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Guidelines for State aid in the fishery and aquaculture sector

(2023/C 107/01)

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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) Operators in all Member States have access to shared and limited marine biological resources. The Common Fisheries Policy ('the CFP') ensures that these marine biological resources, and the fisheries and fleets exploiting such resources, are managed in such a way that the resources remain at sustainable levels. State aid to facilitate the economic development of the fishery and aquaculture sector is embedded in the broader CFP established by Regulation (EU) No 1380/2013 of the European Parliament and the Council ⁽¹⁾. 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'). That Regulation allows the granting of support to interventions that contribute to the achievement of the objectives of the CFP, as set out in Article 2 of Regulation (EU) No 1380/2013 and sets out a list of ineligible operations and strict conditions to ensure that investments and compensation for the fleet are consistent with those objectives.
- (5) 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 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.

⁽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).

- (6) In 2019, the Commission launched an evaluation of the Guidelines for State aid to the fishery and aquaculture sector ⁽³⁾, 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 objectives of the CFP. Some targeted adjustments are, however, necessary for the development of the economic activities in the fishery and aquaculture sector for a consistent approach between State aid rules for this sector and the EMFAF. In that context the Commission takes into account the horizontal State aid rules, and policies stemming from the European Green Deal ⁽⁴⁾, including a sustainable blue economy, under the balancing test (Part I, Section 3.2.6, of these Guidelines).

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*

- (7) 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.
- (8) 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, the conditions set out in Part I, Section 2.2 of these Guidelines apply to such aid.
- (9) These Guidelines apply to all undertakings. Large enterprises tend to be less affected by market failures than micro, small and medium-sized enterprises ('SMEs' ⁽⁵⁾). 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.
- (10) 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 undertaking of the aid is considered to be an undertaking in difficulty within the meaning of point (31)(bb) of these Guidelines, the aid will be assessed in accordance with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽⁶⁾. 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;

⁽³⁾ OJ C 217, 2.7.2015, p 1.

⁽⁴⁾ Communication from the Commission (COM(2019) 640 final) of 11.12.2019 on the European Green Deal.

⁽⁵⁾ See definition in point (31)(r) of these Guidelines.

⁽⁶⁾ 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).

- (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 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 (188)(a) to (c) and (e) to (h) 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; and
 - (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.
- (11) When assessing aid granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring aid unlawful and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered ⁽⁷⁾. 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 (188)(a) to (c) and (e) to (h) of Part II, Chapter 1, Section 1.3, of these Guidelines.
- (12) For aid to be granted in Northern Ireland, where a measure requires compliance with conditions laid down in Regulation (EU) No 1380/2013 or Regulation (EU) 2021/1139, information equivalent must be provided in the notification to the Commission pursuant to Article 108(3) TFEU.

2.1.2. *Aid for other measures*

- (13) 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. In particular, the Commission assesses whether the positive effects of such aid outweigh the identified negative effects on competition and trade. The Commission may conclude on the compatibility of the aid with the internal market only where the positive effects outweigh the negative ones, as laid down in Part I, Chapter 3, Section 3.2.6, of these Guidelines.

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

- (14) 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 ⁽⁸⁾ – only to the extent determined by the European Parliament and the Council, account being taken of the objectives set out in Article 39 TFEU.
- (15) 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 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

⁽⁷⁾ See in this respect judgment of 13 September 1995, *TWD Textilwerke Deggendorf GmbH v Commission*, joined cases T-244/93 and T-486/93, EU:T:1995:160.

⁽⁸⁾ Article 38(1) TFEU: “Agricultural products” means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term “agricultural”, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.”

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 Regulation (EU) 2021/1139 to (i) any public financing that goes beyond the provisions of that Regulation 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 Regulation (EU) 2021/1139.

- (16) The EMFAF is based on a simple architecture without prescribing any predefined measures or detailed eligibility rules at Union level, save for certain support measures. It describes specific objectives under each priority. Therefore, Member States should indicate in their programme the most appropriate means for achieving the broadly described objectives and the priorities as provided under 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 Council ⁽⁹⁾.
- (17) 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.
- (18) 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.
- (19) 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. However, 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.

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

- (20) 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, Section 3.2.6, of these Guidelines.
- (21) Those horizontal guidelines and other instruments include the Criteria for the analysis of the compatibility of State aid for training subject to individual notification ⁽¹⁰⁾, the Guidelines on State aid to promote risk finance investments ⁽¹¹⁾, the Framework for State aid for research and development and innovation ⁽¹²⁾, Guidelines on State

⁽⁹⁾ 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).

⁽¹⁰⁾ 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).

⁽¹¹⁾ Communication from the Commission — Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).

⁽¹²⁾ Communication from the Commission — Framework for State aid for research and development and innovation (OJ C 198, 27.6.2014, p. 1).

aid for climate, environmental protection and energy 2022 ⁽¹³⁾, the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹⁴⁾, the State aid rules for the deployment of broadband networks ⁽¹⁵⁾ and the Criteria for the compatibility analysis of State aid to disadvantaged and disabled workers subject to individual notification ⁽¹⁶⁾.

- (22) The Guidelines on regional State aid for 2022-2027 ⁽¹⁷⁾ 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

- (23) 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 (28)(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.

- (24) 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.

- (25) In relation to points (23) and (24):

- (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 Commission Regulation (EU) 2022/2473 ⁽¹⁸⁾ 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) 2022/2473 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) 2022/2473 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) 2022/2473 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;

⁽¹³⁾ Communication from the Commission- Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

⁽¹⁴⁾ 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).

⁽¹⁵⁾ 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).

⁽¹⁶⁾ 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).

⁽¹⁷⁾ Communication from the Commission – Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

⁽¹⁸⁾ Commission Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82).

- (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) 2022/2473 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) 2022/2473 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

- (26) These Guidelines apply to aid schemes and to individual aid.
- (27) 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) 2015/1589 ⁽¹⁹⁾.
- (28) 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) 2015/1588 ⁽²⁰⁾, if they apply to the fishery and aquaculture sector, in particular:
 - (i) aid complying with Regulation (EU) 2022/2473 ; 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, 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 717/2014 ⁽²¹⁾, complying with Commission Regulation (EU) No 651/2014 ⁽²²⁾;
 - (b) *de minimis* aid complying with Regulation (EU) No 717/2014.
- (29) Member States are reminded that the system of financing, for example, by parafiscal levies, forms an integral part of the aid ⁽²³⁾.

⁽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).

