three or five-year periods in point (150)(b) must be understood as referring to the quantity produced by an average undertaking of the same size as the applicant, namely a micro enterprise or a small enterprise or a medium enterprise, respectively, in the national or regional sector affected by the natural disaster or exceptional occurrence.
- (154) 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.

1.2. Aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster

- (155) The Commission will consider aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in of Part I, Chapter 3, and the specific conditions set out in this Section.
- (156) Aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster is considered as a suitable tool to help undertakings recover from such damage and facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (157) 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 which can be assimilated to a natural disaster. Moreover, in accordance with Regulation (EU) [NEW FIBER] it is possible to block exempt the following types of adverse weather conditions: frost, storms, hail, ice, heavy and persistent rainfall and severe droughts.
- (158) The Commission will continue to assess proposals to grant aid to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster on a case-by-case basis, having regard to its previous practice in the field.

- (159) Aid under this Section must additionally meet the following conditions:
- (a) the damage caused by the adverse climatic event which can be assimilated to a natural disaster 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 which can be assimilated to a natural disaster, excluding the highest and lowest entry;
 - (b) there must be a direct causal link between the adverse climatic event which can be assimilated to a natural disaster and the damage suffered by the undertaking;
 - (c) in the case of losses caused by adverse climatic events which can be assimilated to a natural disaster that could be covered under mutual funds financed through Regulation (EU) 2021/1139, the Member State must justify why it intends to grant aid rather than financial compensation being paid through such mutual funds.
- (160) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group or organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (161) Aid schemes related to adverse climatic events which can be assimilated to a natural disaster 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.
- (162) In order to facilitate rapid crisis management, the Commission will authorise *ex ante* framework aid schemes to compensate for the damage caused by adverse climatic events which can be assimilated to a natural disaster, 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 (321).
- (163) Aid granted to compensate for the damage caused by other types of adverse climatic events which can be assimilated to a natural disaster not mentioned in point (157) must be separately notified to the Commission.
- (164) The eligible costs are the costs of the damage incurred as a direct consequence of the adverse climatic event which can be assimilated to a natural disaster, as assessed either by a public authority, by an independent expert recognised by the granting authority, or by an insurance undertaking.
- (165) 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.
- (166) The damage must be calculated at the level of the individual beneficiary.
- (167) In the case of material damage to assets, the damage must have resulted in a loss of more than 30 % of the average annual production, 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 which can be assimilated to a natural disaster, excluding the highest and lowest entry.

- (168) 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 which can be assimilated to a natural disaster. It must not exceed the repair cost or the decrease in fair market value caused by the adverse climatic event which can be assimilated to a natural disaster, that is to say the difference between the asset's value immediately before and immediately after the adverse climatic event which can be assimilated to a natural disaster.
- (169) 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 which can be assimilated to a natural disaster, 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 which can be assimilated to a natural disaster or a three-year average based on the five-year period preceding the adverse climatic event which can be assimilated to a natural disaster, excluding the highest and lowest entry, by the average selling price obtained.
- (170) That amount may be increased by other costs incurred by the beneficiary due to the adverse climatic event which can be assimilated to a natural disaster, and it must be reduced by any costs not incurred because of the adverse climatic event which can be assimilated to a natural disaster, that would otherwise have been incurred by the beneficiary.
- (171) The Commission may accept other methods for the calculation of damage provided that it is satisfied that those are representative, not based on abnormally high catches or yields and do not result in the overcompensation of any beneficiary.
- (172) Where an SME was set up less than three years from the date of the occurrence of the adverse climatic event which can be assimilated to a natural disaster, the reference to the three or five-year periods in points (159)(a), (167) and (169)(b) must be understood as referring to the turnover generated or quantity produced by an average undertaking of the same size as the applicant, namely a micro enterprise or a small enterprise or a medium enterprise, respectively, in the national or regional sector affected by the adverse climatic event which can be assimilated to a natural disaster.
- (173) 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.

1.3. Aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern, and aid to make good the damage caused by those animal diseases and infestations

- (174) The Commission will consider aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern, and aid to make good the damage caused by those animal diseases and infestations, compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with Part I, Chapter 3, and the specific conditions set out in this Section.
- (175) Aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union concern and by invasive alien species of Member State concern, and aid to make good the damage caused by those animal diseases and infestations by invasive alien species, are considered as a suitable tool to help undertakings address the risks posed by those threats and facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (176) Aid under this Section may only be granted:
 - (a) in respect of animal diseases and infestations by invasive alien species of Union concern and by invasive alien species of Member State concern for which Union or national rules exist, whether laid down by law, regulation or administrative action; and
 - (b) as part of:
 - (i) a public 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; or
 - (iii) measures to eradicate or contain an invasive alien species of Union concern or of Member State concern implemented in accordance with Regulation (EU) No 1143/2014.
- (177) The programmes and measures referred to in point (176)(b) must contain a description of the prevention, control and eradication measures concerned.
- (178) The aid must not relate to measures in respect of which Union legislation provides that the cost of such measures is to be borne by the beneficiary, unless the cost of such aid measures is entirely offset by compulsory charges on the beneficiaries.
- (179) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group or organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (180) No individual aid should be granted where it is established that the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern was caused deliberately or by the negligence of the beneficiary.

