Brussels, 07 July 2020

Draft Minutes

Meeting of the Expert group on the European Maritime and Fisheries Fund (EMFF)

10 June, 2020 (virtual meeting)

1. Adoption of the agenda

Agenda was approved.

2. Adoption of the minutes of previous meeting

The final draft minutes of the previous meeting held on 26 of November were approved.

3. List of points discussed

Initiatives in relation to the COVID-19 Pandemic

3.1. Overview of the CPR and EMFF amendments in response to the COVID 19 pandemic

COM adopted a number of proposals and initiatives to mitigate the impacts of the COVID-19 outbreak in a lot of sectors, including in the fisheries and aquaculture sectors. COM (V. Guerre, MARE D.3) presented an overview of the changes made in the EMFF and the CPR to adapt to this unprecedented crisis.

The first part of the package is the *Temporary State Aid Framework*, which enables Member States to support economic operators of all sectors including the fishery and aquaculture sector through State aid. The aid can take different forms such as direct grants up to a level of EUR 120,000 per undertaking until 31 December 2020. The Commission has put in place urgency procedures to enable very swift assessment and decision-making.

The second element of this package is the *Coronavirus Response Investment Initiative* (CRII) I and II, which includes a series of rules allowing more flexibility in CPR and in the EMFF.

Thirdly, the Commission put forward the *SURE programme*, which provides financial assistance to Member States for measures such as short-time work schemes. This programme applies to the employed and self-employed and therefore, can support fishermen.

Finally, given the difficult situation of the fishery and aquaculture sectors in this crisis, the *Regulation amending the EMFF and the Common Market Organisation was adopted* by the legislators on 23 April 2020. This Regulation includes compensations

- to fishers, including fishers on foot and inland fishers, for the temporary cessation of fishing activities caused by the COVID-19 outbreak,
- to aquaculture producers and processing enterprises for the suspension or reduction of production and sales and for additional storage costs caused by the COVID-19 outbreak.

There is also the possibility for providing working capital to aquaculture producers and processing enterprises, support to producer organisations for the temporary storage of fishery and aquaculture products and specific compensation measures in the outermost regions. This

Regulation also allows a more flexible reallocation of financial resources within the operational programme of each Member State and a simplified procedure for amending operational programmes. In addition, any expenditures for operations related to the COVID-19 outbreak is retroactively eligible as of 01/February/2020. Concretely, this means that MS can already start selecting these operations before the formal approval of the corresponding amendment to their operational programme.

All these changes imply the amendment of the implementing regulations on the OP template and Infosys (e.g. new sections in the programme to cover COVID-19 measures; new field in Infosys to track the new expenditures).

As regards the CPR the followings were highlighted:

- Amendments related to COVID-19 do not entail an amendment of the Partnership agreement.
- COVID-19 outbreak might be recognised as force majeure in case of exception to automatic decommitment.
- Finally, the contributions from the EMFF for payments of final balance for each priority should not exceed by more than 10% the contributions foreseen for each priorities in the decision of the COM approving the programme.

CY, FI, BG, HR, LV indicated that they already started selection procedure for actions related to COVID-19.

COM highlighted the need for action from MS, which should not wait until the modification of the OP template. The Commission is working closely with MS to ensure legal certainty on this matter.

3.2. Q&A

ES raised two questions regarding the modifications of the operational programme for this year, asking about the use of the simplified procedure and potential additional flexibility for the fulfilment of the N+3 rule.

COM clarified that there is a clear list of measures related to COVID-19 that are covered by the simplified procedure. There is a possibility to combine an amendment with COVID-19 measures and an amendment without these measures if the latter falls under the simplified amendment under the usual rules. As regards flexibility on n+3 rule, no further action is foreseen by the COM.

EE shared its hesitation about selecting the operations before the OP amendment as starting selections implies commitment by the MA. COM explained that sending a comfort letter would reassure stakeholders that the adoption of the OP amendment is under process. However, it is more secure if MS wait until the adoption of the OP amendment before making any legally binding commitment.

DK asked if there is any possibility to pay at the MS own risk before the adoption of the programme amendment. COM confirmed that using national funding before reimbursement is possible. Once the programme is adopted, MS can start including these payments in their payment claims.

