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Non paper on permanent cessation schemes and scrapping premiums

This non-paper provides guidance to Member States on the possible contents of permanent cessation schemes financed by the EMFF. It also provides views on elements to be taken into account by Member States in their methods for calculating and eventually adjusting scrapping premiums. Views do not purport to be exhaustive, nor do they prejudice what element if any is indeed used or not. Nevertheless, in its assessment of the operational programmes the Commission would welcome the fact that Member States takes the guidance into account.

1. INTRODUCTION

According to Article 34.1 of the EMFF Regulation, support to permanent cessation is foreseen as a tool of the action plan referred to in Article 22.4 of Regulation 1380/2013 on the Common Fisheries Policy for fleet segments that are not effectively balanced with the fishing opportunities available to each of them. The Operational Programme (OP) to be approved by the European Commission has to include the targets and measures to be taken for the reduction of the fishing capacity in accordance with Article 22 of regulation 1380/2013 and a description of the methods for the calculation of the compensation.

Permanent cessation with or without scrapping would normally be one of the tools to achieve balance in unbalanced fleets. It should be noted though that support for permanent cessation may be granted only until 31 December 2017¹.

According to Article 34 of the EMFF, fishing vessels to be selected among these in unbalanced fleets need to be “active”². This is a necessary condition to effectively achieve balance between capacity and resources at fleet segment level.

In accordance with Article 25.3 of the EMFF Regulation, the total financial contribution for permanent cessation, temporary cessation and the replacement or modernisation of main or ancillary engines shall not exceed the higher of EUR 6 million or 15% of the Union financial assistance allocated by the MS to the Union priorities 1, 2 and 5.

2. DEFINING PERMANENT CESSATION SCHEMES

As stated above, if a Member States opts to include permanent cessation schemes, the EMFF OP shall include the action plans for unbalanced fleet segments. Action plans include the adjustment targets and tools to achieve a balance and a clear time-frame for

¹ Article 34.4 of the EMFF Regulation. It is understood that support for permanent cessation will only be available for operations approved until that date.

² The conditions for considering a vessel “active” are set in Article 34.2 of the EMFF Regulation. See below for additional guidance on how to understand “active”.

its implementation. The maximum duration of such actions plans should correspond to that of the programming period. Nevertheless, the permanent cessation tool cannot be granted beyond the above date.

The assessment of progress towards balance for unbalanced fleets should be part of the yearly report on balance referred to in Article 22.2 of Regulation 1380/2013.

Where support for permanent cessation is foreseen, selection conditions need to be detailed. These are fundamental to ensure the effectiveness and efficiency of permanent cessation.

In its Special Report n°12/2011³, the European Court of Auditors (ECA) stated that “*the selection criteria for fishing vessel decommissioning schemes were not always well targeted and resulted in scrapping fishing vessels which had little impact on the targeted fish stocks*”. A counterfactual evaluation commissioned by the Commission on permanent cessation⁴ concluded that beneficiaries of permanent cessation schemes were often selected on a first come first served basis until the financial resources allocated to the scheme were exhausted. The counterfactual evaluation also found that some Member States had used competitive bidding schemes with good results in terms of cost-efficiency and effectiveness of public support for permanent cessation⁵.

In view of the above, it is recommended that each permanent cessation scheme should ensure that:

- A clear and direct link is established with the action plan included in the capacity report in accordance with Article 22.4 of Regulation (EU) n°1380/2013 for the fleet segment concerned.
- Active fishing vessels in unbalanced fleet segments having the largest impacts on the unbalanced situation are selected.
 - The EMFF defines “activity” on the basis of “days at sea” (at least 90 days per year during the last two calendar years preceding the date of submission of the application for support). A “day at sea” requires that the vessel engages in fishing, or is in transit to a fishing ground, which can be shown by cross-checks with VMS, by logbooks, by data on landings, and/or by sales notes. Port certificates should not be considered sufficient in that respect.
 - The impact on the level of unbalance of the fleet segment can be determined by the indicators defined in the Commission's common guidelines for the analysis of the balance between fishing capacity and fishing opportunities⁶.
- Only data officially collected under EU schemes (Data Collection Framework, Control Regulation or Eurostat) should be used.
- Conditions of access to permanent cessation are as simple as possible in particular in the case of unbalanced small-scale coastal segments, so as not to deter vessel owners in these fleets to apply.
- Member States should consider setting minimum age requirements of the vessels to benefit from permanent cessation.

³ Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?

