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Subject: **State Aid SA.103312 (2022/N) – Germany – Directive on support for the fisheries sector in the context of the implementation of the Brexit Adjustment Reserve – temporary cessation of fishing vessels**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 20 January 2022, registered by the Commission on the same day under the reference SA.101585 (2022/N), Germany notified aid (*Bund: Richtlinie zur Förderung des Fischereisektors im Rahmen der Umsetzung der Brexit-Anpassungsreserve*; the “initial measure”) under Article 107(3)(c) TFEU. With letter of 15 February 2022, the Commission requested additional information, to which the German authorities replied with letter of 28 March 2022, registered by the Commission on the same day. With letter of 25 May 2022, the Commission requested further information. With letter of 16 June 2022, the Commission informed the German authorities that the part related to the temporary cessation of fishing vessels would be separated from the initial measure under the reference SA.103312 (2022/N) (the “measure”). With the same letter, the Commission requested further clarification regarding the measure. On 6 and 26 July 2022, the German authorities replied to the outstanding questions. On 19 September 2022, the German authorities submitted a revised legal base for the measure (*Bund: Richtlinie zur Förderung der Einstellung der Fangtätigkeit im Fischereisektor im Rahmen der Umsetzung der Brexit-Anpassungsreserve (BAR)*).

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2. DESCRIPTION OF THE MEASURE

2.1. Title

- (2) Directive on support for cessation of activities in the fisheries sector in the context of the implementation of the Brexit Adjustment Reserve (*Richtlinie zur Förderung der Einstellung der Fangtätigkeit im Fischereisektor im Rahmen der Umsetzung der Brexit-Anpassungsreserve (BAR)*).

2.2. Objective of the measure

- (3) The notified aid aims to support the German fisheries sector and to limit the negative consequences resulting from Brexit. Following Brexit, the European Union and the European Atomic Energy Community ('Euratom'), on the one part, and the United Kingdom of Great Britain and Northern Ireland ('United Kingdom'), on the other part, concluded the Trade and Cooperation Agreement ('TCA') which set reduced fishing quotas for Member States.
- (4) The measure aims at helping undertakings adapt to the consequences of Brexit induced quota reductions, i.e. a lack of possibility on the exchange of fishing quotas with the UK and a lack of access to or restriction of fishing rights in UK and in third-country waters due to Brexit.
- (5) The measures to be supported under the scheme shall contribute to the restructuring and sustainable adaptation of the fisheries sector as part of local and regional coastal communities dependent on fishing.

2.3. Background of the measure

- (6) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') left the European Union and the European Atomic Energy Community – hereafter referred together as the 'Union', entering a transition period. That time-limited period was agreed as part of the Withdrawal Agreement¹ and ended on 31 December 2020.
- (7) On 24 December 2020, the United Kingdom and the European Union reached a political agreement on a Trade and Cooperation Agreement (TCA), which includes a transfer of fishing quotas from the EU to the United Kingdom and rules on the access to the fishing grounds of the United Kingdom.
- (8) On 6 October 2021, the European Parliament and the Council adopted a Regulation establishing the Brexit Adjustment Reserve² ("BAR Regulation") in view of mitigating the economic impact of the withdrawal of the United Kingdom from the Union and to show solidarity with all Member States, especially those most affected in such unusual circumstances. According to Article 5(5) of that

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('Withdrawal Agreement') (OJ L 29, 31.1.2020, p. 7).

² Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve (OJ L 357, 8.10.2021, p. 1).

Regulation, the measures financed under the BAR must comply with Union and national law.

2.4. Nature and form of aid

- (9) The measure provides aid in the form of direct grants.

2.5. Legal basis

- (10) The legal basis for the measure is the draft „*Richtlinie zur Förderung der Einstellung der Fangtätigkeit im Fischereisektor im Rahmen der Umsetzung der Brexit-Anpassungsreserve (BAR)*“ (Directive on support for the cessation of activities in the fisheries sector in the context of the implementation of Brexit Adjustment Reserve (BAR)).

2.6. Administration of the measure

- (11) Two regional authorities are responsible for administering the measure, the Ministry for Food, Agriculture and Consumer Protection of Lower Saxony (“*Niedersächsisches Ministerium für Ernährung, Landwirtschaft und Verbraucherschutz*”) and the Ministry for climate protection, agriculture, rural areas and environment of Mecklenburg-West Pomerania (“*Ministerium für Klimaschutz, Landwirtschaft, ländliche Räume und Umwelt Mecklenburg-Vorpommern*”).