- (181) As regards animal diseases, the aid may be granted in respect of aquatic animal diseases listed in Article 5(1) of Regulation (EU) 2016/429 of the European Parliament and of the Council⁴⁸, or included in the list of animal diseases of the Aquatic Animal Health Code of the World Organization for Animal Health⁴⁹, or zoonoses of aquatic animals listed in Annex III, Point 2, to Regulation (EU) 2021/690 of the European Parliament and of the Council⁵⁰.
- (182) Aid may also be granted in respect of emerging diseases, which meet the conditions set out in Article 6(2) of Regulation (EU) 2016/429.
- (183) Aid schemes must be established within three years from the date of the occurrence of the costs or damage caused by the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern. Aid must be paid out within four years from that date. These conditions do not apply to costs incurred for preventive purposes as indicated in point (185).
- (184) In order to facilitate rapid crisis management, 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 (321).
- (185) The aid may cover the following eligible costs, including for preventive purposes:
- (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 purchase, storage, deployment and distribution of protection products or equipment to address infestations by invasive alien species of Union concern and by invasive alien species of Member State concern;
 - (d) the slaughtering, culling, and destruction of animals;
 - (e) the destruction of animal products and of products linked to them;
 - (f) the cleaning, disinfection or disinfestation of the holding and equipment;
 - (g) the damage incurred due to the slaughtering, culling or destruction of animals, animal products, and products linked to them.
- (186) The aid in relation to eligible costs referred to in point (185)(a) must be granted in kind and must be paid to the provider of health checks, analyses, tests, and other screening measures, unless beneficiaries already have in-house capabilities suitable for those purposes.

⁴⁸ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

⁴⁹ See <https://www.oie.int/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/>.

⁵⁰ Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (OJ L 153, 3.5.2021, p. 1).

- (187) In the case of aid to make good the damage caused by animal diseases or by infestation by invasive alien species of Union concern or by invasive alien species of Member State concern referred to in point (185)(g), compensation must be calculated only in relation to the following:
- (a) the market value of animals slaughtered or culled, or that have died, or the products destroyed:
 - (i) as a result of the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member States concern; or
 - (ii) as part of a public programme or measure referred to in point (176)(b).
 - (b) loss of income due to quarantine obligations and difficulties in restocking.
- (188) The market value referred to in point (187)(a) must be established on the basis of the value of the animals immediately before any suspicion of the animal disease or infestation arose or was confirmed, and as if they had not been affected by the disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern.
- (189) That amount must be reduced by any costs not directly incurred due to the animal disease or infestation by invasive alien species of Union concern or by invasive alien species of Member State concern which would otherwise have been incurred by the beneficiary, and by any revenue made by the sale of products linked to the animals slaughtered, culled or destroyed for preventive or eradication purposes.
- (190) In exceptional and duly justified cases, the Commission may accept other costs incurred due to animal diseases in aquaculture or infestation by invasive alien species of Union concern and by invasive alien species of Member State concern.
- (191) The aid and any other payments received by the beneficiary, including payments under other national or Union measures or insurance policies or mutual funds for the same eligible costs, must be limited to 100% of the eligible costs.

1.4. Aid to make good the damage caused by protected animals

- (192) The Commission will consider aid to make good the damage caused by protected animals compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in of Part I, Chapter 3, and the specific conditions set out in this Section.
- (193) Aid to make good the damage caused by protected animals is considered as a suitable tool to help undertakings address the risks posed by species protected by Union or national law and to facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (194) Aid under this Section may only be granted if:
- (a) there is a direct causal link between the damage suffered and the behaviour of the protected animals;
 - (b) the eligible costs are the costs of the damage incurred as a direct consequence of the behaviour of protected animals, as assessed either by a public authority, by

an independent expert recognised by the granting authority or by an insurance undertaking.

- (195) Aid must be paid directly to the undertaking concerned or to a producer group or organisation of which that undertaking is a member. Where the aid is paid to a producer group or organisation, the amount of aid must not exceed the amount of aid to which that undertaking is eligible.
- (196) Aid schemes related to damage caused by protected animals must be established within a period of three years from the date of the occurrence of the event. The aid must be paid out within four years from that date.
- (197) The eligible costs may include:
 - (a) the market value of the animals damaged or killed by the protected animals;
 - (b) the material damage to the following assets: equipment, machinery and property.
- (198) The market value referred to in point (197)(a) must be established on the basis of the value of the animals immediately before the behaviour of the protected animals, and as if they had not been affected by the behaviour of the protected animals.
- (199) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the behaviour of the protected animals. It must not exceed the repair cost or the decrease in fair market value caused by the behaviour of the protected animals, that is to say the difference between the asset's value immediately before and immediately after the event.
- (200) That amount may be increased by other costs incurred by the beneficiary due to the behaviour of the protected animals, and it must be reduced by any costs not directly incurred due to the behaviour of the protected animals which would otherwise have been incurred by the beneficiary, and by any revenue made by the sale of products linked to the animals damaged or killed.
- (201) The Commission may accept other methods for the calculation of damage provided that it is satisfied that those are representative, not based on abnormally high catches or yields and do not result in the overcompensation of any beneficiary.
- (202) Save for first attacks by protected animals, a reasonable effort from the beneficiaries is required to mitigate the risk of distortions of competition and to provide an incentive for minimising the risk of damage. This effort must take the form of preventive measures, such as safety fences, which are proportionate to the risk of damage caused by protected animals in the area concerned, unless such measures are not reasonably possible.
- (203) 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.

