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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund

Delegations will find attached document COM(2021) 311 final.

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EUROPEAN
COMMISSION

Brussels, 18.6.2021
COM(2021) 311 final

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
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1. BACKGROUND

Date the Commission sent the proposal to the European Parliament and to the Council: 12 June 2018

(document COM(2018) 390 final – 2018/0210 (COD))

Date of the European Economic and Social Committee's opinion: 12 December 2018

Date of the Committee of the Regions' opinion: 9 October 2018

Date of the European Parliament's position, first reading: 4 April 2019

Date the amended proposal was sent: N/A

Date of the Council's position, first reading: 14 June 2021

2. OBJECTIVE OF THE COMMISSION'S PROPOSAL

This proposal forms part of the post-2020 multiannual financial framework (MFF) package that the Commission proposed in May 2018. It aims to support the achievement of the objectives of the common fisheries policy and of the EU's maritime and international ocean governance policies. The Commission proposed a budget of EUR 6.14 billion.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The Council's position as adopted at first reading fully reflects the political agreement reached between the European Parliament and the Council on 4 December 2020.

The Commission considers that overall the political agreement is in line with the objective of maximising the EU added value and with the EU's priorities of the European Green Deal, digital transition and resilience.

The Commission also considers that overall the political agreement is balanced and contains the necessary safeguards to prevent the introduction of fisheries subsidies that can be considered harmful in terms of sustainability. The Commission believes the political agreement is in line with:

- the basic principles of sustainable fisheries under the common fisheries policy;
- the EU commitment under the UN's Sustainable Development Goal (or SDG) 14.6 to eliminate fisheries subsidies, which contribute to overcapacity and overfishing; and
- the EU's position in the ongoing discussions on fisheries subsidies at the World Trade Organisation.

Therefore, the Commission supports the political agreement.

The main points of this agreement are the following:

- *Name of the fund changed to 'European, Maritime, Fisheries and Aquaculture Fund' (EMFAF).*

The Commission considers that this new title reflects the fund's scope.

- *Distribution of financial resources*

- Reduction of the allocation implemented under direct management by EUR 32 million, due to the overall EMFAF budget being reduced by EUR 32 million under the MFF.

The Commission considers that this very limited cut will not undermine support under direct management, in particular to the maritime policy and the international ocean governance agenda. At the same time, this cut preserves significant allocations to Member States under shared management to tackle the needs of their fishery and aquaculture sectors, and address climate and environment objectives.

- Reduction of the ceiling for Commission's technical assistance from 1.7% to 1.5% of the overall budget.

The Commission considers that, even if this reduction will reduce its ability to assist Member States in the programming process, it will not undermine the core tasks supported by technical assistance.

- A cap of 15% for each national allocation to implement five fleet measures (i.e. increase of gross tonnage, engine replacement, first acquisition of a second-hand vessel by a young fisher, permanent cessation of fishing activities, and temporary cessation of fishing activities).

In the Commission's proposal, the cap was 10% but only for permanent and temporary cessation. However, given that the nature of the other measures has changed, the Commission requested that they be included in the scope of the cap. These five measures involve individual investments or compensation, so do not have a high added value. While the Commission would have preferred a 10% cap for all five fleet measures to ensure maximum added value of EU funds, it considers that this 15% cap still ensures that support for fleet measures will not harm the EMFAF's core priorities (e.g. sustainable fishing, fisheries control, collection of scientific data to support fisheries management, innovation, collective organisation of the sector, or local development). This

cap also prevents an artificial offer of subsidies being created, which would generate its own demand and consequently distort the market.

- Increase of the cap for compensation of additional costs in the outermost regions from 50% to 60% of the allocations ring-fenced for these regions, with the possibility of a further increase by 10 percentage points if duly justified by Member States in their programme.

The Commission considers that this increase preserves a reasonable share for structural investments. The Commission will carefully examine if any requests from Member States to use the additional 10 percentage points are justified by a real need.

- *Alignment of the fund's overall structure to the logic of the other funds covered by the Common Provisions Regulation (in particular, replacement of the 'areas of support' with 'specific objective').*

This alignment does not affect substance. The Commission considers that this new structure has resulted in considerable simplification, which limits the number of derogations allowed for the EMFAF in the Common Provisions Regulation and will ease Member States' programming.

