

HT.5822: Dutch response to the revision of revision of the State aid instruments applicable in the fishery and aquaculture sector

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

Introduction

This is the response to the revisions of the State aid instruments applicable in the fishery and aquaculture sector.

With this revision the European Commission is proposing revised rules: draft Guidelines for State aid in the fishery and aquaculture sector ('*draft guidelines*'); draft Commission Regulation 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 and repealing Commission Regulation (EU) No 1388/2014 ('*draft block exemption regulation*'); and draft Commission Regulation amending Regulation (EU) No 717/2014 as regards its period of application and the maximum cumulative amounts of de minimis aid ('*draft de minimis amending regulation*').

The Netherlands welcomes the revision and proposes some further improvements.

Robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, intervention with State aid may be needed to address certain market failures and/ or to accomplish the goals of European Union interests. In general, the Netherlands are satisfied with the possibilities that the State aid rules offer to public entities. There is a proper balance between, on the one hand, the assessment framework in guidelines, which serves more market-distorting forms of State aid and, the block exemption regulation and the de minimis regulation, which allows certain State aid to be granted relatively easy and quickly- this balance between the instruments should be maintained.

The Netherlands foresees that a broad review of the Common Fishery Policy (CFP) is necessary, to ascertain whether the CFP is still suitable to effectuate the Green Deal and to give the fisheries sector a future perspective in a changing environment. The ambitions in the Green Deal ask for a new way of thinking in fishery policy and better integration of the energy-, nature, and food policy. Without new measures the increasingly limited space at sea will cause the displacement of fisheries activities, both to other fishing grounds and to other fish species. This can lead to pressure on fishing grounds and overfishing of species for which there is no regulation yet. In order to avoid pressure on fishing grounds and to ensure that the fishing intensity does not exceed the carrying capacity of seabeds and unregulated species, there is a need to facilitate permanent cessation to bring fleet capacity in line with the available space based on environmental reasons. The current Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 (EMFAF Regulation) does not offer this option and the same holds true for the State aid rules.

A priority for the Netherlands is to give fishers an honest perspective for the future in these times of transformation, while also contributing to climate and biodiversity policy goals. Important in this regard are the reduction and fragmentation of fishing grounds caused by offshore wind power and marine protected areas. This requires a transformation of the fisheries sector, in terms of reduction of the fleet and types of vessel (smaller, lighter engines etc). There should be sufficient State aid possibilities for such a transition in the sector to be able to meet the goals of the Green Deal.

Another concern is the growing trend in European discussions to phase out bottom trawling. In many European Member States, bottom-disturbing fisheries are an important part of the fishing industry and often the hub of European fishing communities. 25% of global fish landings are

provided by bottom-disturbing fisheries and this also provides European citizens with healthy proteins. Specifically for the Netherlands, this form of fishing is very important, given the cultural-historical fishing for sole, plaice and shrimps. For some fisheries, such as the fishery for sole and plaice, there is currently no alternative for bottom trawling. The transition that those fishermen would like to make is to switch to vessels that are less polluting and towards fishing gears that deliver a higher selectivity of fishing activities. The Netherlands would like to work with the Commission on how to adequately support the required transformation to less polluting vessels and provide perspective for fishers.

Draft block exemption regulation

Proposed changes

The Netherlands welcomes the new aid categories for aid to make good the damage caused by adverse weather conditions and aid to compensate for the damage caused by protected animals. The Netherlands also supports the broadening of possibilities to support the fisheries sector in cases of public health crises. The COVID-19 pandemic has had impact on the economic performance of the Dutch fisheries sector, mainly because of a decrease in demand for fisheries products. Finally, the Netherlands welcomes the opportunities to provide State aid for the collection of litter at sea.

The Netherlands would like to point out that due to changes in the way the draft block exemption refers to other regulations, such as EMFAF, it becomes more unclear how the relationship between these regulations must be seen and it would be helpful if the Commission could provide more informal guidance, such as is the case with the general block exemption regulation (GBER).

Investment aid for environmental reasons

The Netherlands would like to enable the transition that bottom trawling fishermen would like to make to switch to vessels that are less polluting and towards fishing gears that deliver a higher selectivity of fishing activities. Most owners of vessels are small family businesses that possess one vessel. This vessel is often larger than 24 meters. In the EMFAF regulation, investment subsidies are limited to vessels smaller than 24 meters. The Netherlands understand this limitation insofar it concerns big undertakings. However, in the Netherlands these vessels are mainly owned by SME's. Focusing on the size of the undertaking is more relevant than the size of the vessel in itself for the possible distortion of competition and trade. Aid possibilities should therefore not relate to the length of a vessel in meters, but should be related to the size of the undertaking as is common in other State aid rules. In the Dutch response on the consultation of the functioning of the CFP, this point will also be addressed.

Articles 22 and 25 in the draft block exemption regulation, among others, offer possibilities to provide investment aid for environmental reasons. However, Article 25 excludes support for replacement or modernization of engines (paragraph 1), while at the same time allowing for aid for conversion of engines to the use of biofuels (paragraph 2, sub a, under ii). For the Netherlands it is important that there are sufficient possibilities to support the conversion of engines to the use of biofuels (also for vessels longer than 24 meters, owned by SME's) and ask the Commission to clarify whether that is currently possible under Article 25 of the draft block exemption regulation, and if not, to amend the draft block exemption regulation accordingly.

Draft guidelines

Proposed changes

The Netherlands welcomes the proposed changes and new categories for aid to compensate for the damage caused by protected animals, aid for the costs of prevention, control and eradication of animal diseases in aquaculture and of infestation by invasive alien species of Union or Member State concern and aid for the renewal of the fishing fleet in outermost regions.