1.5. Aid for investments to prevent and mitigate the damage caused by natural disasters, adverse climatic events which can be assimilated to a natural disaster, animal diseases and infestations by invasive alien species of Union concern or Member State concern and protected animals

- (204) The Commission will consider aid for investments to prevent and mitigate the damage caused by natural disasters, adverse climatic events which can be assimilated to a natural disaster, animal diseases and infestations by invasive alien species of Union concern or Member State concern and protected animals compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (205) Aid for investments to prevent and mitigate the damage caused by natural disasters, adverse climatic events which can be assimilated to a natural disaster, animal diseases and infestations by invasive alien species of Union concern or Member State concern and protected animals is considered as a suitable tool to help undertakings reduce the risks of incurring such damage, or the amount thereof, and facilitate the development of economic activities, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (206) Aid under this Section must meet the following conditions:
- (a) the investment must primarily pursue the aim of preventing and mitigating damage caused by natural disasters, adverse climatic events which can be assimilated to a natural disaster, animal diseases and infestations by invasive alien species of Union concern or Member State concern and protected animals;
 - (b) the Member State must have assessed the mitigation potential of the investment and the investment is recognised by the Member State as an efficient damage mitigation measure.
- (207) The investment must be in conformity with Union legislation and with the national laws of the Member State concerned on environmental protection. For investments requiring an environmental impact assessment under Directive 2011/92/EU of the European Parliament and of the Council⁵¹, the aid must be subject to the condition that such assessment has been carried out and the development consent has been granted for the investment project concerned before the date of granting the individual aid.
- (208) The aid must cover the eligible costs that are direct and specific for preventive measures. The eligible costs may include:
- (a) the construction, acquisition, including leasing, or improvement of immovable property; and
 - (b) the purchase or lease purchase of machinery and equipment up to the market value of the asset.
- (209) The maximum aid intensity must be limited to 100 % of the eligible costs.

⁵¹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance (OJ L 26, 28.1.2012, p. 1).

CHAPTER 2

2. AID IN OUTERMOST REGIONS

- (210) The Union's outermost regions face permanent constraints to their development, recognised in Article 349 TFEU, which allows the Union to adopt specific measures to support the outermost regions, including the tailored application of Union law in those regions and access to Union programmes. Taking into account the Communication from the Commission "Putting people first, securing sustainable and inclusive growth, unlocking the potential of the EU's outermost regions"⁵², the Commission will assess aid in those regions on the basis of the principles set out in Part I, Chapter 3, of these Guidelines and the specific conditions set out in this Section.

2.1. Operating aid in outermost regions

- (211) Operating aid in the outermost regions is compatible with the internal market under Article 107(3), point (a), TFEU, if it complies with Part I, Chapter 3, the conditions set out in this Section and the specific provisions applying to those regions.
- (212) This Section applies to operating aid in the outermost regions referred to in Article 349 TFEU that, pursuant to Article 10(4) of Regulation (EU) 2021/1139, aims at alleviating the specific constraints in those regions as a result of their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development. In applying this Section, the Commission has regard to the coherence of the operating aid with measures under the EMFAF for the region concerned, if applicable, and its effects on competition and trade both in the regions concerned and in other parts of the Union.
- (213) Aid under this Section 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.
- (214) The eligible costs resulting from those specific constraints must be calculated in accordance with the criteria laid down in Commission Delegated Regulation (EU) 2021/1972⁵³.
- (215) To avoid overcompensation, the Member State concerned must take into account other types of public intervention, including, if applicable, the compensation of

⁵² Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of Regions: Putting people first, securing sustainable and inclusive growth, unlocking the potential of the EU's outermost regions (COM (2022) 198 final of 3.5.2022).

⁵³ Commission Delegated Regulation (EU) 2021/1972 of 11 August 2021 supplementing Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 by laying down the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions (OJ L 402, 15.11.2021, p. 1).

additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions paid pursuant to Articles 24 and 35 to 37 of Regulation (EU) 2021/1139.

- (216) The aid, and any other payments received by the beneficiary for the same eligible costs, must be limited to 100% of the eligible costs.

2.2. Aid for the renewal of the fishing fleet in outermost regions

- (217) The Commission will consider aid for the renewal of the fishing fleet in outermost regions compatible with the internal market under Article 107(3), point (a), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the conditions set out in this Section.
- (218) This Section applies to aid for the renewal of the fishing fleet in the outermost regions referred to in Article 349 TFEU that aims at supporting the costs relating to the acquisition of a new fishing vessel that will be registered in an outermost region.
- (219) Aid under this Section may only be granted if:
- (a) the new fishing vessel complies with Union and national rules on hygiene, health, safety, and working conditions for work on board of fishing vessels and characteristics of fishing vessels; and
 - (b) at the date of applying for the aid the beneficiary has its main place of registration in the outermost region where the new vessel will be registered.
- (220) At the date of granting the aid, the report prepared in accordance with Article 22(2) and (3) of Regulation (EU) No 1380/2013 before that date must demonstrate that there is a balance between the fishing capacity and fishing opportunities in the fleet segment of the outermost region to which the new vessel will belong (the ‘national report’).
- (221) No aid may be granted if the national report, and in particular the assessment of the balance contained therein, has not been prepared on the basis of the biological, economic and vessel use indicators set out in the common guidelines⁵⁴ referred to in Article 22(2) of Regulation (EU) No 1380/2013.
- (222) Therefore, the following conditions must be fulfilled under this Section for all aid to be granted:
- (a) the Member State concerned must have submitted to the Commission the national report by 31 May of year N;
 - (b) the national report must demonstrate that there is a balance between fishing capacity and fishing opportunities in the fleet segment to which the new vessel will belong;

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Communication from the Commission to the European Parliament and the Council: Guidelines for the analysis of the balance between fishing capacity and fishing opportunities according to Art 22 of Regulation (EU) No 1380/2013 of the European Parliament and the Council on the Common Fisheries Policy (COM(2014) 545 final).

