



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2014)

Opinion

Title

DG MARE - Impact Assessment on a Commission Regulation on the application of Articles 107 and 108 of the TFEU to de minimis aid in the fishery and aquaculture sector

(draft version of 14 March 2014) *

(A) Context

The fisheries and aquaculture sector is subject to the general EU restrictions on state aid, and national authorities wishing to grant subsidies must notify the Commission in advance, who will then take a decision. Exceptions to the notification obligation are inter alia foreseen by the so called de minimis Regulations which define limits under which aid measures are not considered to distort competition and, therefore, not regarded as state aid under EU rules. Their aim is to focus state aid control on the most distortive cases and to reduce administrative burden. Due to its specific characteristics, aid to the fishery sector has been subject to a separate de minimis Regulation. In the current Regulation, the limits set out are: (i) a ceiling of EUR 30 000 per beneficiary over any period of three fiscal years, and (ii) a national cap of 2.5% of the annual national fisheries output in the Member State concerned (referring to the cumulative amount of de minimis aid granted per Member State over any period of three fiscal years). The review of the de minimis Regulation in the fishery and agriculture sector, which expired on 31 December 2013, should be seen in the context of the reform of the Common Fisheries Policy, the new European Maritime and Fisheries Fund and the State aid Modernisation (SAM) initiative.

(B) Overall opinion: POSITIVE

The report should better explain the policy context of the initiative, by clarifying the specific characteristics of the sector and referring to current rules and practices for public interventions within the sector. It should also explain how the initiative relates to the SAM reforms. On the basis of current experiences, the report should strengthen the justification for the early discarding of some of the options (e.g. increasing the de minimis ceiling to undertakings active in processing), given the support of some stakeholders. Finally, the report should better assess likely impacts. In this context, it should give a clearer indication of why it has not been possible to quantify foreseen management costs and whether any possible territorial impacts can be expected.

In their written communication with the Board DG MARE accepted to amend the report along the lines of these recommendations.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Clarify the policy context and the link with other relevant initiatives. The report should clarify the policy context of the initiative, including by better explaining why there are separate de minimis rules for the fishery sector. In this context, it should better describe the current rules and practices, in particular how the current individual ceiling and national cap were set, what are the transparency conditions and whether actions are taken in cases when Member States overstep (or get very close to) the national cap. After briefly explaining which are the sector specific state aid rules for fisheries, the report should look at the role played by de minimis aid measures as part of the broader framework of public interventions within the sector, and in particular how they link with the new European Maritime and Fisheries Fund (EMFF), the General Block Exemptions Regulation for the fisheries and aquaculture sector, and notified aid schemes for this sector. It should more concretely explain how the principles of the State Aid Modernisation initiative are applied in this revision and clearly mention what alignments with the general de minimis Regulation are made and why. Furthermore, the report should better explain the specific problems associated with legal uncertainty and their consequences on the relevant actors and describe how these problems would evolve under a 'no policy change' scenario. To the extent possible, the report should explain why the existing provisions were used to a very different degree by national authorities and whether this has had any consequences, in particular for the competition within the sector. It should assess whether the transition to EMFF is likely to have any impact on the tendency of Member States to use the instrument of state aid and in particular de minimis aid.

(2) Better justify the policy options. The report should strengthen the justification for the early discarding of the options to increase the ceiling and of the national cap and the de minimis ceiling to undertakings active in processing, given the support of some stakeholders. It should also better justify the discarded option 'apply the general de minimis Regulation', further elaborating on the risks relating to cumulative effects and financing of ineligible operations under the EMFF and possible consequences. It should also better explain the choice of the options analysed in detail; for instance, why only two levels of national caps are analysed and not others (e.g. 1.5 or 2%).

(3) Better assess and compare the options. The report should better present the views of stakeholders (including of individual Member States) in the impact section and the comparison of options. The report should attempt to analyse qualitatively the likely impacts in different sectors, differentiating at least between fisheries and aquaculture. It should also clarify why it has not been possible to quantify likely management costs, given the fact that data is collected through the current monitoring and reporting obligations, and discuss whether any territorial impacts can be expected. It should also explain if the revised rules are likely to generate changes in competitive positions of Member States. Possible implementation and compliance challenges should be considered and the report should describe how they will be addressed in the different options (e.g. how will Member States verify compliance). The report should clarify the basis for comparison of the options against the baseline, including by explaining what the symbols '▲' and 'Δ' in the comparison table mean and how they relate to the analysis.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should have a clearer structure so that the link between different sub-sections becomes more apparent, especially in the problem definition section. It should critically discuss the source, reliability of data sets on which the analysis is based and mention if there are various possibilities for calculating the ceilings or national caps. A glossary of abbreviations should be included and clear explanations of key terms used – such as landings, processing activities – should be provided. The 'executive summary sheet' should be inserted in the main report and be improved in line with the above recommendations (e.g. by better introducing the policy context and the current rules and more clearly explaining the options).

(E) IAB scrutiny process

Reference number	2014/MARE/107
External expertise used	No
Date of IAB meeting	Written procedure (9 April 2014)