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MARE/E4 – Legal matters

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.



State aid in the
fishery and
aquaculture sector

Outline

- *General Legal Framework*
- *Legal Instruments on State Aid in the fisheries and aquacultural sector*
- *Review of the fisheries State Aid framework*

General Legal Framework

- **Article 42 TFEU**

*States that provisions of the Chapter relating to rules on competition shall apply to **production of and trade in fisheries products only to the extent determined by the EP and the Council** within the framework of Article 43(2);*

- **Article 38 TFEU**

Clarifies that fishery products are those listed in the Annex I to the Treaty, i.e. fish, crustaceans and molluscs; fats and oil of fish and marine animals; preparations of meat of fish, crustaceans or molluscs.

Specificities of the Sector

Article 8 EMFF:

State aid

1. Without prejudice to paragraph 2 of this Article, Articles 107, 108 and 109 TFEU shall apply to aid granted by Member States to undertakings in the fishery and aquaculture sector.
2. However, Articles 107, 108 and 109 TFEU shall not apply to payments made by Member States pursuant to, and in conformity with, this Regulation falling within the scope of Article 42 TFEU.
3. National provisions setting up public financing going beyond the provisions of this Regulation concerning payments referred to in paragraph 2, shall be treated as a whole on the basis of paragraph 1.
4. For the fishery and aquaculture products, listed in Annex I TFEU, to which Articles 107, 108 and 109 thereof apply, the Commission may authorise, in accordance with Article 108 TFEU, operating aid in the outermost regions referred to in Article 349 TFEU within the sectors producing, processing and marketing fishery and aquaculture products, with a view to alleviating the specific constraints in those regions as a result of their isolation, insularity and extreme remoteness.

Specificities of the Sector

- In short, the Treaty rules on State aid generally apply;
- But not to payments made by MS pursuant to, and in conformity with, the EMFF Regulation falling within the scope of Article 42 TFEU.

CONCLUSIONS:

- Payments made under the EMFF (national and EU contributions) are excluded from SA rules
- In case of public financing going beyond EMFF rules (top-ups), the whole operation becomes State aid
- Some operations supported by the EMFF are subject to State aid rules (operations outside Article 42 TFEU).

Specificities of the Sector

- The financial instrument to support fisheries and aquaculture is the EMFF;
- If support comes from other sources (ERDF...) – this support is not excluded from State aid rules;
- Therefore, such measures would to be notified as State aid, unless they are exempted.

Scenario	Consequences
Fishery-related operation financed through the EMFF, respecting the conditions of the EMFF	<ul style="list-style-type: none"> Not State aid
Fishery-related operation financed through the EMFF and additional top-ups by MS	<ul style="list-style-type: none"> The whole operation is State aid Fisheries State aid rules apply (Guidelines, <i>de minimis</i>, FIBER)
Operation financed through the EMFF not fishery-related (IMP, priority 4)	<ul style="list-style-type: none"> The whole operation is State aid General State aid rules apply (general <i>de minimis</i>, GBER, applicable Guidelines)
Fishery-related operation financed by other EU funds (ERDF...)	<ul style="list-style-type: none"> The whole operation is State aid Fisheries State aid rules apply (Guidelines, <i>de minimis</i>, FIBER)

Three specific instruments on State aid for fisheries and aquaculture:

- *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 (De minimis Regulation)*
- *Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (Block Exemption Regulation)*
- *Communication from the Commission - Guidelines for the examination of State aid to the fishery and aquaculture sector (2015/C 217/01), as amended by Communication C(2018) 7667 final.*

***De minimis* Regulation**

Aid measures shall be exempt from the notification requirement, if the following conditions are met:

- The total aid granted to any one undertaking does not exceed 30 000 € over any period of three fiscal years;
- The cumulative amount granted to various undertakings in the fisheries sector does not exceed the national cap set out per Member State in the Annex over any period of three fiscal years (165,840,000 € for Spain, 6,260,000 € for Croatia).

***De minimis* Regulation**

Member States obligations

- Check that the conditions and ceilings are respected before granting de minimis aid;
- Record and compile information on granted aid;
- Upon request, provide information to the Commission to allow an assessment whether the conditions of the Regulation have been met.

***De minimis* Regulation**

Certain types of aid are excluded, Art. 1:

- (a) aid the amount of which is fixed on the basis of price or quantity of products put on the market;
- (b) aid to export-related activities, namely aid directly linked to the quantities exported (...);
- (c) aid contingent upon the use of domestic over imported goods;
- (d) aid for the purchase of fishing vessels;
- (e) aid for the modernisation or replacement of main or ancillary engines of fishing vessels;
- (f) aid to operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;

***De minimis* Regulation**

Certain types of aid are excluded, Art. 1:

- (g) aid for the construction of new fishing vessels or importation of fishing vessels;
- (h) aid to the temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014;
- (i) aid to exploratory fishing;
- (j) aid to the transfer of ownership of a business;
- (k) aid to direct restocking, unless explicitly provided for as a conservation measure by a Union legal act or in the case of experimental restocking.

Block Exemption Regulation

- Aid covered by the FIBER is exempted from the obligation of previous notification;
- Member States have to submit a summary information about each measure under the Regulation to the Commission and provide an annual report;
- Information on granted aid has to be published in accordance with Article 9;
- For monitoring purposes, records with all the relevant documents have to be kept for 10 years.

Block Exemption Regulation

Covers all aid:

- For measures that would be eligible under the EMFF Regulation;
- Granted to SMEs active in the production or marketing of fishery and aquacultural products; (not restriction with regard to size for aid aiming to make good damage caused by natural disasters);
- For projects with eligible costs not exceeding EUR 2 million and not more than 1 million of aid per beneficiary per year;
- Certain types of aid that would be contrary to general principles of the common market are excluded according to Article 1(3).

Fisheries Guidelines

- Any other type of State aid **must be previously notified** to the Commission and **cannot be implemented before approval.**
- The **compatibility** of the notified aid **is assessed exclusively under the Fisheries Guidelines.**

Fisheries Guidelines

Aid needs to comply with the following principles:

- *Consistency with the Competition Policy*
- *Consistency with the Common Fisheries Policy;*
- *Consistency with EU support provided by the EMFF;*
- *Respect Transparency.*

Fisheries Guidelines

- **Aid to make good the damage caused by natural disaster and exceptional occurrences is compatible with the internal market, if conditions set in the Guidelines are met;**
- **Other categories of aid may be declared compatible, if the conditions set out in the Guidelines are met.**

Fisheries Guidelines

Those types of aid are:

- Aid of the same kind as aid covered by a FIBER;
- Aid falling within the scope of certain horizontal guidelines;
- Aid to make good damage caused by adverse climatic events;
- Aid for the costs of prevention, control and eradication of animal diseases in aquaculture;
- Aid financed through parafiscal charges;
- Operating aid in outermost regions;
- Aid for the renewal of the fishing fleet in outermost regions.

Fisheries Guidelines

- **All other aid is in principle incompatible with the internal market;**
- **It might be declared compatible on a case by case assessment, provided it clearly complies with the common assessment principles (and in particular serves clearly the objectives of the CFP).**

Review

- **Review of fisheries state aid instruments is currently ongoing;**
- **A public consultation was held recently; more information can be found here:**
https://ec.europa.eu/fisheries/cfp/state_aid_en
- **In general the approach should remain the same;**
- **Adoption is expected by end of 2020.**



Thank you for your attention!