- (c) the conclusion of the national report of year N, and in particular the assessment of the balance contained therein, must not have been called into question by the Commission.
- (223) For the purpose of point (222)(c), the assessment of the balance contained in the national report is deemed to be called into question if the Commission sends a letter to that effect to the Member State concerned, on the basis of Article 22(4) of Regulation (EU) No 1380/2013, by 31 March of year N+1. If no such letter is issued by that term, or the letter does not contest the assessment of the balance contained in the national report, the Member State concerned may proceed with the granting of aid.
- (224) The Member State concerned may grant aid on the basis of the national report of year N only until 31 December of year N+1.
- (225) The fishing capacity ceilings of each Member State and of each fleet segment of the outermost regions set out in Annex II to Regulation (EU) No 1380/2013, taking into account any possible reduction of those ceilings under Article 22(6) of that Regulation, must not be exceeded at any time. The entry into the fleet of new capacity acquired with aid must be carried out in full respect of these capacity ceilings and must not lead to a situation in which these ceiling are exceeded.
- (226) The aid must not be made conditional on the acquisition of the new vessel from a specific shipyard.
- (227) The maximum intensity of the aid must not be more than 60 % of the total eligible costs in the case of vessels with an overall length of less than 12 metres, must not be more than 50 % of the total eligible costs in the case of vessels with an overall length of 12 metres or more and less than 24 metres, and must not be more than 25 % of the total eligible costs in the case of vessels with an overall length of 24 metres and more.
- (228) The vessel acquired with aid must remain registered in the outermost region for at least 15 years from the date of granting the aid and must during that time land all of its catches in an outermost region. If that condition is not complied with, the aid must be reimbursed in an amount that is proportionate to the period or extent of non-compliance.

2.3. Aid for investments in equipment that contributes to increasing safety, including equipment enabling vessels to extend their fishing zones for small-scale coastal fishing in outermost regions

- (229) The Commission will consider aid for investments in equipment that contributes to increasing safety, including equipment enabling fishing vessels to extend their fishing zones for small-scale coastal fishing in outermost regions compatible with the internal market under Article 107(3), point (a), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (230) Aid under this Section should contribute to strengthening economically, socially and environmentally sustainable fishing activities and improving safety and working conditions on board, enabling fishing vessels to extend their fishing zones up to 20 miles from the coast for small-scale coastal fishing.

- (231) By way of derogation from point (48), aid under this Section can be granted to meet mandatory Union or national requirements.
- (232) Aid for investments entailing the replacement or modernisation of a main or ancillary engine of a fishing vessel may only be eligible pursuant to Article 18 of Regulation (EU) 2021/1139 or under Part II, Chapter 3, Section 3.2, of these Guidelines.
- (233) Aid for investments leading to an increase in the gross tonnage of a fishing vessel may only be eligible pursuant to Article 19 of Regulation (EU) 2021/1139 or under Part II, Chapter 3, Section 3.3, of these Guidelines.
- (234) The maximum aid intensity must be limited to 100 % of the eligible costs.

[CHAPTER 3

3. AID FOR FLEET MEASURES AND CESSATION OF FISHING ACTIVITIES

- (235) With a view to strengthening economically, socially and environmentally sustainable fishing activities, it is appropriate to include in these Guidelines certain nationally funded measures regarding investments in fishing vessels and cessation of fishing activities.
- (236) In order to ensure consistency and coherence between the Union's State aid policy and the CFP, the conditions applicable to these measures funded purely from national resources must reflect the requirements set out under the EMFAF for equivalent EU co-financed measures, namely Article 17-21 of Regulation (EU) 2021/1139, unless otherwise provided in this Section⁵⁵.
- (237) In addition, the financing of measures under this Chapter, at an aggregated level, must not exceed 15 % of the Union financial support allocated per Member State under Regulation (EU) 2021/1139.
- (238) Aid under this Chapter may also be granted to inland fishing under the specific conditions set out in Sections 3.1 to 3.5.
- (239) Where aid is granted under this Chapter in respect of a Union fishing vessel, that vessel must not be transferred or reflagged outside the Union during at least five years from the final payment of the aid.

3.1. First acquisition of a fishing vessel

- (240) The Commission will consider aid for the first acquisition of a fishing vessel compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (241) Aid for the first acquisition of a fishing vessel may constitute a suitable tool to accompany new fishers into the sector and encourage generational renewal. For

⁵⁵ For the purposes of these Guidelines, where a measure involves the submission of the report on fishing capacity referred to in Article 22(2) of Regulation (EU) No 1380/2013, Northern Ireland must provide an equivalent assessment of the balance between the fishing capacity of its fleets and its fishing opportunities in the notification to the Commission pursuant to Article 108(3) of the Treaty.

this reason, aid for the first acquisition of a fishing vessel can, in certain instances, facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.

- (242) Aid under this Section may only be granted to:
- (a) a natural person who is no more than 40 years of age at the date of submission of the aid application and has worked at least five years as fisher or has acquired adequate qualification;
 - (b) legal entities wholly owned by one or more natural persons who each fulfil the conditions set out in point (a);
 - (c) in case of joint first acquisition of a fishing vessel, several natural persons who each fulfil the conditions set out in point (a);
 - (d) in case of acquisition of partial ownership of a fishing vessel, a natural person who fulfils the conditions set out in point (a) and who is deemed to have controlling rights on that vessel through ownership of at least of 33 % of the vessel or of the shares in the vessel or by a legal entity which fulfils the conditions set out in point (b) and which is deemed to have controlling rights on that vessel through ownership of at least of 33 % of the vessel or of the shares in the vessel.
- (243) Aid under this Section may only be granted in respect of a fishing vessel which complies with all the following requirements:
- (a) belongs to a fleet segment for which the latest report on fishing capacity, referred to in Article 22(2) of Regulation (EU) No 1380/2013, has shown a balance with the fishing opportunities available to that segment;
 - (b) is equipped for fishing activities;
 - (c) is no longer than 24 meters in overall length;
 - (d) has been registered in the Union fleet register for at least three calendar years preceding the year of submission of the application for support in the case of a small-scale coastal fishing vessel, and for at least five calendar years in the case of another type of vessel;
 - (e) has been registered in the Union fleet register for a maximum of 30 calendar years preceding the year of submission of the application for support.
- (244) The procedure and conditions set out in points (222) to (224) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (243)(a).
- (245) With regard to inland fishing, point (243)(a) does not apply and point (243)(d) and (e) should be understood as referring to the date of entry into service, in accordance with national law, instead of the date of registration in the Union fleet register.
- (246) The eligible costs may include the direct and indirect costs related to the first acquisition of a fishing vessel.
- (247) The maximum aid intensity must be limited to 40 % of the eligible costs.