2.7. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 12 000 000.
- (13) Support for measures may be granted only if the temporary cessation of fishing activities occurred before 31 December 2022. Aid can only be granted and paid until 31 December 2023.

2.8. Beneficiaries

- (14) Regardless of the legal form and size chosen, undertakings whose activities cover the fisheries sector and which have an establishment in the Federal Republic of Germany are eligible for funding. The fishing vessel in question must fly the German flag.
- (15) The German authorities estimate the number of beneficiaries between 11 and 50.

2.9. Description of the measure

- (16) The measure supports eligible expenditure in respect of the temporary cessation of fishing vessels.

2.9.1. Link to Brexit

- (17) Any grant under the measure is conditional on the causality of the negative consequences of Brexit for the necessity of the measure to be supported. Negative consequences of Brexit are in particular:
- a. the reduction of German fishing quota shares due to the TCA;

- b. the impossibility of exchanging fishing quotas with the UK;
- c. the lack of access to or restriction of fishing rights in third-country waters due to the TCA.

2.9.2. *Business plan*

- (18) Together with the application for funding, the beneficiary must submit a business plan. The business plan shall contain information on:
- a. the economic situation of the undertaking before the TCA, taking into account the turnover in 2018 and 2019;
 - b. for fishing enterprises: the change of the company-related fishing quota allocation due to the TCA;
 - c. the current economic situation, setting out the evolution of turnover and, where relevant, taking into account the uncertainties arising from the negotiations between Norway and the UK after 1 January 2021;
 - d. the causality of the impact of Brexit on the company's current economic situation;
 - e. Description as to whether the number of standstill days on which the application is based is necessary to adapt the undertaking to the consequences of Brexit and what additional measures are taken by the beneficiary;
 - f. in the case of vessels with a GT of 1 500 or more, information and evidence of the actual or expected expenditure of the fishing vessel during the standstill period.

The information in the business plan shall be supported by appropriate evidence. The supporting documents must be submitted to the granting authorities when the application is submitted.

2.9.3. *Exclusions*

- (19) An application for a grant shall be inadmissible if the competent authority has established, in accordance with Article 10(1) of Regulation (EU) No 508/2014, that the operator concerned has committed one or more of the infringements or offences referred to in Article 10(1) of that Regulation or fraud as referred to in Article 10(3) of that Regulation. The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 10(4) of that Regulation apply.
- (20) Grants shall not be used for an operation excluded under Article 11 of Regulation (EU) No 508/2014. This does not apply to the temporary cessation of fishing activities referred to in Article 11(c) of that Regulation.
- (21) Aid is not granted to:
- a. undertakings in which the public capital participation exceeds 25 % of the company's equity capital;

- b. applicants who are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market during the last five years prior to the submission of the application;
 - c. firms in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring, non-financial undertakings in difficulty, unless the difficulties are caused by Brexit and the consequences thereof;
 - d. applicants in respect of whose assets insolvency proceedings have been applied for or opened, and
 - e. applicants who are required to provide information on assets pursuant to Section 802c of the Code of Civil Procedure (Zivilprozessordnung) or Section 284 of the German Tax Code (Abgabenordnung) or who have provided such information. If the applicant is a legal person represented by a legal representative, this shall apply if the legal representative, in his capacity as a legal representative of the legal person, is subject to the corresponding obligations under Section 802c of the Code of Civil Procedure or Section 284 of the Tax Code.
- (22) When applying for the aid, the applicant shall declare that none of the cases mentioned in recitals (19)-(21) exists. The beneficiary must respect the rules of the Common Fisheries Policy (CFP) from the date of submission of the application for a period of five years after the final payment. If, within this period, the beneficiary commits serious infringements under Article 42 of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009, so that at least 9 points have been allocated in the points system referred to in Article 125 in conjunction with Annex XXX to Regulation (EU) No 404/2011, the beneficiary shall repay the grant in full.
- (23) The minimum limit for eligible expenditure per aid application is set at EUR 10 000 net. This does not apply to the temporary immobilisation of fishing vessels with a gross tonnage (GT) of less than 1 500 in accordance with recital (34).
- (24) The German authorities confirm that the aid scheme does not constitute a breach of Regulation (EU) 2021/1139 on the European Maritime, Fisheries and Aquaculture Fund³. In particular, they state that applications that fulfil the conditions set out in Article 11(1) and (3) of Regulation 2021/1139 will be treated as inadmissible.