The Netherlands supports the distinction made in point 10 the draft guidelines between large undertakings and SME's. Large undertakings are less likely affected by market failures and aid to such undertakings may particularly distort competition and trade in the internal market.

Permanent cessation as a result of climate, energy or environmental challenges

As discussed in the introduction an important threat for the Dutch fishing fleet is not only the possible reduction of Total Allowable Catch (TAC) and national quotas as a result, but also the reduction and fragmentation of fishing grounds caused by for instance wind farms at sea and marine protected areas. Climate, energy and environmental policy as foreseen in the Green Deal can have a big impact on the fisheries sector. This likely requires a transformation of the fisheries sector, in terms of reduction of the fleet. Support for a permanent cessation based on a reduction of fishing grounds is not possible within the current State aid regulations. Current EMFAF rules only provide the opportunity for permanent cessation based on an action plan as a result of a disbalance between fishing opportunities and fishing capacity. Since the decrease of fishing grounds will be one of the mayor challenges for the fisheries sector within the EU in the present and the (near) future, it is important that the State aid guidelines are adapted to facilitate a permanent cessation as a result of a reduction of fishing space at sea. Especially important in this regard are the reduction and fragmentation of fishing grounds caused by offshore wind power and marine protected areas. Permanent cessation contributes to the objectives of the Common Fisheries Policy (CFP) mentioned in Article 2, paragraph 1 and 5, sub cd, and f of the CFP. Permanent cessation helps to balance the fishing capacity of the fleet with fishing opportunities to have an economically viable fleet without overexploiting marine resources. The purpose is that those that maintain their fishing business can keep a profitable business with benefits for those depending on fishing activities.

Even though the draft guidelines mention the possibility to notify other aid measures which the Commission will assess it on a case-by-case basis directly on the basis of Article 107(3) of the Treaty, this does not provide the same legal certainty and foreseeability which the issue described in the introduction requires for Member States.

Reference can be made to paragraph 1.2.2 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 which provides for detailed rules in case of closing production capacity in the agricultural sector for, among others, environmental reasons.

The Netherlands would welcome a specific section in the draft guidelines for fishery drafted in analogy with the possibilities for the agricultural sector under the aforementioned relevant Guidelines and along the lines of the conditions of Article 20 of the EMFAF Regulation, except for:

- the condition of paragraph 2, sub a of Article 20, as this refers to possible reduction of TAC as the sole reason for cessation and is therefore too limited.
 - o *The scope of the activities should be permanent cessation done for animal, plant or human health, sanitary, ethical or environmental reasons (including spatial planning issues relating to other environmental goals, such as the energy transition, for instance regarding the installation of offshore wind power).*
- the condition of paragraph 2, sub d of Article 20, because this condition should be broadened.
 - o *This condition is very relevant and can be maintained but the possibility should be added that in case of sectors which are not bound by quotas (such as shrimp fishing) Member States should put in place other safeguards which ensure that fishing capacity is definitely more limited after the cessation measure.*

Eligible costs should at least include loss of income, loss of value in assets, obligatory social costs and a possible incentive payment in case of cessation for environmental reasons. The maximum aid amount should be up to 100 % for compensation (and higher when including an incentive payment). Furthermore, the State aid rules should be aligned with Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve to enable Member States to design measures in line with State aid rules for a financial contribution of the Reserve to support fisheries dependent on fishing activities in United Kingdom waters, in waters of territories with special status or in waters covered by fisheries agreements with coastal states where fishing opportunities for Union fleets have been reduced as a result of the United Kingdom's withdrawal from the Union.

Draft de minimis amending regulation

Proposed changes

The Netherlands welcomes the update of the maximum cumulative amounts contained in the Annex to the draft de minimis amending regulation and has no further comments on the other changes. The draft de minimis amending regulation also clarifies that Regulation (EU) No 717/2014 will not cover aid to the temporary or permanent cessation of fishing activities, unless specifically provided for in Regulation (EU) 2021/1139. Even though the Netherlands sees cessation of fishing activities for, among others, environmental reasons as necessary (see above) the threshold of 30.000 euro per undertaking per year would not be sufficient for the realization of the cessation so the Netherlands does not oppose this change.

General remarks

Undertaking in difficulty

SME's that have been in existence for less than five years should be excluded from the definition. In our experience a period of 5 years (instead of the current 3 years) is sufficient for a start-up to grow and overcome the first few years in which the investments are high and the return low. They are past the valley of dead and their product/service is established in the appropriate market. They become financially viable and can demonstrate their credit-worthiness. Therefore the Netherlands suggests a period of 5 years instead of 3 years in which SME's are excluded from being an undertaking in difficulty.

Suggested changes:

Article 2 - draft block exemption regulation

(15) 'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than ~~three~~ five years) where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU of the European Parliament and of the Council and 'share capital' includes, where relevant, any share premium.*

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than ~~three~~ five years), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

[...]

Transparency

The threshold for publication of State aid on a State aid website is lowered from EUR 30,000 to EUR 10,000. The Netherlands considers that this new threshold would lead to a disproportionate administrative burden for Member States and considers this highly undesirable. Therefore, the Netherlands requests the European Commission to maintain the threshold of EUR 30,000 as this threshold will ensure adequate transparency.

Transitional provisions

As laid down in Article 46, paragraph 4, Regulation (EU) Nr. 1388/2014, any aid schemes exempted under the Regulation shall remain exempted during an adjustment period of six months.

This is a very short period. The Netherlands would propose an adjustment period of a year. The same holds true for Article 48, paragraph 4 of the draft block exemption regulation.