⁽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, 28.6.2014, 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⁾ See judgment of 16 October 2013, *Télévision française 1 (TF1) v Commission*, T-275/11, EU:T:2013:535, paragraphs 41-44 ; judgment of 13 January 2005, *Streekgewest Westelijk Noord-Brabant*, Case C-174/02, EU:C:2005:10; paragraph 26 ; judgment of 7 September 2006 *Laboratoires Boiron SA v Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf) de Lyon*, assuming the rights and obligations of the Agence centrale des organismes de sécurité sociale (ACOSS), Case C-526/04, EU:C:2006:528; judgment of 11 March 1992, *Compagnie commerciale de l'Ouest v. Receveur principal des douanes de La Pallice-Port*, Joint Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 et C-83/90, EU:C:1992:118; judgment of 23 April 2002, *Niels Nygård v Svineafgiftsfonden, and Ministeriet for Fødevarer*, C-234/99, EU:C:2002:244 ; judgment of 17 July 2008, *Essent Netwerk Noord and others*, C-206/06, EU:C:2008:413, paragraph 90; judgment of 11 July 2014, *DTS Distribuidora de Televisión Digital v Commission*, T-533/10, EU:T:2014:629, paragraphs 50-52.

- (30) 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

- (31) 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 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) 'biosecurity measures' means management and physical measures designed to reduce the risk of introduction, development and spread of diseases to, from and within: (i) an animal population, or (ii) an establishment, zone, compartment, means of transport or any other facilities, premises or location;
 - (f) 'control and eradication measures' means measures regarding animal diseases for which a competent authority has formally recognised an outbreak, or regarding invasive alien species for which a competent authority has formally acknowledged their presence;
 - (g) 'date of granting the aid' means the date when the legal right to receive the aid is conferred on the beneficiary undertaking under the applicable national legal regime;
 - (h) 'depredation' means preying on fish caught in nets or kept in ponds by protected animals such as seals, sea otters and sea birds;
 - (i) '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;
 - (j) 'fishery and aquaculture products' means the products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and the Council ⁽²⁴⁾;
 - (k) 'fishery and aquaculture sector' means the sector of the economy which comprises all activities of production, processing, and marketing of fishery or aquaculture products;
 - (l) 'fishing capacity' means a vessel's tonnage in GT (Gross Tonnage) and its power in kW (Kilowatt) as defined in Articles 4 and 5 of Regulation (EU) 2017/1130 ⁽²⁵⁾;
 - (m) 'gross grant equivalent' means the amount of the aid if it had been provided in the form of a grant to the beneficiary undertaking, before any deduction of tax or other charges;

⁽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) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels (OJ L 169, 30.6.2017, p. 1).

- (n) 'individual aid' means *ad hoc* aid and awards of aid to individual beneficiary undertakings on the basis of an aid scheme;
- (o) 'inland fishing' means fishing activities carried out for commercial purposes in inland waters by vessels or other devices, including those used for ice fishing;
- (p) 'invasive alien species' means invasive alien species of Union concern and invasive alien species of Member State concern as defined in Article 3(3) and 3(4) of Regulation (EU) No 1143/2014 of the European Parliament and of the Council ⁽²⁶⁾ ('Regulation (EU) No 1143/2014');
- (q) 'large enterprises' means any undertaking not fulfilling the criteria laid down in Annex I to Regulation (EU) 2022/2473 ;
- (r) 'micro, small and medium-sized enterprises ("SMEs")' means undertakings fulfilling the criteria laid down in Annex I to Regulation (EU) 2022/2473 ;
- (s) 'operating aid' means aid that is aimed at or has the effect of increasing the business liquidity of an undertaking, reducing its production costs, or improving its income, in particular aid that is calculated solely on the basis of the quantity produced or marketed, product prices, units produced or the means of production;
- (t) 'outermost regions' means the regions referred to in Article 349 TFEU ⁽²⁷⁾;
- (u) 'prevention measures' means measures regarding an animal disease or invasive alien species that has not yet occurred;
- (v) '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;
- (w) 'protected animal' means any animal other than fish protected either by Union or by national legislation;
- (x) 'repayable advance' means a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project;
- (y) 'risk events' means natural disasters, adverse climatic events which can be assimilated to a natural disaster, animal diseases, infestations by invasive alien species or damage caused by the behavior of the protected animals;
- (z) '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 1967/2006 ⁽²⁸⁾; or (b) fishers on foot, including shellfish gatherers;
- (aa) '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;
- (bb) '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 difficulty ⁽²⁹⁾ or its successor.

⁽²⁶⁾ 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).

⁽²⁷⁾ Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands (OJ C 202, 7.6.2016, p. 195).

⁽²⁸⁾ 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).

⁽²⁹⁾ 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).

- (32) In addition to the definitions listed in this Section, the definitions contained in the respective instruments listed under points (21), (22), (28)(a) of these Guidelines and those provided for in Article 4 of Regulation (EU) No 1380/2013⁽³⁰⁾ and Article 2 of Regulation (EU) 2021/1139 apply, as relevant.

Chapter 3

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

- (33) 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.
- (34) 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).
- (35) 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.
- (36) In order to make the assessment referred to in point (34), 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).

⁽³⁰⁾ This include the definition of 'Union waters', 'marine biological resources', 'fresh water biological resources', fishing vessel, 'Union fishing vessel', 'entry to the fishing fleet', 'maximum sustainable yield', 'precautionary approach to fisheries management', 'ecosystem-based approach to fisheries management'.

- (37) The overall balance of certain categories of schemes may further be made subject to a requirement of *ex post* evaluation as described in points (326) to (333). 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.
- (38) 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*

- (39) The Commission will identify, based on information provided by the Member State, which economic activity will be supported by the notified measure.
- (40) The Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity.
- (41) Aid to prevent or reduce the negative effects of economic activities on climate or environment or on the conservation objective of the CFP can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned.
- (42) Member States must describe if and how the aid will contribute to the achievement of the objectives of the CFP and, within that policy, to the objectives of EMFAF and describe more specifically the expected benefits of the aid.
- (43) 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, 3.5 and 3.6 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

- (44) When awarding aid to individually notifiable investment projects on the basis of a scheme, the granting authority must explain how that selected project will contribute towards the objective of the scheme. For this purpose, Member States should refer to information provided by the applicant for aid.

3.1.2. *Incentive effect*

- (45) 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.
- (46) 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.
- (47) 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.

- (48) 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. For example, this principle applies to Part II, Chapter 3, Sections 3.4, 3.5 and 3.6.
- (49) For the reasons explained in point (45), the Commission considers that aid does not present an incentive for the beneficiary undertaking wherever work on the relevant project or activity has already started, prior to the aid application by the beneficiary undertaking to the national authorities.
- (50) 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.
- (51) 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.
- (52) 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 undertaking regarding the project or activity concerned.
- (53) Aid in the form of tax advantages 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.
- (54) 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, Sections 3.5 and 3.6 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 and investment aid to large enterprises under notified schemes

- (55) In addition to the requirements set out above in points (45) and (48) to (53) respectively, for individually notifiable investment aid and investment aid to large enterprises under notified schemes, 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 undertaking by any public authority.
- (56) 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.