2.9.4. *Temporary cessation of fishing vessels*

- (25) In the case of a fishing vessel flying the German flag which is directly affected by the reduction of German fishing quota shares due to the TCA or, at times, by the impossibility to exchange European fishing quotas with the UK, or which, due to Brexit, has temporarily no access to the waters of a third country or is severely affected in its fishing rights in third country waters, the temporary cessation may be supported if:

³ 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, *OJ L* 247, 13.7.2021, p. 1.

- a. the minimum fishing activity of the vessel or vessels replaced by the applicant vessel was at least 120 days at sea in the two calendar years preceding the date of the application for the grant or in 2018 and 2019 in total;
 - b. the fishing vessel's fishing activity is effectively stopped for the period of decommissioning because the vessel is in port. Berth time shall be demonstrated by satellite-based vessel monitoring system (VMS) data in accordance with Article 9 of Regulation (EC) No 1224/2009 or by electronic logbook (ERS) data in accordance with Article 15 of that Regulation, or by any other appropriate means;
 - c. the cessation of fishing activities is a consequence of Brexit; periods during which the vessel could not be used for fishing due to repairs, which includes dockyard periods for warranty purposes or other circumstances, shall not be eligible for support;
 - d. during the period of cessation of fishing activity, no liquidity support has been granted through the Support measure providing liquidity aid to undertakings in the fishery sector following the Brexit adjustment reserve of 29 July 2021 (SA.63536 - 2021/N);
 - e. the fishing vessels concerned must fly the German flag at the time when Brexit took effect, i.e. on 31 January 2020.
- (26) The fishing vessel may be decommissioned during the period from 1 January 2021 to 31 December 2022. More than one cessation can be taken into account, as long as the cessation occurs for at least 10 consecutive days and does not last longer than six months.
- (27) The German authorities confirm that aid for temporary and permanent cessation of fishing vessels is mutually exclusive.

2.10. Required retention period

- (28) Undertakings receiving a grant under this measure shall not be allowed to transfer or reflag the vessel supported to a country outside the Union for at least five years after the final payment for the supported operation.

2.11. Calculation of aid

- (29) The aid takes the form of project funding by way of non-reimbursable grants in the form of full or part-financing.
- (30) The amount of the aid corresponds to the expenditure incurred in connection with the fishing vessel during the standstill period.
- (31) For vessels of 1500 GT and more, the actual expenditure incurred by the vessel during the standstill period shall be taken into account. The expenditure actually incurred includes, in particular, actual personnel costs, insurance incurred despite the presence in the port, port charges, fixed costs and depreciation, and actual variable costs.

- (32) For fishing vessels with a GT of less than 1500, the amount of the aid is calculated on the basis of the estimated expenditure during the standstill period (exp). The calculation shall be made in accordance with the formula:

$$\text{exp} = \frac{Ta \times R \times D}{A} = 0,7 \times Ta \times \frac{D}{365}$$

- Ta Annual turnover of the fishing vessel (derived from the sale of catches) from the average turnover in 2018 and 2019. If, during that period, the vehicle has been replaced by a new vehicle or another vehicle, that vehicle shall replace the old vehicle in that respect.
- R The rate to be deducted for expenses incurred during the cessation of fishing activities; of the annual turnover, the eligible fixed costs are estimated at 30 % and wage costs at 40 %: $0.30 + 0.40 = 0.70$.
- D Number of days requested for decommissioning of the fishing vessel.
- A Number of days in the reference period of one year, i.e.: 365.