3.2. Replacement or modernisation of a main or ancillary engine

- (248) The Commission will consider aid for the replacement or modernisation of a main or ancillary engine compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (249) Aid for the replacement or modernisation of a main or ancillary engine may constitute a suitable tool to encourage undertakings, among other things, to increase energy efficiency and reduce CO₂ emissions. For this reason, aid for the replacement or modernisation of a main or ancillary engine can, in certain instances, facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (250) Aid under this Section may only be granted for the replacement or modernisation of a main or ancillary engine of a fishing vessel up to 24 meters in overall length.
- (251) Aid under this Section must meet the following conditions:
 - (a) the vessel belongs to a fleet segment for which the latest report on fishing capacity, referred to in Article 22(2) of Regulation (EU) No 1380/2013, has shown a balance with the fishing opportunities available to that segment;
 - (b) the vessel has been registered in the Union fleet register for at least five calendar years preceding the year of submission of the aid application;
 - (c) for small-scale coastal fishing vessels and vessels used for inland fishing, the new or modernised engine does not have more power in kW than that of the current engine;
 - (d) for other vessels up to 24 meters in overall length, the new or modernised engine does not have more power in kW than that of the current engine and emits at least 20 % less CO₂ compared to the current engine; and
 - (e) the fishing capacity withdrawn due to the replacement or modernisation of a main or ancillary engine must not be replaced.
- (252) The procedure and conditions set out in points (222) to (224) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (251)(a).
- (253) With regard to inland fishing, point (251)(a) does not apply and point (251)(b) should be understood as referring to the date of entry into service, in accordance with national law, instead of the date of registration in the Union fleet register.
- (254) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee the fulfillment of the conditions of this Section.
- (255) Member States must ensure that all replaced or modernised engines are subject to a physical verification.
- (256) The reduction of CO₂ emission required under point (251)(d) will be considered to be met in either of the following cases:
 - (a) where relevant information certified by the manufacturer of the engine concerned as part of a type approval or product certificate indicates that the new engine emits 20 % less CO₂ than the engine being replaced; or

- (b) where relevant information certified by the manufacturer of the engine concerned as part of a type approval or product certificate indicates that the new engine uses 20 % less fuel than the engine being replaced.
- (257) Where the relevant information certified by the manufacturer of the engine concerned as part of a type approval or product certificate for one or both of the engines does not permit a comparison of the CO₂ emission or fuel consumption, the reduction of CO₂ emission required under point (251)(d) will be considered to be met in any of the following cases:
- (a) the new engine uses an energy-efficient technology and the age difference between the new engine and the engine being replaced is at least seven years;
 - (b) the new engine uses a type of fuel or a propulsion system which is considered to emit less CO₂ than the engine being replaced;
 - (c) the Member State concerned measures that the new engine emits 20 % less CO₂ or uses 20% less fuel than the engine being replaced under the normal fishing effort of the vessel concerned.
- (258) To identify the energy-efficient technologies referred to in point (257)(a) and to further specify the methodology elements for the implementation of point (257)(c), Implementing Regulation (EU) 2022/46⁵⁶ must be followed.
- (259) The eligible costs may include the direct and indirect costs related to the replacement or modernisation of a main or ancillary engine.
- (260) The maximum aid intensity must be limited to 40 % of the eligible costs.

3.3. Increase in the gross tonnage of a fishing vessel for the purposes of improving safety, working conditions or energy efficiency

- (261) The Commission will consider aid for the increase in the gross tonnage of a fishing vessel for the purposes of improving safety, working conditions or energy efficiency compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (262) Aid for the increase in the gross tonnage of a fishing vessel may constitute a suitable tool to encourage undertakings to invest in improving safety, working conditions or energy efficiency. For this reason, aid for the increase in the gross tonnage of a fishing vessel can, in certain instances, facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (263) Aid under this Section must meet all the following conditions:

⁵⁶ Commission Implementing Regulation (EU) 2022/46 of 13 January 2022 implementing Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 as regards the identification of energy-efficient technologies and the specification of methodology elements to determine the normal fishing effort of fishing vessels (OJ L 9, 14.1.2022, p. 27).