- (57) 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) ⁽³¹⁾ of the project, the internal rate of return (IRR) ⁽³²⁾ 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 undertaking 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.
- (58) 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.
- (59) If the aid does not change the behaviour of the beneficiary undertaking 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 any relevant provisions of Union law

- (60) 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 it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market ⁽³³⁾.
- (61) In the fishery and aquaculture sector, this concerns in particular State aid:
- (a) granted in support of fishing activities involving serious infringements under Article 42 of Council Regulation (EC) No 1005/2008 ⁽³⁴⁾ or Article 90 of Regulation (EC) No 1224/2009 ⁽³⁵⁾ and constituting or supporting illegal, unreported and unregulated (IUU) fishing ⁽³⁶⁾;
 - (b) granted in support of the operation, management or ownership of a fishing vessel included in the Union IUU vessel list as referred to in Article 40(3) of Regulation (EC) No 1005/2008, or of a vessel flying the flag of countries identified as non-cooperating third countries as set out in Article 33 of that Regulation;

⁽³¹⁾ 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).

⁽³²⁾ 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.

⁽³³⁾ See, for instance, judgment of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; judgment of 12 December 2002, *France v Commission*, C-456/00, EU:C:2002:753, paragraphs 30 and 32; judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 94 to 116; judgment of 14 October 2010, *Nuova Agricast v Commission*, C-67/09 P, EU:C:2010:607, paragraph 51; and judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

⁽³⁴⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, p. 1).

⁽³⁵⁾ 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 (OJ L 343, 22.12.2009, p. 1).

⁽³⁶⁾ For example, fishing without a valid fishing licence, fishing in a closed area, during a closed season, without or after attainment of a quota; fishing beyond a closed depth; fishing for a stock which is subject to a moratorium or for which fishing is prohibited; using prohibited or non-compliant fishing gear; fishing in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation, etc.

- (c) involving non-compliance with the rules laid down in Regulation (EU) 1379/2013⁽³⁷⁾ governing the common organisation of the market⁽³⁸⁾; or
- (d) involving an increase in fishing capacity or construction of new vessels that directly and automatically lead to non-compliance by the Member State with Article 22(7) of Regulation (EU) 1380/2013 and the fishing capacity ceilings set out in its Annex II.

(62) Moreover, State aid cannot be declared compatible with the internal market where the award of aid is subject to the obligation for the beneficiary undertaking to use national products or services, as well as for aid restricting the possibility for the beneficiary undertaking to exploit the research, development and innovation results in other Member States.

(63) 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.

(64) State aid notifications should provide information on how the national authorities will verify compliance with points (61) to (63).

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

(65) 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.'

(66) 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 (36)(b).

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

(68) The Commission will then assess the distortive effect of the 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.

3.2.1. *Need for State intervention*

(69) 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.

⁽³⁷⁾ 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 (OJ L 354, 28.12.2013, p. 1).

⁽³⁸⁾ See, for instance, Judgment of 26 June 1979, *Pigs and Bacon Commission*, 177/78, EU:C:1979:164, paragraph 11; Judgment of 12 December 2002, *French Republic v Commission*, C-456/00, EU:C:2002:753, paragraph 32; Judgment of 14 November 2017, *Président de l'Autorité de la concurrence v Association des producteurs vendeurs d'endives (APVE) and Others*, C-671/15, EU:C:2017:860, paragraph 37.

- (70) 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.
- (71) For the purposes of these Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning 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*

- (72) The proposed aid must be an appropriate policy instrument to facilitate the development of the economic activity. There may be other, better placed instruments, such as regulation, market-based instruments, infrastructure development and improvement in the business environment, to achieve the objectives of the aid. The Member State must demonstrate that the aid and its design are appropriate to achieve the objective of the measure at which the aid is targeted.
- (73) The Commission considers that aid measures 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 II, Chapter 2, Section 2.2, are an appropriate policy instrument. 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.
- (74) In other cases that do not fall under point (73), the Member State must demonstrate that no other less distortive policy instrument exists.
- (75) Where a Member State decides to put in place a measure under Part II, Chapter 3, while the same intervention is concurrently provided for in the relevant EMFAF programme, the Member State should set out the advantages of such a national aid instrument compared to the relevant intervention in the EMFAF programme.

Appropriateness among different forms of aid

- (76) 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.
- (77) 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.
- (78) 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.
- (79) 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*

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

Maximum aid intensities and maximum aid amounts

- (81) In principle, in order for the aid to be proportionate, the Commission considers that the aid amount should not exceed the eligible costs.
- (82) In order to ensure predictability and a level playing field, in these Guidelines the application of maximum aid intensities for aid is foreseen.
- (83) 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.
- (84) For categories of measures covered by Regulation (EU) 2022/2473 , as set out in Part I, Chapter 2, Section 2.3, 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 that Regulation and Annex IV thereto. If an aid measure goes beyond the provisions set out in Regulation (EU) 2022/2473 , the Member State must demonstrate the justification for and the indispensability of the aid.
- (85) 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.
- (86) Value added tax (VAT) is not eligible for aid, except where it is not-recoverable under national VAT legislation.
- (87) Where aid is granted in a form other than a grant, the aid amount is the gross grant equivalent of the aid.
- (88) 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.
- (89) 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.
- (90) 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.
- (91) 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 beneficiary undertakings; or
 - (iii) the application of usual cost accounting practices of individual beneficiary undertakings;
 - (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.

- (92) 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.
- (93) When assessing the compatibility of aid, the Commission will consider any insurance taken out, or which could have been taken out by the beneficiary undertaking. 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, beneficiary undertakings 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

- (94) 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 aid ⁽³⁹⁾, 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.
- (95) 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.
- (96) 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 (95) must be used together with maximum aid intensities as a cap.
- (97) 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 (95). 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 (56).
- (98) The additional conditions set out in points (94) to (97) 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 (51).

Cumulation of aid

- (99) 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.
- (100) 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.

⁽³⁹⁾ When comparing counterfactual scenarios, the aid is to be discounted by the same factor as the corresponding investment and counterfactual scenarios.

- (101) 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 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.
- (102) 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.
- (103) 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.
- (104) 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

- (105) Member States must ensure the publication ⁽⁴⁰⁾ of the following information in the Commission's transparency award module ⁽⁴¹⁾ 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 10 000 ⁽⁴²⁾.
- (106) 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.

⁽⁴⁰⁾ Considering the legitimate interest in transparency to provide information to the public, in weighting up the needs of transparency with the rights under the data protection rules, the Commission concludes that the publication of the name of the aid beneficiary when the aid beneficiary is a natural person or a legal persons which have names of natural persons, is justified (see Judgement of 9 September 2010, *Volker und Markus Schecke and Eifert*, C-92/09, EU:C:2010:662, paragraph 53), taking into account Article 49(1)(g) of Regulation 2016/679. Transparency rules aim to a better compliance, greater accountability, peer review and ultimately more effective public spending. This aim shall prevail over the data protection rights of natural persons receiving public support.

⁽⁴¹⁾ 'State Aid Transparency Public Search', available at the following website: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

⁽⁴²⁾ The threshold of EUR 10 000 corresponds to the threshold for the publication of information set out in Article 9 of Regulation (EU) 2022/2473 . 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.

- (107) 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 restrictions ⁽⁴³⁾.
- (108) For reasons of transparency, Member States must carry out reporting as required in Part III, Section 4, of these Guidelines.