2.12. Other provisions

2.12.1. Right to audit

- (33) The authorising authorities and the audit body designated in accordance with Article 14(1)(a) of the BAR Regulation are entitled to verify the appropriate use of the grant by inspecting all books, original supporting documents and other documents relating to the grant and by means of on-the-spot checks.
- (34) Furthermore, the Federal Ministry of Food and Agriculture, the Federal Ministry of Economic Affairs and Energy, the Federal Court of Auditors, the European Commission, including the European Anti-Fraud Office (OLAF), the European Court of Auditors, the third parties appointed by each of them and, in the case of Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) are fully entitled to audit. In so far as such right does not arise directly from Articles 285 to 287 of the Treaty on the Functioning of the European Union for the audit bodies of the European Union and from Section 91 of the Federal Budget Code (*Bundeshaushaltsordnung*) for the Federal Audit Office (*Bundesrechnungshof*), this right of scrutiny must be established vis-à-vis the parties concerned.

2.12.2. Obligations of the beneficiary to cooperate

- (35) Beneficiaries are obliged to provide the granting authorities with all the necessary data and information for authorising, paying and settling the aid, as well as for the verification and auditing of the use of the aid and, should the situation arise, for cancelling the grant decision and ordering the recovery of the aid.
- (36) This also applies to information required by the European Commission in order to evaluate and report on effectiveness, efficiency, relevance, coherence and Union added value of the BAR.
- (37) For audit purposes, the beneficiary shall conserve supporting documents (in particular, application, granting decisions, proof of use, original supporting documents, final reports) as originals or certified copies for at least 5 years (as

from 31 December of the year in which the last proof of use has been submitted), unless taxation, national or other EU laws provide for a longer retention period.

2.12.3. Procedure

- (38) The Länder are responsible for implementing the funding guidelines. Grant applications must be submitted in writing to the granting authorities using the official forms.
- (39) In particular, the following documents must be attached to the application:
 - a. appropriate evidence of compliance with the general eligibility conditions referred to in recital (17) and the applicable specific eligibility conditions under recitals (25)-(26),
 - b. the submission of the declaration referred to in recital (22);
 - c. proof of ownership and, where applicable, powers of representation.
- (40) The granting authorities can request further documentation.

2.13. Cumulation

- (41) Aid granted under the measure shall not be cumulated with other partially or completely overlapping aid for the same eligible costs.
- (42) Aid granted should only allow beneficiaries to adapt to the immediate consequences of Brexit and mitigate its negative consequences. Overcompensation is not permitted.

2.14. Transparency

- (43) The legal bases, as well as information and possible guidance, can be found at <https://www.portal-fischerei.de/bund/foerderrichtlinie-nach-bar-vo>.

The authorities responsible for the support measure are published on the internet at: <https://www.portal-fischerei.de/bund/foerderrichtlinie-nach-bar-vo>.

For each grant, the information referred to in point 69(c) of the Guidelines for the examination of State aid to fisheries and aquaculture is published on a state aid website.

3. ASSESSMENT

3.1. Applicability of Articles 107, 108 and 109 TFEU

- (44) The European Parliament and the Council have determined in Article 8(1) of Regulation (EU) No 508/2014⁴ (EMFF) that Articles 107, 108 and 109 TFEU apply to aid granted by Member States to undertakings in the fishery and

⁴ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L 149, 20.5.2014, p. 1.

aquaculture sector. The derogation from the application of these provisions stipulated in Article 8(2) of the EMFF does not apply in the current context because the notified aid is not granted pursuant to that Regulation. Therefore, all measures financed in accordance with the present decision have to comply with State aid rules, including those related to the fishery and aquaculture sector.

3.2. Lawfulness of the measure

- (45) By notifying the measure before putting it into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

3.3. Existence of State aid

- (46) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (47) The measure will be pre-financed first by the Member State budget, with a view to subsequent reimbursement by the future Brexit adjustment reserve. The budget allocated to the Brexit adjustment reserve will be implemented under shared management between the Member States and the Commission. In both cases, the measure is financed with public funds and therefore from State resources. Shared management gives Member States discretion in the use of these resources (in particular for the selection of beneficiaries). This Decision is without prejudice to the eligibility rules under the Brexit adjustment reserve Regulation, which will be assessed after the entry into force of that Regulation.
- (48) The measure is administered by two regional authorities as described in recital (11) and it is based on the draft “*Richtlinie zur Förderung der Einstellung der Fangtätigkeit im Fischereisektor im Rahmen der Umsetzung der Brexit-Anpassungsreserve*“. The measure is therefore imputable to the State.
- (49) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (9)). The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.
- (50) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the fishery sector (recital (14)).
- (51) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (52) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.4. Compatibility

3.4.1. Application of Article 107(3)(c) TFEU

- (53) Having established that the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measure can be found to be compatible with the internal market on the basis of the compatibility grounds foreseen by Article 107 TFEU.
- (54) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market aid “*to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (55) The aid is granted to the fishery sector and the Commission will therefore assess its compatibility on the basis of the *Guidelines for the examination of State aid to the fishery and aquaculture sector*⁵ of 2 July 2015, hereinafter the *Guidelines*.