A representative of the European Parliament drew attention on the need to avoid double funding and asked if there will be a comparison on the financial impacts on the funding and the measures released. COM highlighted that MS will need to include information on the COVID-19 in the annual implementation report but also in Infosys in 2021. COM will have a dedicated chapter on the adaptation to COVID-19 in the report of the ESIF. With regards of

the impacts and the result, this will be covered at the end of the programming period in the *ex-post* evaluation.

ES as well as EE raised a question on the time limitation of the modified articles 66 and 69 of the EMFF. COM emphasized that Article 66 does not need to be linked to COVID-19, it is a general increase of the capping for production and marketing plans.

DK asked about the interpretation of article 65 (6) of CPR as the temporary cessation or reduction in sales may be over by the time of the submission of the application. COM clarified that, under the CPR, there is a general derogation for expenditure falling under COVID-19 measures, including measures under the EMFF. The retroactivity of the COVID-19 measures is a derogation from article 65 CPR.

BE requested clarification on the necessity for MS to apply selection criteria or not. COM explained that operations related to COVID-19 fall under exceptional rules but this does not mean that MS do not have to establish selection criteria.

New initiatives of the Commission

3.3. Biodiversity strategy

COM (D. Vaigauskaite, MARE D.3) presented the Biodiversity strategy, which was adopted on 20 May 2020. The Strategy is based on four pillars:

- *Restoring nature*: No fisheries specific points but important legally binding targets of no deterioration of protected areas.
- *Enable transformative change* – includes governance framework as the current framework is patchy; unlocking finance; business engagement; knowledge; promotion of nature based solutions.
- *International dimension* – the Strategy establishes EU position for the post 2020 CBD framework; IOG (finalization of BBNJ agreement by end 2020, agreement on MPAs in South Ocean; work on IUU, WTO fisheries subsidies).
- *Protecting nature***:** 30% of EU seas areas will be protected by 2030. 1/3 of which should be strictly protected – for areas of high biodiversity value and important for climate change mitigation and adaptation. (in line with 0 CBD draft) not a no-go area, more a no-extraction area). Now less than 1% of EU seas is strictly protected.

A representative of the European Parliament sought clarification about the different targets deadline (MSY 2020, Biodiversity strategy 2030). The COM plans to deliver a report to the Council and the European Parliament assessing to what extent the CFP is working and would include the different elements of the strategies.

3.4. Farm to Fork

COM (D. Barreira Ramos**,** MARE A.2) presented the Farm to Fork (F2F) strategy, which was also adopted on 20 May 2020. The vision that the F2F brings is to create a sustainable food system. The impacts of the pandemic were incorporated in the strategy, highlighted the need for a resilient system. The Farm to Fork Strategy aims to accelerate the EU transition to a sustainable food system that should:

- have a neutral or positive environmental impact,
- help to mitigate climate change and adapt to its impacts,
- reverse the loss of biodiversity,

- ensure food security, nutrition and public health, making sure that everyone has access to sufficient, safe, nutritious, sustainable food,
- preserve affordability of food while generating fairer economic returns, fostering competitiveness of the EU supply sector and promoting fair trade.

Follow-up on the Programming seminar post-2020 (5-6 March)

3.5. New programme template for post-2020 as a consequence of the agreement in the trilogue of 4 March

COM (V. Guerre, MARE D.3) presented the updated template for the next generation of programmes based on the provisional common understanding on the CPR and on the architecture of the EMFF.

Firstly, MS would have to give a description of their main challenges and responses. Then, a SWOT analysis specific to the EMFF will be required for each priority. The novelty is that MS will have to address the challenges of small-scale fisheries in the SWOT. For each specific objective, MS will have to indicate, inter alia, the type of actions. By including such information, the MS will be able to tighten the specific objective of the EMFF to the specificities of their country. The MS will also have to indicate the main target groups. There is a provisional agreement that there must be EMFF-specific types of interventions developed under the EMFF. These will serve the purpose of tracking climate and environment expenditure and of having an indicative programming including subtopics with indicative amounts. The list of types of interventions is still under discussion. On this topic, a specific meeting with experts will be held on the 18th of June but the co-legislators will take the final decision. There are also different options under the CPR proposal for the use of technical assistance (real cost based or SCO). The codes were adapted because of the structure agreed on. COM highlighted that this is the new programme template but, even if it is stable, there are elements, which are still open and would need adjustments.