3.2.5. *Avoidance of undue negative effects on competition and trade*

- (109) Aid for the fishery and aquaculture sector may potentially cause product market distortions. Certain aid may raise concerns on building up overcapacity in declining markets regarding the primary production of fisheries ⁽⁴⁴⁾ and aquaculture products and their processing and marketing. 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, Part II, Chapter 1, Sections 1.1, 1.2, 1.3, 1.4 and 1.5, and Part II, Chapter 2, Section 2.2 the negative effects on competition and trade are limited to the minimum.
- (110) 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 beneficiary undertaking. 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) affected ⁽⁴⁵⁾ in the fishery and aquaculture sector.
- (111) 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.
- (112) However, even where aid is necessary and proportionate, it may result in a change of the behaviour of the beneficiary undertaking which distorts competition. This is more likely in the fishery and aquaculture sector which differs from other markets due to its specific structure, as it is characterised by a high number of small undertakings involved and by fish stocks being a common, limited resource. On such markets the risk of distortion of competition is high even when only small amounts of aid are granted.

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

- (113) 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 (114) to (124) must be respected as regards investment aid for the processing and marketing of fishery and aquaculture products.

⁽⁴³⁾ 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.

⁽⁴⁴⁾ These Guidelines lay down safeguards to avoid undue negative effects of aid on the primary production of fisheries products. See for instance the conditions laid down for the measures in Part II, Chapter 3.

⁽⁴⁵⁾ 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 undertaking is already present on them or may be present in the near future.

(114) 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.

(115) 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 beneficiary undertakings 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 and investment aid to large enterprises under notified schemes

(116) In appraising the negative effects of individual investment aid or investment aid to large enterprises under notified schemes, 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 (117) to (124) and must be counterbalanced with the positive effects of the aid.

(117) 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 project ⁽⁴⁶⁾. 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).

(118) 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 beneficiary undertaking, entry and exit barriers, product differentiation.

(119) 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.

(120) 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.

(121) 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.

(122) 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.

⁽⁴⁶⁾ For investment projects that involve the production of several different products, each product must be assessed.

- (123) 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).
- (124) 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.

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

- (125) The Commission assesses whether the positive effects of the aid outweigh the identified negative effects on competition and trade. The Commission may conclude on the compatibility of the aid with the internal market only where the positive effects outweigh the negative ones.
- (126) 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.
- (127) As part of the assessment of the positive and negative effects of the aid, the Commission will take into account the impact of the aid on the achievement of the objectives of the CFP set out in Article 2 of Regulation (EU) No 1380/2013 and referred to in the EMFAF. The main objective of the CFP is to ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and 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 supply (Article 2(1) of Regulation (EU) No 1380/2013) and the objective to ensure coherence with Union environmental legislation (Article 2(5)(j) of Regulation (EU) No 1380/2013). Measures that contravene any of these objectives are unlikely to create positive effects for the CFP and may have negative effects on competition and trade because of the limited resources for which undertakings in the sector are competing. This will render a positive balancing for such measures unlikely. In that context, the Commission will pay particular attention to the risk of fishing capacity enhancing, overfishing or displacement of fishing efforts, as well as to the balance between the fishing capacity and the available fishing opportunities.
- (128) 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, Part II, Chapter 1, Sections 1.1, 1.2 1.3, 1.4 and 1.5, and Part II, Chapter 2, Section 2.2, the negative effect on competition and trade between Member States is limited to the minimum.
- (129) With respect to State aid which is co-financed under the EMFAF, the Commission will consider that the related positive effects have been established.
- (130) Aid that contributes to conservation policy objectives by phasing out derogations currently permitted under CFP rules, such as derogations from the landing obligation, will be considered to have a positive effect for the objectives of the CFP.
- (131) The Commission will also consider aid that supports environmental policy objectives, and that can be linked to conservation efforts by contributing to the good environmental status, implementing and monitoring marine protected areas, implementing actions contributing to restoring river continuity under the Water Framework Directive 2000/60/EC⁽⁴⁷⁾, or Directive (EU) 2019/904⁽⁴⁸⁾ for fishing gears/plastic or putting in place priority action framework measures for Natura 2000 sites, as positively contributing to the objectives of the CFP.

⁽⁴⁷⁾ Directive 2000/60 of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p 1).

⁽⁴⁸⁾ Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155, 12.6.2019, p. 1).

- (132) In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852, including the 'do no significant harm' principle, or other comparable methodologies, such as the ecosystem-based approach applied to the management of marine fisheries in line with Article 2(3) of Regulation (EU) No 1380/2013. The CFP consists of legislative acts establishing a holistic fisheries governance framework that requires finding a balance between ecological, social and economic sustainability criteria.
- (133) In addition, the Commission may also take into account, where relevant, whether the proposed aid brings about other positive or negative effects. Where such other positive effects reflect those embodied in Union policies, such as the European Green Deal, including a sustainable blue economy ⁽⁴⁹⁾, the Farm to fork Strategy ⁽⁵⁰⁾, the Circular Economy Action Plan ⁽⁵¹⁾, Biodiversity Strategy ⁽⁵²⁾, EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' ⁽⁵³⁾, the Strategy on adaptation to climate change ⁽⁵⁴⁾, or those related to energy efficiency ⁽⁵⁵⁾, the initiative on Shaping Europe's Digital Future Communication ⁽⁵⁶⁾, then the proposed aid aligned with such Union policies can be presumed to have such wider positive effects.
- (134) By contrast, aid that contributes to fishing capacity enhancement or results in overfishing or displacement of fishing effort that could lead to such overfishing (see point (4) of the Guidelines) will likely undermine the objectives of the CFP. Taking into account the legal and economic context of the fisheries sector, where undertakings are competing for limited resources, measures with such effects that are in principle considered to be harmful are unlikely to result in a positive result of the balancing exercise.
- (135) With the exception of aid provided for explicitly in these Guidelines, the balancing test is unlikely to be positive with regard to the following types of aid measures that are in principle considered to be harmful:
- (a) that increase the fishing capacity of a fishing vessel;
 - (b) for the acquisition of equipment that increases the ability of a fishing vessel to find fish;
 - (c) for the construction, acquisition or importation of fishing vessels;

⁽⁴⁹⁾ 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).

⁽⁵⁰⁾ 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).

⁽⁵¹⁾ 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).

⁽⁵²⁾ 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).

⁽⁵³⁾ 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).

⁽⁵⁴⁾ 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).

⁽⁵⁵⁾ In particular concerning the first principle of energy efficiency, as set out 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).

⁽⁵⁶⁾ 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).