- (a) the fishing vessel belongs to a fleet segment for which the latest report on fishing capacity, referred to in Article 22(2) of Regulation (EU) No 1380/2013, has shown a balance of the fishing capacity of the segment with the fishing opportunities available to that segment;
 - (b) the fishing vessel is not longer than 24 meters in overall length;
 - (c) the fishing vessel has been registered in the Union fleet register for at least the 10 calendar years preceding the year of submission of the aid application;
 - (d) the entry into the fishing fleet of new fishing capacity generated by the operation is compensated for by the prior withdrawal of at least the same amount of fishing capacity without public aid from the same fleet segment or from a fleet segment for which the latest report on fishing capacity, referred to in Article 22(2) of Regulation (EU) No 1380/2013, has shown that the fishing capacity is not in balance with the fishing opportunities available to that segment.
- (264) The procedure and conditions set out in points (222) to (224) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (263)(a).
- (265) The eligible costs may include:
- (a) the increase in gross tonnage necessary for the subsequent installation or renovation of accommodation facilities dedicated to the exclusive use of the crew, including sanitary facilities, common areas, kitchen facilities and shelter deck structures;
 - (b) the increase in gross tonnage necessary for the subsequent improvement or installation of on-board fire prevention systems, safety and alarm systems or noise-reduction systems;
 - (c) the increase in gross tonnage necessary for the subsequent installation of integrated bridge systems to improve navigation or engine control;
 - (d) the increase in gross tonnage necessary for the subsequent installation or renovation of an engine or a propulsion system that demonstrates a better energy efficiency or lower CO₂ emissions compared to the previous situation, which does not have a power exceeding the fishing vessel's previously certified engine power pursuant to Article 40(1) of Council Regulation (EC) No 1224/2009⁵⁷, and whose maximum power output is certified by the manufacturer for that engine or propulsion system model;
 - (e) the replacement or renovation of the bulbous bow provided that it improves the overall energy efficiency of the fishing vessel.
- (266) With regard to inland fishing, points (263)(a) and (d) do not apply and point (263)(c) should be understood as referring to the date of entry into service, in accordance with national law, instead of the date of registration in the Union fleet register.

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Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

- (267) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee the fulfillment of the conditions laid down in this Section.
- (268) The Member State concerned must communicate to the Commission the characteristics of the aided measure including the amount of the fishing capacity increased and the purpose of that increase.
- (269) The eligible costs may include the direct and indirect costs related investment aid for improving safety, working conditions or energy efficiency leading to the increase in the gross tonnage of a fishing vessel.
- (270) The maximum aid intensity must be limited to 40 % of the eligible costs.

3.4. Aid for permanent cessation of fishing activities

- (271) The Commission will consider aid for permanent cessation of fishing activities compatible with the internal market under Article 107(3), point (c), TFEU⁵⁸, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (272) Aid for permanent cessation of fishing activities may constitute a suitable tool to help the beneficiaries in the fisheries sector to adapt to a new situation in particular by diversifying into new types of economic activities. For this reason, aid for permanent cessation of fishing activities can, in certain instances, facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (273) Aid under this Section must meet the following conditions:
 - (a) the cessation must be foreseen as a tool of an action plan referred to in Article 22(4) of Regulation (EU) No 1380/2013;
 - (b) the permanent cessation of fishing activities must be achieved through the scrapping of the fishing vessel or through its decommissioning and retrofitting for activities other than commercial fishing;
 - (c) the fishing vessel must be registered as active and has carried out fishing activities for at least 90 days per year during the last two calendar years preceding the date of submission of the aid application;
 - (d) the equivalent fishing capacity must be permanently removed from the Union fishing fleet register and must not be replaced;
 - (e) beneficiaries must commit to not increase their fishing capacity from the time of the application for aid until five years after the payment of the aid;
 - (f) the respective fishing licences and the fishing authorisations must be equally permanently withdrawn; and
 - (g) the beneficiaries must not register any fishing vessel within five years following the receipt of support.

⁵⁸ For the purpose of this Section, the Commission takes into account the experience gained with State aid for permanent cessation; see, for example, SA.101091, decision of the Commission [REFERENCE].

- (274) If the fishing activity in question is of a nature that it cannot be carried out throughout the whole calendar year, the minimum requirement of fishing activity set out in point (273)(c) may be reduced so long as the ratio between the number of days of activity and the number of fishable days is the same as the ratio between the number of days of activity and the number of calendar days per year for beneficiaries who fish throughout the year.
- (275) The Commission may exceptionally authorise a permanent cessation of fishing activities pursuing also considerations other than the conservation of marine biological resources in duly justified cases, where the scope of fishing activities at a local level can no longer be sustained due to the reduction of fishing spaces, as demonstrated by scientific economic analysis, and there is a need to ensure an orderly restructuring of the sector, even if the fleet segments concerned are not in a situation of imbalance. Such aid must meet the conditions set out in point (273)(b) to (g) and, in addition, the Member State concerned must ensure that beneficiaries do not replace or modernise their engines, unless under the conditions set out in Article 18 of Regulation (EU) 2021/1139, from the time of the application for aid until five years after the payment of the aid.
- (276) The Commission will not consider the proposed aid duly justified if the Member State at the same time plans to implement State aid schemes or operations under the EMFAF that would lead to an increase of capacity in the same Sea Basin.
- (277) With regard to inland fishing, aid for permanent cessation of fishing activities can only be granted for beneficiaries operating exclusively in inland waters and for cases of conservation measures supported by scientific evidence or falling under point (275). Point (273)(a) does not apply to inland fishing and point (273)(g) applies by reference to the relevant national fleet register, if available under national law, instead of the Union fleet register. The fishing licences and the fishing authorisations must be permanently withdrawn, irrespective of whether a national fleet register is available.
- (278) Aid for permanent cessation of fishing activities may only be granted to:
- (a) owners of Union fishing vessels concerned by the permanent cessation; and
 - (b) fishers who have worked on board a Union fishing vessel concerned by the permanent cessation for at least 90 days per year during the last two calendar years preceding the year of submission of the aid application.
- (279) The fishers referred to in point (278)(b) must cease all fishing activities for five years following the receipt of aid. If a fisher returns to fishing activities within that period, sums unduly paid in respect of the aid must be recovered by the Member State concerned, in an amount proportionate to the period during which the condition set out in the first sentence of this point has not been fulfilled.
- (280) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee compliance with the permanent cessation, including to ensure that capacity is permanently withdrawn, and that the vessel or fishers concerned have ceased any fishing activities following the measure. In the absence of a national fleet register applicable to inland waters, Member States must also demonstrate that such control and enforcement mechanisms ensure a management of capacity comparable to that applicable to sea fisheries.
- (281) The eligible costs may include:

