

Q&As on State Aid rules applicable to Community-led Local Development (CLLD) Projects

1. Are there changes in State aid rules applicable to the fishery sector for the period 2014-2020?

Certain fishery-specific State aid instruments have expired and been reviewed (*de minimis* and block exemption Regulations) to reflect the priorities of the new CFP. However, the basic rules of interaction between the financial framework (EMFF) and State aid rules remain the same.

In substance:

- The fishery and aquaculture sector is subject to competition rules (which includes State aid) **only to the extent determined by the legislators**, as set out in Article 42 of the Treaty on the Functioning of the European Union (TFEU). Article 42 TFEU refers to the production and trade of agriculture products (which covers the production, processing and marketing of fishery and aquaculture products).
- Article 8(2) EMFF foresees that State aid rules do not apply to payments made by Member States which respect the EMFF rules and are covered by Article 42 TFEU. A similar rule was already in the EFF. Accordingly, **if a CLLD activity is financed under the EMFF framework and is "fishery-related" (i.e. Article 42 TFEU), State aid rules do not apply. On the contrary, if the activity is not "fishery-related", State aid rules apply.**

As mentioned above, **this rule is not new.**

As far as CLLD projects co-financed by the EMFF are concerned, it is therefore necessary to determine on a case-by-case basis whether they are "fishery-related" to assess whether State aid rules apply.

2. Which kind of operations financed under the EMFF should be considered as "fishery-related", thereby being excluded from the application of State aid rules?

As mentioned above, this is covered by Article 42 TFEU. Operations which should be considered as "fishery-related" are those which **concern the production, processing and marketing of fishery and aquaculture products.**

Most of the operations co-financed under the EMFF are fishery-related, with the exception of measures aimed at fostering the implementation of the IMP (Union Priority (UP) 6), as well as some CLLD projects (UP 4).

As projects financed under UP 4 of the EMFF (CLLD) are not necessarily fishery-related, they need to be examined on a case-by-case basis in order to determine whether they are "fishery-related" or not.

Example: A family group of fishermen owns an old house which they want to transform into a day-care centre for their community's elderly people. The initiative would adopt the legal form of a cooperative. Such activity is clearly not "fishery-related", since it is not related to the production, processing and marketing of fisheries and aquaculture products.

Projects which are not fishery-related do not benefit from the exemption of the application of State aid rules provided for under Article 8(2) EMFF. As a consequence, **general** (and not fishery-specific) **State aid rules apply** to them.

The fact that State aid rules do apply to the operation does not mean that it necessarily needs to be notified to the Commission. If the amount involved is below 200 000 EUR per beneficiary over a period of 3 years, the General *de minimis* Regulation will apply. If the amount is higher than 200 000 EUR per beneficiary over a period of 3 years, the Managing Authority will need to examine whether the project could fall under the General Block Exemption Regulation. In this case, the Commission needs to be informed of the project but no notification is required. If the project does not meet the conditions to benefit from the General *de minimis* Regulation or General Block Exemption Regulation, it will need to be notified to the Commission (which means that it cannot be implemented before the Commission's decision).

See point 5 below and the summary table at the end of this document for an overview of the various possible processes.

3. The Fishery-specific Block Exemption Regulation (FIBER) does not contain a specific Article on CLLD. Under which conditions would these operations be considered exempted from State aid notification?

See questions 1 and 2.

The Fishery-specific Block Exemption Regulation is a State aid instrument. It only applies to measures which meet the conditions to be qualified as State aid. The main objective of FIBER is to exempt from the notification requirement aid **measures** which are **financed outside the EMFF framework** (exclusively on the basis of national funds) but which could have been eligible for funding under the EMFF.

If a CLLD activity financed under the EMFF is "fishery-related", State aid rules do not apply to it pursuant to Article 8(2) EMFF.

If a CLLD activity financed under the EMFF is not "fishery-related", general State aid rules apply to it and not fishery-specific State aid rules such as FIBER.

4. If a fishery-related operation does not fall under FIBER can it still benefit from the GBER or *de minimis* exemption? If yes, under which circumstances?

As explained above, if a CLLD activity financed under the EMFF is "fishery-related", State aid rules **do not apply** to it pursuant to Article 8(2) EMFF.