- (d) for the transfer or reflagging of fishing vessels to third countries, including through the creation of joint ventures with partners of third countries;
- (e) for the temporary or permanent cessation of fishing activities;
- (f) for exploratory fishing;
- (g) for the transfer of ownership of a business;
- (h) for the direct restocking, except as the case may be in the case of experimental restocking;
- (i) for the construction of new ports or new auction halls, with the exception of new landing sites;
- (j) for market intervention mechanisms aiming to temporarily or permanently withdraw fishery or aquaculture products from the market with a view to reducing supply in order to prevent price decline or to drive prices up that do not comply with Article 30 and 31 Regulation (EU) No 1379/2013;
- (k) for investments on board fishing vessels necessary to comply with the requirements under Union law in force at the time of submission of the application for aid, including requirements under the Union's obligations in the context of regional fisheries management organisations;
- (l) for investments on board fishing vessels that have carried out fishing activities for less than 60 days in the two calendar years preceding the year of submission of the application for aid; or
- (m) for the replacement or modernisation of a main or ancillary engine of a fishing vessel.

(136) The balancing test is unlikely to be positive with regard to aid measures that do not:

- (a) include safeguards ensuring that the applicant for State aid, or if no application is required an equivalent act provides that the beneficiary undertaking, comply with the rules of the CFP and continue to do so throughout the period of implementation of the project and for a period of five years after the final payment of the aid to the undertaking; and
- (b) provide that a beneficiary undertaking that has not complied with the requirements in point (a), or committed one or more of the environmental offences laid down in Article 3 and 4 of Directive 2008/99/EC ⁽⁷⁾ where the application for aid is submitted under Article 32 to 39 of Regulation (EU) 2022/2473, as determined by the competent national authority, during the periods specified in point (a) becomes inadmissible to apply for aid and must reimburse the aid in proportion to the non-compliance or offence.

(137) The provisions laid down in point (136) do not apply to:

- aid that meets the specific conditions set out in Part II, Chapter 1, Section 1.1 of these Guidelines; or
- 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.

(138) For aid categories in Part I, Chapter 2, Sections 2.1.2, 2.2 and point (24) of Section 2.3 and Part II, Chapter 2, Section 2.1 and Section 2.3 and Chapter 3 of these Guidelines, the Commission will balance the identified negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to the objectives of the CFP and, within that policy, with the objectives of the EMFAF.

⁽⁷⁾ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

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

- (139) 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.
- (140) '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 Union ⁽⁵⁸⁾.
- (141) 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) 2022/2473 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.
- (142) 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.
- (143) 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.
- (144) 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.
- (145) Member States may, where appropriate, establish in advance criteria on the basis of which the formal recognition referred to in point (144)(a) is deemed to be granted.
- (146) 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.
- (147) 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.

⁽⁵⁸⁾ See judgment of 11 November 2004, *Spain v Commission*, Case C-73/03, ECLI:EU:C:2004:711, paragraph 36; and judgment of 23 February 2006, *Giuseppe Atzeni and others*, joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130, paragraph 79.

- (148) 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 (345).
- (149) Aid granted to compensate for the damage caused by other types of natural disasters not mentioned in point (141), and for damage caused by exceptional occurrences, must be separately notified to the Commission.
- (150) 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.
- (151) 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.
- (152) The damage must be calculated at the level of the individual beneficiary.
- (153) 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.
- (154) 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.
- (155) That amount may be increased by other costs incurred by the beneficiary undertaking 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 undertaking.
- (156) 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 undertaking.
- (157) 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 (154)(b) must be understood as referring to the quantity produced and sold 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.

(158) 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

(159) 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.

(160) 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 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.

(161) 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) 2022/2473 it is possible to block exempt the following types of adverse weather conditions: frost, storms, hail, ice, heavy and persistent rainfall and severe droughts.

(162) 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.

(163) 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 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;
- (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.

(164) 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.

(165) 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.

(166) 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 (345).

- (167) 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 (161) must be separately notified to the Commission.
- (168) 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.
- (169) 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.
- (170) The damage must be calculated at the level of the individual beneficiary.
- (171) 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.
- (172) 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.
- (173) 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.
- (174) That amount may be increased by other costs incurred by the beneficiary undertaking 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 undertaking.
- (175) 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 undertaking.
- (176) 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 (163)(a), (171) and (173)(b) must be understood as referring to the quantity produced and sold 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.

(177) 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 infestations by invasive alien species, and aid to make good the damage caused by those animal diseases and infestations

(178) The Commission will consider aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestations by invasive alien species, 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 the principles set out in Part I, Chapter 3, and the specific conditions set out in this Section.

(179) Aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestations by invasive alien species, and aid to make good the damage caused by those animal diseases and infestations, are considered as a suitable tool to help undertakings address the risks posed by those threats and 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.

(180) Aid under this Section may only be granted:

- (a) in respect of animal diseases and infestations by invasive alien species 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 implemented in accordance with Regulation (EU) No 1143/2014.

(181) The programmes and measures referred to in point (180)(b) must contain a description of the prevention, control and eradication measures concerned.

(182) 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 undertaking, unless the cost of such aid measures is entirely offset by compulsory charges on the beneficiary undertakings.

(183) 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.

(184) No individual aid should be granted where it is established that the animal disease or infestation by invasive alien species was caused deliberately or by the negligence of the beneficiary undertaking.

(185) As regards animal diseases, the aid may be granted in respect of:

- (a) aquatic animal diseases listed in Article 5(1) of Regulation (EU) 2016/429 of the European Parliament and of the Council ⁽⁵⁹⁾, or included in the list of animal diseases of the Aquatic Animal Health Code of the World Organization for Animal Health ⁽⁶⁰⁾;

⁽⁵⁹⁾ 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).

⁽⁶⁰⁾ See <https://www.oie.int/en/what-we-do/standards/codes-and-manuals/aquatic-code-online-access/>.

- (b) zoonoses of aquatic animals listed in Annex III, Point 2, to Regulation (EU) 2021/690 of the European Parliament and of the Council ⁽⁶¹⁾;
 - (c) emerging diseases, which meet the conditions set out in Article 6(2) of Regulation (EU) 2016/429;
 - (d) diseases other than a listed disease as referred to in Article 9(1), point (d), of Regulation (EU) 2016/429, and which meet the criteria laid down in Article 226 of that Regulation.
- (186) 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. 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 (188).
- (187) 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 (345).
- (188) The aid may cover the following eligible costs, including for preventive purposes:
- (a) health checks, analyses, tests, and other screening measures;
 - (b) the improvement of biosecurity measures;
 - (c) the purchase, storage, administration or distribution of vaccines, medicines, and substances for the treatment of animals;
 - (d) the purchase, storage, deployment and distribution of protection products or equipment to address infestations by invasive alien species;
 - (e) the slaughtering, culling, and destruction of animals;
 - (f) the destruction of animal products and of products linked to them;
 - (g) the cleaning, disinfection or disinfestation of the holding or equipment;
 - (h) the damage incurred due to the slaughtering, culling or destruction of animals, animal products, and products linked to them.
- (189) The aid in relation to eligible costs referred to in point (188)(a) must be granted in kind and must be paid to the provider of health checks, analyses, tests, and other screening measures, unless beneficiary undertakings already have in-house capabilities suitable for those purposes.
- (190) In the case of aid to make good the damage caused by animal diseases or by infestations by invasive alien species referred to in point (188)(h), 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; or
 - (ii) as part of a public programme or measure referred to in point (180)(b).
 - (b) loss of income due to quarantine obligations and difficulties in restocking.
- (191) The market value referred to in point (190)(a) must be established on the basis of the value of the animals immediately before any suspicion of the animal disease or the infestation by invasive alien species arose or was confirmed, and as if they had not been affected by the disease or infestation.