- *Creation of a new measure to increase the volume (quantified in 'gross tonnage') of fishing vessels in order to improve safety, working conditions or energy efficiency.*

While noting that this measure was not in the Commission's proposal and that it allows a vessel's nominal fishing capacity to be increased, the Commission considers that there are sufficient safeguards to prevent the vessel from increasing its ability to catch fish.

- Only the 'gross tonnage' parameter of fishing capacity can be increased, not the power parameter.
- The increase of gross tonnage is eligible only in fleet segments where there is no overcapacity. It must be compensated by the prior withdrawal of at least the same level of gross tonnage in the same fleet segment or in a segment of the national fleet subject to overcapacity, therefore not increasing the fleet's overall capacity. This is a stricter condition than the general EU 'entry-exit system', which simply provides that an entry of fishing capacity must be compensated by a corresponding exit from any fleet segment.
- The increase of gross tonnage must be justified by improved safety, working conditions or energy efficiency. Therefore, the article includes an exhaustive list of eligible operations that links the increase of gross tonnage to the subsequent installation of a facility or equipment that improves safety, working conditions or energy efficiency, to ensure that no harmful operations are supported.
- Only vessels that are up to 24m long and at least 10 years old are eligible in order to focus on vessels in most need.

Therefore, the Commission considers that this measure is not a harmful subsidy, as it does not contribute to overfishing or overcapacity.

- *Modification of certain conditions of support for the replacement of engines of fishing vessels (i.e. extension of eligibility to vessels longer than 12m, up to 24m;*

new requirement of 20% reduction of CO2 emissions for vessels between 12m and 24m).

The Commission highlights three conditions that prevent potential harmful effects:

- support is available only in fleet segments without overcapacity;
- the new engine must not have more power than the engine replaced;
- the new engine must be physically inspected to ensure that its actual power matches the power declared.

The extension of support to vessels up to 24m is a carry-over from the scope of the 2014-2020 period. The Commission believes that the new requirement to reduce CO2 emissions will help achieve the European Green Deal's objectives towards climate neutrality. The Commission will be empowered to specify certain aspects of the methodology for measuring this reduction and will make sure that this methodology does not create burden for Member States and beneficiaries.

- *Modification of certain conditions of support provided for the first acquisition of a second-hand vessel by a young fisher (i.e. extension of eligibility to vessels longer than 12m, up to 24m; eligibility of the partial acquisition of the vessel, where the young fisher owns at least 33% of the shares).*

The Commission recalls that this support is a start-up scheme for young fishers that aims to step up generational renewal. This is not the same as fleet renewal because support is granted only for the first acquisition of a second-hand vessel by a young fisher (i.e. younger than 40).

The Commission highlights two conditions that prevent potential harmful effects:

- support is available only in fleet segments without overcapacity;
- the vessel must be second-hand (i.e. registered for at least 3 years in the case of small-scale vessels and for at least 5 years for other vessels).

The extension of support to vessels up to 24m is a carry-over from the scope of the 2014-2020 period.

The Commission also believes that the new possibility to support the partial acquisition of a vessel will facilitate transitional generational renewal, for example within a family business. The condition of a minimum share of ownership of 33% will ensure that the young fisher is actually involved in the vessel's operation, therefore reducing the possibility of any abuse, e.g. 'paper ownership'.

- *Elimination of the mandatory results-based implementation mechanism proposed for the permanent cessation of fishing activities ('financing not linked to costs'). Consequently, Member States are free to choose any of the implementation mechanisms provided for in the Common Provisions Regulation.*

Although the Commission regrets that this mandatory results-based mechanism has been removed, it believes permanent cessation helps eliminate overcapacity for the following reasons:

- it has to be included in the action plans that Member States must prepare, pursuant to the common fisheries policy, to align the fishing capacity of the fleet with the available resources in the fleet segments which are subject to overcapacity;

- the fishing capacity scrapped cannot be replaced;
- the beneficiary cannot register a new vessel within 5 years of receiving the aid payment.

The Commission considers that this measure is not a harmful subsidy, as it will permanently reduce the fleet's overall capacity and therefore reduce the pressure from fishing on marine biological resources.