5. What does the FLAG and the Managing Authority need to do once an activity is considered to be subject to State aid rules?

This would be the case of "non fishery-related" CLLD projects financed under the EMFF, and which therefore fall under General State aid rules.

The fact that State aid rules do apply to the operation does not mean that it needs to be notified to the Commission.

Step 1

If the amount involved is below 200 000 EUR per beneficiary over a period of 3 years, the project will be able to benefit from the General *de minimis* Regulation.

Step 2

If the amount is higher, it needs to be examined whether the project could fall under the General Block Exemption Regulation. In this case, the Commission needs to be informed of the project but no notification is required.

Step 3

Finally, if the project does not meet the conditions to benefit from the General *de minimis* or General Block Exemption Regulations, it will need to be notified to the Commission (which means that it cannot be implemented before the Commission's decision).

Reminder: as far as the application of State aid rules is concerned, and in particular for steps 2 and 3, managing authorities need to be in contact with the national authority in charge of State aid rules.

6. In UP 4, individual projects are selected by Fisheries Local Action Groups (FLAGs), in line with a local development strategy. FLAGs may support projects which are non-fishery related and do not meet the conditions to benefit from the General de minimis and the General Block Exemption Regulations.

a) Will MAs need to start the notification procedures to the Commission for each of those projects?

Yes. These projects need to be notified to the Commission and cannot be implemented before the Commission's decision. This will concern (non-fishery) projects where the amount of public aid is higher than the threshold of the General *de minimis* Regulation (200 000 EUR per beneficiary over a period of 3 years).

Please note that in case the projects are covered by the General Block Exemption Regulation, they are exempted from the notification requirement.

b) Is it possible to group those project under a specific aid scheme, so that only the scheme needs to be notified to the European Commission?

Yes it is possible to notify schemes. Under State aid rules, 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount.

It is for the national authority to ensure that these conditions are respected.

c) Can such a scheme cover a certain type of projects financed by a single FLAG, or by several FLAGs?

If the conditions of the above-mentioned definition can be met, yes.

Summary table:

Type of operations	Application of State aid rules
<p><u>Scenario 1</u></p> <p>CLLD project Financed under the EMFF framework¹</p> <p>Fishery-related</p>	<p>Article 8(2) EMFF</p> <p>State aid rules DO <u>NOT</u> apply (exempted under Article 8(2) EMFF)</p>
<p><u>Scenario 2</u></p> <p>CLLD project Financed under the EMFF framework</p> <p>Non fishery-related</p>	<p>GENERAL State aid rules <u>DO</u> apply</p>
	<p>Step 1: Can the operation benefit from the General <i>de minimis</i> Regulation?</p> <p>Yes: no more assessment needed</p> <p>No: step 2</p>
	<p>Step 2: Van the operation benefit from the General Block Exemption Regulation?</p> <p>Yes: The Commission needs to be informed (no notification) within 20 working days following the entry into force of the measure. Contacts should be made with the national authority in charge of State aid rules which will know how to inform the Commission (via the information form annexed to the General Bock Exemption Regulation). The operation can be implemented in the meantime.</p> <p>No: step 3</p>
	<p>Step 3: the operation must be notified to the Commission and cannot be implemented before decision of the Commission. Contacts should be made with the national authority in charge of State aid rules.</p>

¹ Please note that specific State Aid rules (see point A of the references below) apply to **fishery-related operations financed outside the EMFF framework** (exclusively on the basis of national funds).

<u>References</u>

A) For fishery-related State aid instruments (for fishery-related State aid **outside** the EMFF framework):

http://ec.europa.eu/fisheries/state_aid/index_en.htm:

- Fishery and Aquaculture Block Exemption Regulation: [Commission Regulation \(EU\) No 1388/2014, OJ L 369, 24.12.2014, p. 37–63](#)

- *De minimis* Regulation – [Commission Regulation \(EU\) No 717/2014, OJ L 190, 28.6.2014, p. 45–54](#)

- [Guidelines for the examination of State aid to fisheries and aquaculture](#)

B) For general State aid instruments

http://ec.europa.eu/competition/state_aid/legislation/block.html#gber