⁽⁶¹⁾ 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).

- (192) That amount must be reduced by any costs not directly incurred due to the animal disease or infestation by invasive alien species which would otherwise have been incurred by the beneficiary undertaking, and by any revenue made by the sale of products linked to the animals slaughtered, culled or destroyed for preventive or eradication purposes.
- (193) In exceptional and duly justified cases, the Commission may accept other costs incurred due to animal diseases in aquaculture or infestations by invasive alien species.
- (194) The aid and any other payments received by the beneficiary undertaking, 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

- (195) 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 Part I, Chapter 3, and the specific conditions set out in this Section.
- (196) 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 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.
- (197) 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 the protected animals, as assessed either by a public authority, by an independent expert recognised by the granting authority or by an insurance undertaking; and
 - (c) in the fisheries sector, the aid only concerns damage to catches, irrespective of any impact of protected animals on the overall wild population.
- (198) 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.
- (199) 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 damage. The aid must be paid out within four years from that date.
- (200) 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.
- (201) The market value referred to in point (200)(a) must be established on the basis of the value of the animals immediately before the damage occurred, and as if they had not been affected by the behaviour of the protected animals.
- (202) The calculation of the material damage must be based on the repair cost or economic value of the affected asset before the damage occurred. 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 damage occurred.

- (203) That amount may be increased by other costs incurred by the beneficiary undertaking due to the behaviour of the protected animals, and in any case 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 undertaking, and by any revenue made by the sale of products linked to the animals damaged or killed.
- (204) 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 undertaking.
- (205) Save for first attacks by protected animals, a reasonable effort from the beneficiary undertaking 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.
- (206) 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 risk events

- (207) The Commission will consider aid for investments to prevent and mitigate the damage caused by risk events 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.
- (208) Aid for investments to prevent and mitigate the damage caused by risk events 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 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.
- (209) The investment must primarily pursue the aim of preventing and mitigating damage caused by risk events. With regard to the prevention and mitigation of damage caused by protected animals in the fisheries sector, the investment must aim at preventing and mitigating depredation or damage to fishing gear or other equipment.
- (210) For investments requiring an environmental impact assessment under Directive 2011/92/EU of the European Parliament and of the Council ⁽⁶²⁾, 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.
- (211) 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.
- (212) The maximum aid intensity must be limited to 100 % of the eligible costs.

⁽⁶²⁾ 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

(213) 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' ⁽⁶³⁾, 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

(214) Operating aid in the outermost regions is 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, the specific conditions set out in this Section and the specific provisions applying to those regions.

(215) 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.

(216) 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.

(217) The eligible costs resulting from those specific constraints must be calculated in accordance with the criteria laid down in Commission Delegated Regulation (EU) 2021/1972 ⁽⁶⁴⁾.

(218) To avoid overcompensation, the Member State concerned must take into account other types of public intervention, including, if applicable, the compensation of 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.

(219) The aid, and any other payments received by the beneficiary undertaking 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

(220) 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 specific conditions set out in this Section.

⁽⁶³⁾ 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).

⁽⁶⁴⁾ 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).

- (221) 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.
- (222) 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 undertaking has its main place of registration in the outermost region where the new vessel will be registered.
- (223) 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').
- (224) 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 guidelines ⁽⁶⁵⁾ referred to in Article 22(2) of Regulation (EU) No 1380/2013.
- (225) 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; and
 - (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.
- (226) For the purpose of point (225)(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.
- (227) 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.
- (228) 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.
- (229) The aid must not be made conditional on the acquisition of the new vessel from a specific shipyard.

⁽⁶⁵⁾ 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).

- (230) 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.
- (231) 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**
- (232) 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.
- (233) Aid under this Section should contribute to strengthening economically, socially and environmentally sustainable fishing activities, improving safety and working conditions on board and, where applicable, enabling fishing vessels to extend their fishing zones up to 20 miles from the coast, for small-scale coastal fishing.
- (234) By way of derogation from point (47), aid under this Section can be granted to meet mandatory Union or national requirements.
- (235) 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.
- (236) 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.
- (237) 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

- (238) 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.
- (239) 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 the measures laid down in Articles 17 to 21 of Regulation (EU) 2021/1139, unless otherwise provided for in this Section.
- (240) Aid under this Chapter may also be granted to inland fishing under the specific conditions set out in Sections 3.1 to 3.6.
- (241) 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

- (242) 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.
- (243) 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 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.
- (244) 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 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.
- (245) 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 metres 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 aid application 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; and
 - (e) has been registered in the Union fleet register for a maximum of 30 calendar years preceding the year of submission of the aid application.
- (246) The procedure and conditions set out in points (225) to (227) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (245)(a).
- (247) With regard to inland fishing, point (245)(a) does not apply and point (245)(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.
- (248) The eligible costs may include the direct and indirect costs related to the first acquisition of a fishing vessel.
- (249) The maximum aid intensity must be limited to 40 % of the eligible costs.

3.2. Replacement or modernisation of a main or ancillary engine

- (250) 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.
- (251) 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.
- (252) 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.
- (253) Aid under this Section must meet all 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 metres 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;
 - (e) the fishing capacity withdrawn due to the replacement or modernisation of a main or ancillary engine must not be replaced.
- (254) The procedure and conditions set out in points (225) to (227) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (253)(a).
- (255) With regard to inland fishing, point (253)(a) does not apply and point (253)(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.
- (256) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee the fulfilment of the conditions laid down in this Section.
- (257) Member States must ensure that all replaced or modernised engines are subject to a physical verification.
- (258) The reduction of CO₂ emission required under point (253)(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;
 - (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.

- (259) 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 (253)(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.
- (260) Implementing Regulation (EU) 2022/46 ⁽⁶⁶⁾ applies to identify the energy-efficient technologies referred to in point (259)(a) and to further specify the methodology elements for the implementation of point (259)(c).
- (261) The eligible costs may include the direct and indirect costs related to the replacement or modernisation of a main or ancillary engine.
- (262) 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**

- (263) 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.
- (264) 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.
- (265) Aid under this Section must meet all the following conditions:
- (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 metres 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; and

⁽⁶⁶⁾ 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).

- (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.
- (266) The procedure and conditions set out in points (225) to (227) of Part II, Chapter 2, Section 2.2 apply for the purpose of point (265)(a).
- (267) 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 1224/2009 ⁽⁶⁷⁾, 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.
- (268) With regard to inland fishing, points (265)(a) and (d) do not apply and point (265)(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.
- (269) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee the fulfilment of the conditions laid down in this Section.
- (270) The Member State concerned must communicate to the Commission the characteristics of the aid measure including the amount of the fishing capacity increased and the purpose of that increase.
- (271) The eligible costs may include the direct and indirect costs related to the investment aid for improving safety, working conditions or energy efficiency leading to the increase in the gross tonnage of a fishing vessel.
- (272) The maximum aid intensity must be limited to 40 % of the eligible costs.