- *Transformation of 'extraordinary cessation of fishing activities' (i.e. a compensation scheme to alleviate the socio-economic impact of unexpected and significant closures of fisheries) into 'temporary cessation of fishing activities' (i.e. a compensation scheme to accompany the implementation of conservation measures and temporary reductions of fishing effort, on the basis of scientific advice). Extension of the maximum duration of compensation from 6 months to 12 months per vessel during the programming period.*

The Commission notes that this scheme is stricter than that under the 2014-2020 period because any compensation provided for a conservation measure must i) be justified by scientific advice and ii) help reduce fishing effort. Even if the maximum duration of the compensation scheme has been extended from 6 to 12 months, these conditions ensure that temporary cessation contributes to conservation measures.

The Commission also notes that this scheme is stricter than that under the 2014-2020 period as regards sustainable fisheries partnership agreements (SFPAs). Indeed, it is no longer possible to compensate for the non-renewal of a SFPA but only for interruptions to its application due to reasons of force majeure.

- *Availability of direct grants for productive investments in aquaculture and for small and medium-sized businesses in the processing sector.*

The Commission regrets that the political agreement has not retained the proposal for mandatory financial instruments (e.g. public loans or guarantees) for productive investments in aquaculture and for investments in the processing sector, therefore carrying over the rules of the 2014-2020 period (i.e. mandatory financial instruments only for large companies in the processing sector). The Commission invites Member States to consider the potential of financial instruments, both in terms of simplification and of investment leverage.

- *Creation of a compensation scheme to respond to exceptional crises that cause market disruptions. The eligibility of these compensation schemes can only be triggered by a Commission decision setting out the situation of market disruption.*

The Commission welcomes this crisis scheme to address the consequences of the COVID-19 pandemic and other possible future crises. The Commission recalls that its scope is based on the COVID-19 measures, which expired at the end of 2020:

- compensation for economic losses of individual fishers, aquaculture farmers and businesses of the processing sector;
- compensation for producer organisations so they can manage the storage mechanism of the Common Market Organisation (i.e. a temporary collective storage of products in order to limit supply as a way to drive prices up).

In particular, the Commission considers that this scheme should only be activated in the case of 'exceptional events generating a significant disruption of markets', and by a Commission decision, for three reasons:

- (1) to limit it to serious crises;
 - (2) to ensure compensation can be provided quickly (indeed, a delegated act or an implementing act in comitology would require several weeks, if not months);
 - (3) to ensure a level-playing field across Member States.
- *Preservation of the principle that investments on board are eligible only if they go beyond EU legal requirements. However, investments to comply with national legal requirements become eligible, including investments on board necessary to comply with requirements imposed by a Member State to give effect to optional provisions under Directive (EU) 2017/159 on working conditions on board.*

The Commission considers that public support must encourage behaviour that goes beyond compliance with the law, therefore investments on board (e.g. for fishing or safety equipment) must generate added value. However, investments that comply with national requirements can be eligible in order to encourage Member States to be more ambitious than EU law. The Commission also welcomes the specific derogation to this rule for investments on board related to control and monitoring (see next point).

- *Eligibility of all fishing vessels to receive support for mandatory electronic reporting systems (only small-scale vessels in the Commission's proposal).*

The Commission believes that modernising the existing control tools and using new monitoring technologies is key to fostering a culture of compliance in the sector. Therefore, the Commission welcomes the eligibility of these investments despite the fact that they do not go beyond legal requirements.

- *Eligibility of the construction of new landing sites (but not of new ports).*

The Commission considers that there is no economic justification for the construction of new ports to be eligible for support, which is also too expensive for such a small fund to cover. The Commission recalls that modernising existing ports is eligible, even with a higher rate of public aid for investments related to implementing the landing obligation. However, the Commission considers that landing sites are not the same thing as ports since they are primarily used for landings of small-scale coastal fishing vessels. Therefore, the Commission acknowledges that support for new landing sites can be justified.

- *Single maximum co-financing rate of 70%, instead of a specific rate for each specific objective. The only exception is 100% for the compensation of additional costs for the outermost regions, as in the initial proposal.*

The Commission welcomes this single maximum rate and notes that, except for the permanent and temporary cessation of fishing activities (50% in the proposal), it has decreased compared to the initial proposal (i.e. between 75% and 100% for all the other specific objectives). Therefore, the Commission welcomes this overall decrease of the EU's share, resulting in more balanced co-financing between the EU and Member States.