EE requested more details on the link between the specific objectives and the relevant types of interventions and raised its concern about the different layers of information requested (e.g. types of interventions, types of actions and types of projects). In line with this, MT sought confirmation that one specific objective can be linked to one or more types of interventions and that one type of interventions be linked to one or multiple specific objectives. The COM clarified that the programme template is based on what the co-legislators have agreed on. For programming, the proposal is simplified as there will not be any set of measures. For reporting, the list of interventions gives indication on what the EMFF fund is concretely supporting. When establishing the list of types of interventions, the COM made clear that a predefined link with the specific objectives is not necessary.

3.6. Consequences of the agreement in the trilogue on SSCF

COM (V. Guerre, MARE D.3) presented the consequences of the agreement in the trilogue on SSCF. The co-legislators provisionally agreed to delete the action plan for small-scale coastal fisheries as a document annexed to the programme. Small-scale coastal fisheries shall be addressed in the main programme elements, i.e. in the SWOT analysis and in the description of the types of actions for each specific objective. Even if it is obligatory to mention this matter in the content, the format gives more flexibility to MS as there is no specific section on SSCF.

EE and DK reacted positively to the deletion of the action plan and asked if the types of actions related to SSCF could be described under the UP relevant to CLLD. COM confirmed

and emphasized that introducing SSCF in the content of the programme is to make the actions more visible.

Spain sought clarification about the assessment of the programme by COM. COM will focus on verifying that MS are using the wide range of possibilities available under EMFF to support SSCF.

3.7. Links between programming and reporting

FAME presented an overview of the links between programming and reporting for the next programming period. The OP template as annexed to the proposed CPR is broken down in different sections. The most important of those for reporting and programming are section 1 on SWOT and justification and section 2 including the types of actions, common result indicators, indicative budget breakdown per types of interventions. The latter should not be confused with the types of operations that are only relevant for Infosys reporting.

- *Programming:*

In the next programing period, the EMFF will be based on four priorities, which are dealt separately in the OP under section 1. In section 2 each specific objective has a separate sub-chapter defining amongst other co-financing rates, ring-fenced amounts, types of interventions and types of actions.

- *Reporting :*

Cornerstone of the EMFF reporting for the next period are

- Article 37 of the CPR (new element in this form for 2021-2027) and
- the Infosys report (similar to 2014-2020).

The main difference to the 2014-2020 period is that all reporting streams are merged in one. Infosys should be the basis for reporting under CPR Article 37 as they are both based on the same reference period. For more consistency, MS should make sure that Infosys is fully integrated in their national system. In addition, Article 37 CPR requires an aggregation based on elements that are already available in Infosys. FAME will develop a tool that will allow this aggregation and allow CPR Article 37 generation from Infosys reports. This approach will ease reporting and reduce errors; solely double counting is an aspect that needs still to be addressed.

ES asked if the list of types of interventions can still be modified. COM responded positively as the CPR is still not adopted. However, at this stage of negotiations, the list should remain stable. Poland sought confirmation that indicators under article 37 CPR will be reported only twice a year at the same time as Infosys report. FAME confirmed and specified that the reporting of indicators under EMFF 2021-2027 remains similar to 2014-2020 (instead of being reported once, they are reported twice a year). Most Infosys data remain stable during the entire duration of operations. The two exceptions are: (i) value of the common result indicators, where a final value has to be reported and (iii) financial data (commitment and mainly expenditure) which change continuously. Financial data need to be reported 5 times a year.

3.8. What to do after the adoption of the programme? (list of obligations for MAs with firm deadline)

Document was sent to this agenda point prior to the meeting. The document includes a two-page table collecting the obligations and related tasks of the Member States (not necessarily only the Managing Authorities) as soon as the EMFF programme is approved. The table was prepared on the basis of the Commission proposals. Managing Authorities, therefore, should

closely follow the negotiations for any eventual change. At this stage, this is only for calling attention to certain tasks and to facilitate the work of the Managing Authorities.