3.4. Aid for permanent cessation of fishing activities

- (273) The Commission will consider aid for permanent 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.

⁽⁶⁷⁾ 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).

- (274) Aid for permanent cessation of fishing activities may constitute a suitable tool to help beneficiary undertakings in the fisheries sector to adapt to a new situation in particular by diversifying into new types of economic activities ⁽⁶⁸⁾. 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.
- (275) Aid under this Section must meet all 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 have 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) the respective fishing licences and the fishing authorisations must be permanently withdrawn; and
 - (f) the beneficiary undertaking must not register any fishing vessel within five years following the receipt of aid.
- (276) 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 (275)(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 beneficiary undertakings which fish throughout the year.
- (277) In addition to aid referred to in point (275), the Commission may exceptionally authorise aid for permanent cessation of fishing activities pursuing considerations of an economic nature, or other considerations related to conservation of marine biological resources, in duly justified circumstances to be proven by the Member States. For example, aid may be justified in cases of issues related to the good environmental status of marine waters supported by scientific evidence, or where the scope of fishing activities at a local level can no longer be sustained due to the reduction of fishing spaces, and there is a need to ensure an orderly restructuring of the sector even if the fleet segments concerned are in a situation of balance.
- (278) Aid pursuant to point (277) must meet the conditions set out in point (275)(b) to (f) and, in addition, beneficiary undertakings must commit not to increase their active fishing capacity from the time of the aid application until five years after the payment of the aid. Beneficiary undertakings must also commit not to use the aid to replace or modernise their engines, unless the conditions set out in Article 18 of Regulation (EU) 2021/1139 are fulfilled.
- (279) Where one year prior to the notification a Member State granted any aid or implemented operations under the EMFF or the EMFAF leading to an increase of fishing capacity in a sea basin, or where it included such operations in the national EMFAF programme, the Member State concerned must explain to which extent aid for permanent cessation in that same sea basin is compatible with such an increase of fishing capacity and demonstrate the justification for and the indispensability of the aid.

⁽⁶⁸⁾ For the purpose of this Section, the Commission takes into account the experience gained with State aid for permanent cessation; see, for example, Case SA.101091, Commission Decision C(2022) 4764 final of 11 July 2022, Case SA.102997, Commission Decision C(2022) 6248 final of 30 August 2022 and Case SA.64737, Commission Decision C(2022) 5009 final of 18 July 2022.

- (280) With regard to inland fishing, aid for permanent cessation of fishing activities can only be granted to beneficiary undertakings operating exclusively in inland waters and for cases of conservation measures supported by scientific evidence or falling under point (277). Point (275)(a) does not apply to inland fishing and points (275)(d) and (f) apply 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.
- (281) In addition, the following adjustment applies to inland fishing concerning the minimum number of days of fishing activities set out in point (275)(c). Where a fishing vessel is active in the catch of multiple species for which different numbers of fishable days are allowed in inland waters, the number of fishable days to calculate the ratio set out in point (276) is the average of the number of fishable days allowed for the catches of that vessel. Nevertheless, the minimum number of days of fishing activities resulting from such an adjustment must in no case be below 30 days or above 90 days.
- (282) 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.
- (283) The minimum number of working days set out in (282)(b) shall be adjusted in accordance with points (276) and (281), where those points are applicable to the fishing vessel on which the fisher carries out the activity.
- (284) The fishers referred to in point (282)(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.
- (285) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee compliance with the conditions attached to 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.
- (286) The eligible costs must be calculated at the level of the individual beneficiary.
- (287) 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; and
 - (c) the costs related to the fishers identified in point (282)(b) 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.
- (288) 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 undertaking.

(289) 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 undertaking.

(290) The maximum aid must be limited to 100 % of the eligible costs.

3.5. Aid for temporary cessation of fishing activities

(291) 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.

(292) 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⁽⁶⁹⁾. 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.

(293) Aid under this Section may be granted in the following cases:

- (a) conservation measures, as referred to in Article 7(1), points (a), (b), (c), (i) and (j), of Regulation (EU) No 1380/2013 or, where applicable to the Union, equivalent conservation measures adopted by regional fisheries management organisations, provided that a reduction of fishing effort is needed, based on scientific advice, in order to achieve the objectives of the CFP, as set out in Article 2(2) and point (a) of Article 2(5) of Regulation (EU) No 1380/2013;
- (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 State 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.

(294) 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.

(295) 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;
- (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.

(296) If the fishing activity in question is of a nature that it cannot be carried out throughout the whole calendar year, the period of 120 days set out in point (295)(a), (b) and (c) 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 beneficiary undertakings which fish throughout the year.

⁽⁶⁹⁾ For the purpose of this Section, the Commission takes into account the experience gained with State aid for temporary cessation: see, for example, Case SA.62426, Commission Decision C(2021) 2780 final of 23 April 2021, Case SA.64035, Commission Decision C(2021) 6458 final of 3 September 2021, and Case SA.102242, Commission Decision C(2022) 2983 final of 10 May 2022.

- (297) With regard to inland fishing, aid for temporary cessation of fishing activities can only be granted to beneficiary undertakings operating exclusively in inland waters and for cases of conservation measures supported by scientific evidence or falling under point (293)(e). Point (295)(a) applies by reference to the relevant national fleet register, if available under national law.
- (298) In addition, the following adjustment applies to inland fishing concerning the minimum number of days of fishing activities set out in point (295)(a), (b) and (c). Where a fishing vessel or a fisher is active in the catch of multiple species for which different numbers of fishable days are allowed in inland waters, the number of fishable days to calculate the ratio set out in point (296) is the average of the number of fishable days allowed for the catches of that vessel or fisher. Nevertheless, the minimum number of days of fishing activities resulting from such an adjustment must in no case be below 40 days or above 120 days.
- (299) 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 (346).
- (300) All fishing activities carried out by the vessels or fishers concerned must be effectively suspended during the period concerned by the temporary cessation of fishing activities.
- (301) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee compliance with the conditions attached to the temporary cessation, including to ensure that the vessel or fisher concerned has ceased any fishing activities during the period concerned by the measure.
- (302) The eligible costs may include:
- (a) loss of income due to the temporary cessation of fishing activities; and
 - (b) other costs related to the maintenance, upkeep and preservation of unutilised assets during temporary cessation of fishing activities.
- (303) The eligible costs must be calculated at the level of the individual beneficiary.
- (304) 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 temporary cessation 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 temporary cessation of fishing activities, or a three-year average based on the five-year period preceding the temporary cessation of fishing activities, excluding the highest and lowest entry, by the average selling price obtained.
- (305) 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 temporary cessation of fishing activities, or on a three-year average over the five-year period preceding the temporary cessation of fishing activities, excluding the highest and lowest entry.
- (306) The eligible costs may include other costs incurred by the beneficiary undertaking 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 undertaking.