- (a) in the case of scrapping the fishing vessel:
 - (i) the costs of the scrapping;
 - (ii) compensation for the losses of value of the fishing vessel measured as its current selling value;
 - (b) in the case of decommissioning and retrofitting for activities other than commercial fishing: the investment costs related to converting the fishing vessel for the purposes of other economic activities;
 - (c) the costs related to the fishers identified in point (278)(b) that can also include the obligatory social costs resulting from the implementation of the permanent cessation insofar as not covered by other national provisions in case of cessation of a business activity.
- (282) The Commission may accept other calculation methods provided that it is satisfied that they are based on objective criteria and do not result in overcompensation of any beneficiary.
- (283) The eligible costs must be reduced by any costs not incurred because of the permanent cessation of fishing activities which would otherwise have been incurred by the beneficiary.
- (284) The maximum aid must be limited to 100 % of the eligible costs.

3.5. Aid for temporary cessation of fishing activities

- (285) The Commission will consider aid for temporary cessation of fishing activities compatible with the internal market under Article 107(3), point (c), TFEU, if it complies with the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.
- (286) Aid for temporary cessation of fishing activities may constitute a suitable tool to help the sector react to circumstances that warrant a limited suspension of fishing efforts. For this reason, aid for temporary cessation of fishing activities can, in certain instances, facilitate the development of economic activities or of certain economic areas, without adversely affecting the trading conditions to an extent contrary to the common interest, provided that it respects the conditions set out in this Section.
- (287) Aid under this Section may be granted in the following cases:
- (a) conservation measures, as referred to in points (a), (b), (c), (i) and (j) of Article 7(1) of Regulation (EU) No 1380/2013 or, where applicable to the Union, equivalent conservation measures adopted by regional fisheries management organisations;
 - (b) Commission measures in case of a serious threat to marine biological resources, as referred to in Article 12 of Regulation (EU) No 1380/2013;
 - (c) Member States' emergency measures pursuant to Article 13 of Regulation (EU) No 1380/2013;
 - (d) the interruption, due to reasons of force majeure, of the application of a sustainable fisheries partnership agreement or protocol thereto; and

- (e) environmental incidents or health crises, as formally recognised by the competent authorities of the relevant Member State.
- (288) With regard to inland fishing, aid for temporary cessation of fishing activities can only be granted for beneficiaries operating exclusively in inland waters and for cases of conservation measures supported by scientific evidence or falling under point (287)(e). Point (290)(a) applies by reference to the relevant national fleet register, if available under national law.
- (289) Aid under this Section may only be granted where the fishing activities of the vessel or fisher concerned are stopped during at least 30 days in a given calendar year.
- (290) Aid for temporary cessation of fishing activities may only be granted to:
 - (a) owners or operators of Union fishing vessels which are registered as active and which have carried out fishing activities for at least 120 days during the last two calendar years preceding the year of submission of the aid application;
 - (b) fishers who have worked on board a Union fishing vessel concerned by the temporary cessation for at least 120 days during the last two calendar years preceding the year of submission of the aid application; or
 - (c) fishers on foot who have carried out fishing activities for at least 120 days during the last two calendar years preceding the year of submission of the aid application.
- (291) If the fishing activity in question is of a highly seasonal nature in the sense that it cannot be carried out throughout the whole calendar year, the period of 120 days set out in point (290)(a) and (b) may be reduced as long as the ratio between the number of days of activity and the number of fishable days is the same as the ratio between the number of days of activity and the number of calendar days per year for beneficiaries who can fish throughout the year.
- (292) Aid under this Section may be granted for a maximum duration of 12 months per vessel or per fisher during the EMFAF programming period, irrespective of the source of funding, whether nationally financed or co-financed pursuant to Article 21 of Regulation (EU) 2021/1139. The Member States must in such cases comply with the reporting obligation set out in point (322).
- (293) All fishing activities carried out by the vessels or fishers concerned must be effectively suspended during the period concerned by the temporary cessation.
- (294) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee compliance with the temporary cessation, including to ensure that the vessel or fisher concerned has ceased any fishing activities during the period concerned by the measure.
- (295) The eligible costs may include:
 - (a) loss of income due to the suspension of fishing activities; and
 - (b) other costs related to the maintenance, upkeep and preservation of unutilised assets during temporary cessation of fishing activities.
- (296) The eligible costs must be calculated at the level of the individual beneficiary.
- (297) The loss of income must be calculated by subtracting:

