



State aid in the fishery and aquaculture sector

Main principles

- **Article 107 TFEU: any aid granted by a Member State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods**
- **State aid is incompatible with the internal market (Art. 107(1) TFEU)**
- **Some categories are declared compatible with the internal market (Art. 107(2) TFEU)**
- **Some categories may be considered compatible (Art. 107(3) TFEU).**
- **Envisaged State aid must be notified to the Commission (Art. 108(3) TFEU, unless covered by an exemption (Art. 109 TFEU).**

Main principles

Notion of State aid

- **Four conditions:**
 - (i) there must be an intervention by the State or by means of State resources;
 - (ii) the intervention must be liable to affect trade between Member States;
 - (iii) it must confer an advantage on the beneficiary;
 - (iv) it must distort or threaten to distort competition.

Main principles

Notion of State aid

Intervention by the State or by means of State resources:

- State resources includes all resources of the public sector, including infra-State entities
- Resources coming from the European Union (e.g. from structural funds) are State resources if national authorities have discretion as to the use of the resources, in particular the selection of beneficiaries.

Specificities of the sector

- **Article 42 TFEU states that the provisions of the Treaty on competition apply to production of and trade in fishery products only to the extent determined by the EP and the Council.**
- **Article 38 clarifies that the products in question are those listed in Annex I to the Treaty: fish, crustaceans and molluscs, fats and oil of fish and marine animals, preparations of meat, of fish, of crustaceans or molluscs.**

Specificities of the sector

What have the EP and Council decided?

- **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

- **Whether or not a project falls within the scope of Article 42 (and is therefore NOT State aid) must to be assessed on a case-by-case basis.**
- **Nevertheless, it is possible to say that some of the priorities of the EMFF are clearly fishery-related:**
 - (1) Promoting environmentally sustainable, resource-efficient, innovative, competitive and knowledge-based fisheries
 - (2) Fostering environmentally sustainable, resource-efficient, innovative, competitive and knowledge-based aquaculture
 - (3) Fostering the implementation of the CFP
 - (5) Fostering marketing and processing

Specificities of the sector

- **One of the priorities of the EMFF is clearly NOT fishery-related:**
 - (6) Fostering the implementation of the IMP
- **One of the priorities of the EMFF is more problematic:**
 - (4) Increasing employment and territorial cohesion by pursuing the following specific objective: the promotion of economic growth, social inclusion and job creation, and providing support to employability and labour mobility in coastal and inland communities which depend on fishing and aquaculture, including the diversification of activities within fisheries and into other sectors of maritime economy

Consequences

- **Not all operations under the EMFF are excluded from State aid rules**
- **If they are not excluded:**
 - The support under the EMFF is State aid within the meaning of Article 107 TFEU
 - Member State must check whether the aid is potentially covered by the general *de minimis* or block exemption Regulations
 - If not, the aid must be notified and cannot be implemented before the Commission adopts a positive decision.
 - The notified aid will be assessed by the Commission under the general Guidelines (e.g. Regional, Environmental, etc.).

Support from other sources

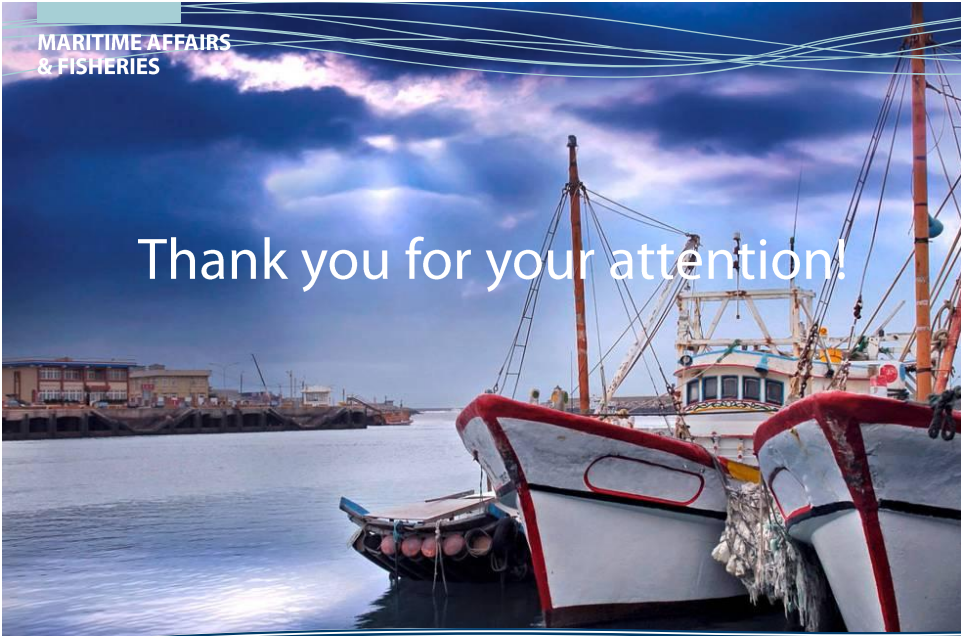
- **The financial instrument to support fisheries and aquaculture is the EMFF**
- **But support can come from other sources (ERDF...)**
- **Support from other EU Funds is not excluded from the State aid rules**
- **Such measures would need to be notified as State aid, unless they are exempted from notification**
- **Fishery-related instruments on State aid are applicable.**

Overview

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)

Review of the sectoral legal instruments

- ***De minimis* Regulation No 717/2014 for the fishery and aquaculture sector was adopted on 27 June 2014 and entered into force on the 1st July 2014**
- **A second draft Block Exemption Regulation (FIBER) will be discussed with MS in the autumn 2014**
- **A draft of the Guidelines will also be sent to MS and will be discussed in at the same meeting**
- **The FIBER and the Guidelines should be adopted before the end of 2014.**



Thank you for your attention!