3.4.2. Application of the Guidelines

- (56) The aid aims at compensating enterprises active in the fisheries sector for costs incurred during the Brexit induced temporary cessation of their fishing vessels between 01.01.2021 and 31.12.2022.
- (57) The Guidelines deal with various types of aid which may be found compatible with the internal market. Member States may consider using these possibilities by notifying the aid to the Commission on the basis of the Guidelines.
- (58) Aid for temporary cessation of fishing activities is not explicitly included among the categories of aid that can be found compatible with the internal market on the basis of Union State aid rules. While it is true that in point (116) of the Guidelines, the Commission reserved the possibility of declaring aid compatible with the internal market on the basis of a case-by-case assessment, the fact remains that a Member State intending to grant aid not expressly provided for in the Guidelines must demonstrate that the aid in question complies with the principles set out in Section 3 of the Guidelines. However, according to point (35) of the Guidelines, no aid should be granted for activities corresponding to ineligible operations within the meaning of Article 11 of Regulation (EU) No 508/2014, which would in principle exclude any aid for temporary cessation which does not fulfil the conditions set out in Article 33 of Regulation (EU) No 508/2014.
- (59) However, in addition to the possibilities offered by the *de minimis* Regulation, the FIBER and the Guidelines, it appears that certain extraordinary measures, not covered by the existing State aid rules, are necessary to mitigate the effects of Brexit. Therefore, the Commission considers to derogate from point (35) of the Guidelines as regards aid for temporary cessation in 2021 and 2022, provided that such a measure has a causal link with Brexit, that it does not address causes other than the consequences of Brexit and that it is designed in such a way that its

⁵ Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2 July 2015, p. 1. as amended by the Communication published in OJ C 422, 22.11.2018, p. 1.

positive effects linked to the achievement of an objective of common interest outweigh its potential negative effects on trade and competition. Such an assessment is based directly on Article 107(3)(c) TFEU. The Commission has already applied the same assessment to a comparable situation in other Member States⁶. Beyond point (35), the Guidelines remain fully applicable.

- (60) Given that the notified aid does not correspond to any of the types of aid mentioned in Sections 4 and 5.1. to 5.6. of the *Guidelines*, it has to be assessed under its Section 5.7. ("*Aid for other measures*"). Section 5.7. of the *Guidelines* allows the Commission to declare aid compatible with the internal market on the basis of a case-by-case assessment, if the Member State clearly demonstrates that the aid complies with the principles set out in Section 3 of the *Guidelines*. Section 3 sets out the "*Common assessment principles*" (Sub-sections 3.1. and 3.3. to 3.9.) and the "*Specific principles for the fishery and aquaculture sector*" (Section 3.2.).

3.4.2.1. Assessment under Section 3 of the Guidelines

- (61) In accordance with point (116) of the Guidelines, the Commission will assess the scheme on the basis of Section 3. Section 3.1 of the Guidelines sets out the common assessment principles, while Section 3.2 sets out the specific principles applicable to the fisheries and aquaculture sector in the light of Article 107(3)(c) TFEU.

3.4.2.1.1. The aid needs to facilitate the development of an economic activity

- (62) In order to be compatible under Article 107(3)(c) TFEU, aid must contribute to the development of a certain economic activity or of certain economic areas.
- (63) The Commission notes that the objective of the scheme is to facilitate the development of certain economic activities referred to in Article 107(3)(c) TFEU, in particular by allowing the beneficiaries to adapt to the new situation resulting from the withdrawal of the United Kingdom from the Union. More specifically, the aid allows the rebalancing of fishing capacity at national level with the new fishing opportunities resulting from the TCA.
- (64) The Commission therefore considers that the scheme facilitates the development of certain economic activities, as required by Article 107(3)(c) TFEU.