- (a) the result of multiplying the quantity of the fishery products produced in the year of the suspension of fishing activities, by the average selling price obtained during that year, from
 - (b) the result of multiplying the average annual quantity of fishery products produced in the three-year period preceding the suspension of fishing activities or a three-year average based on the five-year period preceding the suspension of fishing activities, by the average selling price obtained.
- (298) Costs related to the maintenance, upkeep and preservation of unutilised assets during temporary cessation of fishing activities must be calculated based on an average of the costs incurred over the three-year period preceding the suspension of fishing activities, or on a three-year average over the five-year period preceding the suspension of fishing activities .
- (299) The eligible costs may include other costs incurred by the beneficiary due to the temporary cessation of fishing activities, and they must be reduced by any costs not incurred because of the temporary cessation of fishing activities which would otherwise have been incurred by the beneficiary.
- (300) The Commission may accept other calculation methods provided that it is satisfied that they are based on objective criteria and do not result in overcompensation of any beneficiary.
- (301) Where a vessel is used during the temporary cessation for activities other than commercial fishing, any income must be declared and deducted from the aid granted under this Section, and no aid must be granted for other costs related to the maintenance, upkeep and preservation of unutilised assets during temporary cessation of fishing activities.
- (302) Where an SME was set up less than three years from the date of the suspension of fishing activities, the reference to the three or five-year periods in points (297) and (298) must be understood as referring to the turnover generated or quantity produced by an average undertaking of the same size as the applicant, namely a micro enterprise, a small enterprise or a medium enterprise, respectively, in the national or regional sector affected by the temporary cessation of fishing activities.
- (303) The aid and any other payments, including payments under insurance policies, received for the purpose of temporary cessation of fishing activities must be limited to 100 % of the eligible costs.]

PART III

PROCEDURAL MATTERS

1. Maximum duration of aid schemes and evaluation

- (304) The Commission will only authorise aid schemes of a limited duration. Aid schemes must in principle not apply for a period exceeding seven years.
- (305) To further ensure that distortion of competition and trade is limited, the Commission may require that aid schemes as referred to in point (306) are subject to an *ex post* evaluation. Evaluations will be carried out for aid schemes where the

potential distortion of competition and trade is particularly high, i.e. that may risk significantly restricting or distorting competition if implementation is not reviewed in due time.

- (306) *Ex post* evaluation may be required for aid schemes with large aid budgets, or containing novel characteristics, or when significant market, technology or regulatory changes are foreseen. In any case, evaluation will be required for schemes with a State aid budget or accounted expenditure over EUR 150 million in any given year or EUR 750 million over their total duration, i.e. the combined duration of the aid scheme and any predecessor aid scheme covering a similar objective and geographical area, starting from 1 January 2023. Given the objectives of the evaluation, and to avoid putting a disproportionate burden on Member States, *ex post* evaluations are only required for aid schemes the total duration of which exceeds three years, starting from 1 January 2023.
- (307) The *ex post* evaluation requirement may be waived for aid schemes that are an immediate successor of an aid scheme covering a similar objective and geographical area that has been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and has not generated any negative findings. Where the final evaluation report of an aid scheme is not in compliance with the approved evaluation plan, that aid scheme must be suspended with immediate effect.
- (308) The aim of the evaluation should be to verify whether the assumptions and conditions underlying the compatibility of the aid scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives. It should also assess the impact of the aid scheme on competition and trade.
- (309) For aid schemes subject to the evaluation requirement according to point (306) Member States must notify a draft evaluation plan, which will form an integral part of the Commission's assessment of the aid scheme, as follows:
 - (a) together with the aid scheme, if the State aid budget of the aid scheme exceeds EUR 150 million in any given year or EUR 750 million over its total duration;
 - (b) within 30 working days following a significant change that increases the budget of the aid scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the aid scheme;
 - (c) within 30 working days following the recording in official accounts of expenditure under the aid scheme in excess of EUR 150 million in any year.
- (310) The draft evaluation plan must be in line with the common methodological principles provided by the Commission⁵⁹. Member States must publish the evaluation plan approved by the Commission.
- (311) The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Member States must publish both reports.

⁵⁹ Commission staff working document: Common methodology for State aid evaluation (28.5.2014, SWD(2014) 179 final).

- (312) The final evaluation report must be submitted to the Commission in due time to assess any prolongation of the aid scheme and at the latest nine months before its expiry. That period may be reduced for schemes triggering the evaluation requirement in their last two years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. The notification of any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

2. Application of the Guidelines

- (313) The Commission will apply these Guidelines for the assessment of all aid to be granted on and after 1 January 2023, irrespective of the date of notification.
- (314) 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.
- (315) Aid granted unlawfully will be assessed on the basis of the Guidelines in force at the time of granting the aid. Individual aid granted under an unlawful aid scheme will be assessed under the Guidelines that apply to the unlawful aid scheme at the time the individual aid was granted.
- (316) The Guidelines for the examination of State aid to the fisheries and aquaculture sector⁶⁰ adopted in 2015 are repealed and will no longer apply after 31 December 2022, with the exception of the cases referred to in points (314) and (315).

3. Proposals for appropriate measures

- (317) In accordance with Article 108(1) TFEU, the Commission proposes that each Member State amends its existing aid schemes to conform them with these Guidelines by 30 June 2023 at the latest.
- (318) 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*.
- (319) If a Member State does not give its explicit and unconditional agreement within the two-month 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 23(2) of Regulation (EU) 2015/1589.

4. Reporting and monitoring

- (320) The Commission reminds each Member State of its duty to submit annual reports to the Commission, as set out in Article 26 of Regulation (EU) 2015/1589 and Articles 5, 6, and 7 of Commission Regulation (EC) No 794/2004⁶¹.

⁶⁰ 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).

- (321) The annual report must also include meteorological information about the type, timing, relative magnitude, and location of the events under Part II, Chapter 1, Sections 1.1 and 1.2 and information about the animal disease and infestation of invasive alien species under Part II, Chapter 1, Section 1.3. The reporting obligation set out in this point only relates to *ex ante* framework schemes.
- (322) In addition, the annual report must also include information about the temporary cessation of fishing activities under Part II, Chapter 3, Section 3.5.
- (323) The Commission reserves the right to seek additional information on existing aid schemes on a case-by-case basis, where this is necessary to enable it to fulfil its responsibilities under Article 108(1) TFEU.
- (324) 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.

5. Revision

- (325) 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.

⁶¹ 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 141, 30.2004, p. 1).