There were no comments on the document.

Explanatory fiches on EMFF post-2020

3.9. Fiche on non-compliance

The fiche was sent to the experts prior to the meeting. COM (P. Colson, MARE D.3) presented the technical fiche with a first draft of list of cases of non-compliance with CFP rules by Member States. This list of cases covers both delegated acts (non-compliance and serious non-compliance) as the serious non-compliance cases are those which are not solved during the period of the eventual interruption of the payment deadline. This fiche was a follow-up to a previous one presented in 2019, which concerned only applicable procedures in accordance with the EMFF proposal. COM stressed that this list was a very first draft that was still under internal consultation and therefore might still be subject to changes. The main purpose was to have a preliminary exchange of views with Member States.

COM explained that this list was drawn up after having taken on board lessons learned from the 2014-2020 period, tried to have less focus on control and data collection, and added some new cases. This draft list is longer than the one included in COM Delegated Regulation 2015/852, but this is mainly attributable to the fact that some cases were added, while new categories of cases were created in order to make it clearer and to establish a stronger link with the CFP Regulation. For instance, Control is now split in Control, enforcement and IUU. Actually, only Category 2 (failure to respect conservation measures and/or protect sensitive species and habitats) and 9 (failure to respect rules on Common Organisation of the Markets) are real new Categories. COM also reminded that the same logic as in the current EMFF would be applicable. In the current period there had been very few cases of interruption of the payment deadline, and no case of suspension of EMFF funds, as COM always applied a cautious approach.
Many Member States referred to not having enough time for the examination of the document, therefore they envisage sending comments in writing. Some Member States asked how the link between the non-compliance and the expenditure concerned would be established. According to COM, this is the most difficult part and it needs further considerations.
Member States were requested to send their comments by 30 June 2020, with a view of a second discussion at the next Expert Group to be held in autumn. In particular, the Commission asked Member States the 3 following questions:

- does this draft list include the right number of cases?
- are there cases Member States would like to be added?
- are there some cases that should be removed, and why?

3.10. AOB

Sea basin analyses:

The process was delayed due to the COVID-19 pandemic. COM tried to incorporate analyses of the impact of the COVID-19 outbreak in the different sea basins and on the aquaculture sector in particular. The document is expected to be adopted early autumn.

EMFF work programme under direct management

This year is particular since discussions on post 2020 and new MFF are still going on. Depending on the progress of negotiations, the next expert group meeting may be suitable for a discussion of this topic.

Written procedures on the amendment to the secondary legislation of the EMFF in response to the COVID-19 pandemic

COM asked for the opinion of the EMFF Committee on the amendments to the secondary legislation of the EMFF due to the amendment of the EMFF in response to the COVID-19 pandemic. The written procedure was launched on the day of the Expert group meeting with an exceptionally short deadline of 8 working days (to facilitate the fast approval). The procedure is launched with EN, FR and DE language versions but by the end of the week all other language versions are expected to be sent as well. In case of a positive opinion, adoption is foreseen before the end of June. SFC2014 will be ready by the time of adoption to host new OP template for amendments.

ES asked if the timeline for the modifications of the OP due to COVID-19 would align with the deadline for the submission of the modification for N+3. If the 8 working days deadline is respected, COM aims to have the amended template approved by the end of June. As soon as there is a positive opinion of the Committee, the SFC team will work on including the amendments into SFC2014. COM encouraged MS to start working on the new programme template and submit it once the template is approved by the Committee.

EL asked if there is a possibility to submit the N+3 modification separately from the COVID-19 modifications. COM advised the MS to send the COVID-19 changes under simplified procedure. Then, once these changes are approved, MS can send the N+3 modifications by 30th of June. The COM has until 30 September to issue the decision.

4. Conclusions/recommendations/opinions

There were no points submitted for the approval of the Expert Group and therefore there was no voting at the meeting.

5. Next steps

N/A

6. Next meeting

The date of the next meeting is still to be confirmed given the exceptional circumstances. It is expected to take place around end of September.

7. List of participants

See annex.