- (307) 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 undertaking.
- (308) 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.
- (309) Where an SME was set up less than three years from the date of the temporary cessation of fishing activities, the reference to the three or five-year periods in points (304)(b) and (305) must be understood as referring to the quantity produced and sold, or costs incurred, 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.
- (310) 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.

3.6. Liquidity aid to fishers

- (311) The Commission will consider liquidity aid to fishers 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.
- (312) Liquidity aid to fishers may constitute a suitable tool to help undertakings in the sector react to circumstances that threaten their viability. For this reason, liquidity aid to fishers 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.
- (313) Aid under this Section may exceptionally be authorised in duly justified cases to be proven by the Member State to compensate the loss of income of vessel owners and fishers resulting from exogenous events entailing a temporary restriction of fishing activities. The following do not constitute such exogenous events:
- (a) the cases of temporary cessation of fishing activities listed in Section 3.5 of this Chapter;
 - (b) conservation measures taken in accordance with sustainable fisheries partnership agreements and of agreements on exchange or joint management;
 - (c) the reduction or loss of fishing opportunities within EU waters in the framework of the implementation of the CFP;
 - (d) the reduction or loss of fishing opportunities with regard to non-EU waters, e.g. due to non-renewal, suspension, termination or re-negotiation of a sustainable fisheries partnership agreement and of agreements on exchange or joint management or measures on fixing and allocation of fishing opportunities taken in accordance with such agreements or under the auspice of a regional fisheries management organisation.
- (314) Aid under this Section may only be granted where there is a direct causal link between the exogenous events and the loss of income suffered. For example, aid under this Section may be justified where fishing activities cannot take place due to the temporary unavailability of port infrastructures.
- (315) Aid under this Section may also be granted to undertakings active in inland fishing.
- (316) Member States must demonstrate that they have in place effective control and enforcement mechanisms to guarantee compliance with the conditions attached to the liquidity aid to fishers.

- (317) The eligible costs are the loss of income due to the exogenous events.
- (318) The eligible costs must be calculated at the level of the individual beneficiary.
- (319) 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 exogenous events, 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 exogenous events, or a three-year average based on the five-year period preceding the exogenous events, excluding the highest and lowest entry, by the average selling price obtained.
- (320) The eligible costs may include other costs incurred by the beneficiary undertaking due to the exogenous events, and they must be reduced by any costs not incurred because of the exogenous events, which would otherwise have been incurred by the beneficiary undertaking.
- (321) 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 undertaking.
- (322) Where a vessel is used during the exogenous events for activities other than commercial fishing, any income must be declared and deducted from the aid granted under this Section.
- (323) Where an SME was set up less than three years from the date of the exogenous events, the reference to the three or five-year periods in point (319)(b) must be understood as referring to the quantity produced and sold 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 exogenous events.
- (324) The aid and any other payments, including payments under insurance policies, must be limited to 100 % of the eligible costs.

PART III

PROCEDURAL MATTERS

1. MAXIMUM DURATION OF AID SCHEMES AND EVALUATION

- (325) Following the practice established in its previous Guidelines, in order to contribute to transparency and to the regular review of all existing aid schemes, the Commission will only authorise aid schemes of a limited duration. Aid schemes must in principle not apply for a period exceeding seven years.
- (326) To ensure that distortion of competition and trade is limited, the Commission may require that aid schemes as referred to in point (327) 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, that is to say, that may risk significantly restricting or distorting competition if implementation is not reviewed in due time.
- (327) *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, that is to say, 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.

- (328) 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.
- (329) 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.
- (330) For aid schemes subject to the evaluation requirement according to point (327) 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.
- (331) The draft evaluation plan must be in line with the common methodological principles provided by the Commission ⁽⁷⁰⁾. Member States must publish the evaluation plan approved by the Commission.
- (332) 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.
- (333) The final evaluation report must be submitted to the Commission in due time to allow it 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 exact 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. REVISION CLAUSE FOR SPECIFIC COMMITMENT MEASURES

- (334) A revision clause must be provided for specific commitments undertaken by the beneficiary undertakings of the measures covered by Part I, Chapter 2, Section 2.3, in order to ensure that those commitments are adjusted in case the relevant mandatory standards, requirements or obligations referred to in Articles 38 and 39 of Regulation (EU) 2022/2473 are amended.
- (335) If the beneficiary undertaking does not accept or implement the adjustments referred to in point (334), the commitment expires as of the moment that it is rejected, and the aid amount is to be reduced to the aid amount corresponding to the period until the expiry of the commitment.

3. APPLICATION OF THE GUIDELINES

- (336) The Commission will apply these Guidelines from 1 April 2023.

⁽⁷⁰⁾ Commission staff working document: Common methodology for State aid evaluation (28.5.2014, SWD(2014) 179 final).

- (337) These Guidelines replace the Guidelines for the examination of State aid to the fisheries and aquaculture sector ⁽⁷¹⁾, adopted in 2015.
- (338) The Commission will apply these Guidelines to all notified aid measures in respect of which it is called upon to take a decision after 1 April 2023, even where the aid was notified prior to that date.
- (339) However, individual aid granted under approved aid schemes 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 on which the individual aid is based.
- (340) Unlawful aid will be assessed in accordance with the rules in force on the date 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.

4. PROPOSALS FOR APPROPRIATE MEASURES

- (341) In accordance with Article 108(1) TFEU, the Commission proposes that Member States amend their existing aid schemes to comply with these Guidelines by 30 September 2023 at the latest.
- (342) Member States are invited to give their explicit and unconditional agreement to these proposed appropriate measures within two months from the date of publication of these Guidelines in the *Official Journal of the European Union*. For approved measures, that were planned to be financed under the Brexit Adjustment Reserve, ⁽⁷²⁾ Member States may continue to grant aid until 31 December 2023 under the Guidelines for the examination of State aid to the fishery and aquaculture sector, adopted in 2015, in the version applicable at the time of adoption of the Commission decision, in accordance with the conditions set out in the respective Commission decisions.
- (343) In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

5. REPORTING AND MONITORING

- (344) In accordance with Council Regulation (EU) 2015/1589 ⁽⁷³⁾ and Commission Regulation (EC) No 794/2004 ⁽⁷⁴⁾, Member States must submit annual reports to the Commission.
- (345) 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.
- (346) In addition, the annual report must also include information about the temporary cessation of fishing activities under Part II, Chapter 3, Section 3.5.
- (347) 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.

⁽⁷¹⁾ 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, as modified by OJ C 422, 22.11.2018, p. 1).

⁽⁷²⁾ Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve (OJ L 357, 8.10.2021, p. 1).

⁽⁷³⁾ 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).

⁽⁷⁴⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

- (348) Member States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions set out in these Guidelines, including eligible costs and maximum aid intensity, have been fulfilled. These records must be maintained for 10 years from the date of granting the aid and must be provided to the Commission upon request.

6. **REVISION OF THE GUIDELINES**

- (349) The Commission may decide to review or amend these Guidelines at any time, if necessary for reasons associated with competition policy or to take account of other Union policies, international commitments, developments in the markets, or for any other justified reason.
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