⁴ “Retrospective Evaluation of Scrapping and Temporary Cessation Measures in the EFF”. November 2013. Available at http://ec.europa.eu/fisheries/documentation/studies/cessation/index_en.htm.

⁵ Article 23.3 of the EFF permitted MS to use public calls for tenders or call for proposals.

⁶ Referred to in Article 22.2 of Regulation 1380/2013.

- The counterfactual evaluation has shown how difficult it is to avoid that scrapping premium monies are reinvested in the catching sector. The Commission thinks that such reinvestments are in contradiction with the objective of using permanent cessation as a conservation measure.
- It is strongly recommended that Member States consider the possibility of using competitive bidding in their permanent cessation schemes.

3. SCRAPPING PREMIUMS

As stated above Member States need to describe in their OP the method used for the calculation of the compensation to be granted.

EFF 2007-2013

Under the EFF, guidance on the level of scrapping premiums was limited to a list of criteria that Member States could take into account⁷: the price or the insurance value of the vessel, its turnover, its age and its tonnage. Furthermore, Article 4 of the EFF implementing regulation⁸ requested Member States to specify the method of calculating the premiums in the OP. In general, the method consisted of a table setting the premium per GT class, with a fixed quantity for the first GTs plus a variable quantity decreasing with additional GTs. In most cases, the age of the vessel was used to reduce the premium beyond a given age.

In the Special Report n° 12/2011, the ECA states that referring only to GT had the advantage of being transparent and simple to administer. However, it also concluded that *“the public aid rates applied for decommissioning fishing vessels often did not take into account cost effectiveness on the basis of sufficient objective criteria”*.

In the context of the EMFF, the Commission considers that the method for the calculation of the compensation should take into account variables other than the GT. The value of similar vessels in second-hand markets (regarding transactions within the same Member State or in export markets) should be a good starting point for setting the scrapping premium. If information on transactions in the Member State is not sufficient, sale prices in other Member States (for instance in the same sea basin) could be used.

Insurance values could also be used as reference, but in that case it should be checked whether the value insured corresponds or not to that of a new vessel. If so, the insurance value should be reduced taking into account the age of the vessel in accordance with the rate of depreciation applied in the MS.

Additional factors should also be taken into account in to calculate or adjust scrapping premiums. These are detailed below.

3.1. Fishing rights

In the Special Report n° 12/2011 the ECA concludes that *“..public aid rates did not specifically take into account the possibility that exists in some Member States for applicants for fishing vessel decommissioning schemes to sell their fishing rights”*. The counterfactual evaluation confirmed that in some MS, beneficiaries of scrapping aid were allowed to keep and/or sell fishing rights.

The only requirement under Article 34.5 of the EMFF Regulation is that scrapping premiums cannot be paid until the equivalent fishing capacity and related fishing licences and authorisations have been withdrawn.

⁷ Article 23.3, second paragraph.

⁸ Commission Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of the European Fisheries Fund

However, in order to address the ECA criticism above, Member States might consider taking back from beneficiaries for further redistribution any entitlements or rights to fish as part of the national quotas they may have, irrespective of their legal title, formal or informal nature, attributed to the beneficiary in relation to fishing vessel to be scrapped.

3.2. Additional revenues from scrapping

Member States might also consider adjusting the scrapping premium to take into account additional revenues that could be obtained by the vessel owner from the separate sale of pieces of equipment from the vessel to be scrapped (e.g.: electronic equipment, engines or fishing gears).

3.3. Consideration of previous public support in the calculation of scrapping premiums

Article 71 of the Common Provisions Regulation (CPR)⁹ institutes the principle of durability of operations according to which contributions from the ESI funds shall be repaid under certain circumstances. This principle applies to the 2014-2020 programming period. A similar provision exists in Article 56 of the EFF for the 2007-2013. However, there is no provision making the link between the EFF and the EMFF. MS should examine the possibility to make such a link. In case they decide to do so, they may consider the ideas developed in Section 3.3.3 below:

3.3.1. Determination of beneficiaries

Different situations should be distinguished to determine who beneficiaries are:

- When beneficiaries are different, unrelated undertakings, public support received in the past for the same vessel should not be taken into account to reduce the scrapping premium. Nevertheless, the burden of the proof on the absence of links shall lie with the beneficiary of permanent cessation support.
- When the beneficiary is the same, public support received in the past should be taken into account to reduce the scrapping premium in accordance with the guidance below.
- If the original beneficiary (irrespective of whether the beneficiary is still in operation or not) and the beneficiary of permanent cessation are different operators but they are considered as a single undertaking¹⁰, they should be considered the same beneficiary for the purposes of the calculation of the scrapping premium.