3.4.2.1.2. The aid does not adversely affect trading conditions to an extent contrary to the common interest

Need for state intervention

⁶ Aide d'État SA.62426 (2021/N) – France, Aide à l'arrêt temporaire des activités de pêche dans le cadre du retrait du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord as approved by decision C(2021) 2780 final of 23.4.2021; State Aid SA.64035 (2021/N) – Ireland, Brexit adjustment reserve : Brexit Temporary Tie-Up Scheme ; State Aid SA.102849 (2022/N) – Sweden, BAR : Support for fisheries and related activities following the withdrawal of the United Kingdom from the European Union.

- (65) According to point (39) of the Guidelines, State aid must be targeted at situations where it can bring about a significant improvement which the market alone is unable to bring about. This holds especially in a context of scarce public resources.
- (66) The German authorities stress that the consequences of Brexit significantly affect the economic activity of part of the German fishing industry. As the market is inherently destabilised by these consequences (absence, delay or uncertainty as to authorisations for access to water, irregular production, etc.), the aid enables beneficiaries to adapt to the changes brought about by Brexit and thus increase the sector's resilience.
- (67) With Regulation (EU) 2021/1755 establishing the BAR, the European legislator recognised the need for State intervention to support measures to help companies dependent on fishing activities in UK waters with a view to achieve adjustments in the sector.
- (68) The Commission therefore considers that State intervention is necessary and that the principle of necessity of State intervention is therefore respected.

Appropriateness of the aid measure

- (69) Point (43) of the Guidelines requires that the proposed aid measure must be an appropriate instrument to contribute to achieving the objectives pursued.
- (70) There is no precedent for Brexit which would have seen the introduction of another type of mechanism for the same purpose by allowing financial support as a result of the temporary cessation of a vessel. In particular, the economic losses caused by Brexit require compensation to adapt to this unprecedented situation, through a mechanism already tested under the EMFF.
- (71) The Commission notes that the scheme consists of financial support which compensates the beneficiary on the basis of objective criteria. The benefit of financial support under the scheme is limited to applicants who demonstrate the existence of a causal link with Brexit in accordance with the conditions set out in the legal basis. Moreover, the Commission considers that, in the present case, direct and rapid aid is justified in order to ensure the adaptation of the sector to the new situation on the post-Brexit market.
- (72) The Commission therefore considers that the scheme is an appropriate policy instrument and that the principle of the appropriateness of the aid is respected.

Incentive effect

- (73) Point (49) of the Guidelines provides that aid can only be considered compatible with the internal market if it has an incentive effect. Point (52) specifies that aid which is compensatory does not necessarily have to have an incentive effect.
- (74) Aid for temporary cessation is compensatory in so far as it provides financial support which compensates for downtime at berth. Therefore, it does not necessarily have to have an incentive effect.

Proportionality of the aid

- (75) In accordance with point (54) of the Guidelines, the aid must be limited to the minimum necessary to provide an incentive for the beneficiary to carry out an activity. Point (58) of the Guidelines states that aid which is compensatory is deemed to be proportionate.
- (76) The aid amount is calculated based on actual expenditure incurred for vessels of 1500 GT and more. For vessels with a GT of less than 1500, a lump sum is calculated based on a formula that includes a discount factor for non-incurred variable costs.
- (77) The Commission notes that the aid will be granted in the exceptional situation due to the negative consequences of the withdrawal of the United Kingdom from the EU and that, in this sense, it has a compensatory objective. The aid is limited to applicants who demonstrate the existence of a causal link with Brexit in accordance with the conditions set out in the legal basis and is calculated according to a formula based on objective criteria. Amounts received as liquidity support (see recital (25)) will be deducted.
- (78) The Commission therefore considers that the scheme is limited to the minimum necessary.

Duration of the scheme

- (79) In accordance with point (117) of the Guidelines, the Commission only authorises aid schemes of limited duration. Aid schemes should in principle not apply for more than seven years.
- (80) As already mentioned in recital (13), the scheme should apply until 31 December 2022. The Commission therefore considers that this requirement is fulfilled.