3.3.2. Temporary cessation under the EMFF

Temporary cessation. According to Article 25.5 of the EMFF Regulation, financial assistance to owners of fishing vessels in the form of temporary cessation shall be deducted from scrapping premiums granted to owners for the same vessel.

⁹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. OJ L 347/320 of 20 December 2013.

¹⁰ As defined in Article 2.2 of Commission regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid. OJ L352/1 of 24.12.2013.

3.3.3. *Types of previous public support*

Investments on board under Article 25 of the EFF. Member States could consider deducting from the scrapping premium under the EMFF an amount representing grants under Article 25 of the EFF Regulation to the same vessel of the same beneficiary.

Two methods could be used.

- The first would be to do it pro rata within the 5 year period referred to in Article 71 CPR.
- The second would be to adjust the grant(s) by a percentage equivalent to the depreciation of the piece of equipment since the date of the award decision to the date of the decision to grant the scrapping premium. The depreciation rates could be those applied to fishing vessels and equipment in that Member State for instance in accounting or for taxation purposes. The Commission considers that this second method would maximize the effectiveness and efficiency of public support.

Support to young fishermen for the acquisition of a first fishing vessel under Article 27.2 of the EFF. Member States could consider deducting from the scrapping premium under the EMFF the amount of the grant under Article 27.2 of the EFF Regulation. As in the previous section, two methods could be used.

- The first would be to do it pro rata within the 5 year period referred to in Article 71 CPR.
- The second could be based on depreciation rates. The depreciation period of a fishing vessel is normally 20 years, which means that the depreciation rate is 5 percentage points per year. Hence, the amount to be deducted would be the grant under Article 27.2 of the EFF Regulation reduced by 5 percentage points per year since the date of the award decision to the date of the decision to grant the scrapping premium.

Scrapping of fishing vessels constructed with public support. Construction aid granted until 2004 is a driver for the current unbalance situation of some fishing fleet segments. Construction aid granted to the vessel to be scrapped should then be taken into account to calculating or adjusting the scrapping premium.

Although the durability requirements of the different regulations no longer apply to vessels constructed with EU aid, one possible way forward is for fishing vessels of between 10 and 20 years of age, at the time of the decision to grant the scrapping premium, to reduce or adjust the scrapping premium by an amount equivalent to 50% of the grant for the construction of the vessel, for vessels of 10 years of age. For vessels over 10 years and up to 20 years of age, the amount will be 50% of the construction aid minus 5 percentage points per year¹¹.

4. PERMANENT CESSATION WITHOUT SCRAPPING: RETROFITTING OF VESSELS FOR ACTIVITIES OTHER THAN COMMERCIAL FISHING AND WOODEN VESSELS

In the case of retrofitting for activities other than commercial fishing as foreseen under Article 34.6, first paragraph of the EMFF Regulation, the total public cost of the retrofitting operation should not exceed the scrapping premium paid to a comparable

¹¹ For example, in the case of the scrapping of a vessel constructed with public support of 11 years of age, the amount to be deducted would be 45% of the construction grant, 40% for a vessel of 12 years of age, etc.

vessel scrapped with public support. Member States should also take into account the elements under 3.1 to 3.3 above.

As regards traditional wooden vessels that retain a land-based heritage function as foreseen under Article 34.6, second paragraph of the EMFF Regulation, the total public cost of the operation should not exceed the scrapping premium paid to a comparable vessel scrapped with public support and that Member States should also take into account the elements under 3.1 to 3.3 above.

5. VESSELS LOST

Finally, if a fishing vessel is lost between the date of the decision to grant the premium and the date of actual permanent cessation of fishing activities, Member States should make a financial correction for the amount of the compensation paid by the insurance.

6. AUDIT TRAIL

The information necessary to complete the audit trail should include:

- Regarding fishing rights, Member States need to ensure that any legal title or document related to fishing rights is revoked.
- Regarding additional revenues, receipts indicating the price paid by the seller to the owner of the scrapped fishing vessel or the estimation of the value used in the case of equipment kept by the vessel owner.
- Member States should ensure that they can ascertain if a vessel or a beneficiary has already received assistance via the EFF or the FIGF for temporary cessation, modernisation, support to young fishermen and vessel construction.
- The depreciation rates used.