Specific principles for the fishery and aquaculture sector

- (81) Point 30 of the *Guidelines* provides that, in addition to the common assessment principles, the Commission also applies the specific principles for the fishery and aquaculture sector set out in its Section 3.2.
- (82) Points 31 and 33 of the *Guidelines* requires that each beneficiary of a State measure must comply with the rules of the CFP throughout the period of implementation of the project and for a period of five years after the final payment to the beneficiary. In its notification, Germany has confirmed that the aid explicitly provides for the compliance with this requirement (see recital (22)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.
- (83) In accordance with point 32 of the *Guidelines*, the German authorities have also confirmed in their notification that they will ensure the inadmissibility of applications from applicants having committed one or more of the infringements of CFP rules and that no aid is granted to an operator having committed a fraud as set out in Article 10(1) and Article 10(3) respectively of Regulation (EU) No 508/2014⁷ during the period set out in the delegated acts adopted on the basis of

⁷ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC)

Article 10(4) of that Regulation (see recital (19)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.

- (84) According to point 33 of the *Guidelines*, the aid measure must explicitly provide that if a beneficiary commits one or more of the offenses referred to in Article 10(1) of Regulation (EU) No 508/2014 throughout the period of implementation of the project and during a period of five years after final payment to the beneficiary, the beneficiary must repay the aid. In its notification, Germany has confirmed that the aid explicitly provides for the compliance with this requirement (see recital (22)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.
- (85) Germany confirmed also that, in accordance with point 35 of the *Guidelines*, no aid will be granted for activities that correspond to ineligible operations under Article 11 of Regulation (EU) No 508/2014 (see recital (20)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.
- (86) The Commission therefore considers that the aid respects the common assessment principles set out in Section 3.1 of the *Guidelines* as well as the specific principles for the fishery and aquaculture sector set out in Section 3.2 of the *Guidelines*.

Avoidance of undue negative effects on competition and trade and balancing test

- (87) With regard to Section 3.8. and point 60 of the *Guidelines*, for the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to achieving the objective of common interest. Furthermore, according to points 64 and 65 of the *Guidelines*, the aid must not lead to significant distortions of competition and trade and the Member States must demonstrate that the negative effects of the aid will be limited to the minimum.
- (88) In accordance with point (37) of the *Guidelines*, each aid measure must indicate the objectives of the CFP to which it contributes and clearly demonstrate how it will contribute to the achievement of those objectives without undermining other objectives of the CFP.
- (89) The German authorities argue that the aid measure contributes to the objectives set in Regulation (EU) No 1380/2013, including the principle of achieving maximum sustainable yield for all stocks according to the best available scientific advice, as well as ending overfishing, restoring populations of harvested species and protecting the marine environment, as also provided for in international commitments.
- (90) The Commission considers that, although not negligible, the overall envelope of the scheme, namely EUR 12 million, does not appear *prima facie* likely to have a significant effect on competition and trade. In particular, this would represent only 0.05 % of intra-EU trade (EUR 23,25 billion in 2020). In addition, the

benefit of financial support under the scheme is limited to applicants who demonstrate the existence of a causal link with Brexit.

- (91) The Commission notes that the scheme also contributes to achieving the specific objectives of the CFP (see recitals (89)), without undermining other CFP objectives, and that the German authorities undertake to respect them throughout the scheme.
- (92) Finally, the Commission also notes that no aid will be granted to firms in difficulty or to undertakings which are subject to an outstanding recovery order following a Commission decision declaring aid incompatible with the internal market (cf. recital (21)).
- (93) Overall, the Commission therefore concludes that the scheme facilitates an economic activity (also contributing to the objectives of the CFP) without unduly distorting competition and trade. It follows that the positive effects of the scheme outweigh their negative effects on competition and trade.

Transparency

- (94) With regard to Section 3.9. of the *Guidelines*, Germany has committed in its notification to comply with the transparency requirements and will publish all the relevant information on the comprehensive State aid website⁸.
- (95) The Commission therefore considers that the principle of transparency is respected.
- (96) Therefore, the Commission considers that the scheme complies with the common assessment principles set out in Section 3.1 of the *Guidelines*.

3.4.2.2. Conclusion under Section 3 of the Guidelines

- (97) Overall, the Commission notes that the scheme complies with all the principles set out in Section 3 of the *Guidelines*.

3.4.3. Conclusion on the compatibility of the aid measure.

- (98) In light of the above, the Commission considers the aid compatible with the internal market on the basis of Article 107(3)(c) TFEU and the relevant provisions of the *Guidelines*.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt.

⁸ <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

If the Commission does not receive a reasoned request by that deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President