- *Increase of the maximum intensity of public aid from 30% to 40% for certain fleet measures (i.e. increase of gross tonnage, engine replacement, first acquisition of a second-hand vessel by a young fisher). Increase of other aid intensity rates up to 100% for other cases, e.g. linked to innovation, collective benefits and collective beneficiaries.*

The Commission considers that the rate of public aid should depend on the type of operation or beneficiary. Higher rates over the 50% standard should be justified by a market failure, a high added value or a collective benefit. The Commission believes that the conditions included in the political agreement respond to this concern, especially the 100% rate for small-scale coastal fishing vessels – which is the main part of the preferential treatment for small-scale vessels – and the possibility for a 100% rate if the operation combines a collective interest, a collective beneficiary and innovative features. The Commission also welcomes the lower rate (40%) for certain individual fleet measures because they are individual investments with limited added value. In this respect, public support should leverage private investment and not overshadow it.

- *Eliminate the action plan for small-scale coastal fishing as a self-standing document but incorporate its objectives throughout the programming requirements.*

The Commission believes that this solution will have the same impact as the proposed action plan. Indeed, Member States will have to take into account the specific needs of small-scale vessels in the analysis of their strengths, weaknesses, opportunities and threats (SWOT) and when describing the types of actions envisaged for each specific objective. This will ensure that small-scale vessels are treated differently where relevant.

- *Requirement for Member States to take into account regional challenges in their national programme.*

The Commission considers that this new requirement introduced by the co-legislators is a reasonable compromise to take specific geographical challenges into account when preparing the national programmes, without creating administrative burden. The Commission underlines that Member States should refer to the ‘Sea Basin Analyses’¹, which highlight the key challenges at sea basin level and suggest possible solutions.

- *Implementing acts (instead of delegated acts in the proposal) for defining cases of non-compliance with the common fisheries policy.*

The Commission considers that this change of procedure does not affect the content of those acts.

- *The co-legislators did not accept that a 30% climate target and a specific biodiversity spending target could be set out in an article as requested by the Commission as a follow-up to the agreement on the multiannual financial framework.*

Even if there are no binding climate and biodiversity spending targets as such, the Commission notes that the EMFAF must contribute to the EU’s climate objectives in the context of the overall 30% target for climate expenditure and to biodiversity objectives in the context of the 7.5-10% target established in the MFF. The Commission will work with Member States in the context of the programming exercise for the 2021-2027 EMFAF to achieve both those targets.

¹ SWD(2020)206 final

4. CONCLUSION

The Commission supports the results of the inter-institutional negotiations and can therefore accept the Council's position at first reading.

5. DECLARATIONS FROM THE COMMISSION

The Commission has made three unilateral declarations and two joint declarations, which can be found in the appendix.

APPENDIX

Declarations from the Commission

European Parliament, Council and Commission statement on the biodiversity spending objective

“The European Parliament, the Council and the European Commission recognise the need to urgently advance action on the protection and conservation of marine and coastal ecosystems and biodiversity. The three institutions agree that tackling biodiversity loss, protecting and restoring ecosystems and/or maintaining them in good condition will require significant public and private investment at national and European level and that a significant proportion of the EMFAF expenditures should be invested in biodiversity. The three institutions agree that the European Commission will work with Member States, in the context of the programming exercise for the EMFAF 2021-2027, to reach the overall ambition of biodiversity spending highlighted in recital 15.”

European Commission statement on the monitoring of the biodiversity spending objective

“The European Commission, in the context of the programming exercise for the EMFAF 2021-2027, will actively encourage Member States to maximise the use of measures included in their programmes, in particular under Article 25 (protection of biodiversity and ecosystems), to reach the overall ambition of providing an annual spending under the MFF to tackle biodiversity loss, protect and restore ecosystems and maintain ecosystems in good conditions as follows: 7,5% of annual spending under the MFF to biodiversity objectives in the year 2024 and 10% of annual spending under the MFF to biodiversity objectives in 2026 and 2027.

The Commission will regularly monitor the level of this spending on the basis of the total eligible expenditure declared by the beneficiaries to the managing authority and on data submitted by the Member State. Where the monitoring shows insufficient progress towards reaching the overall ambition, the Commission will actively engage with Member States in the annual review meeting in order to adopt remedial measures, including a programme amendment.”

Statement from the Commission and the Council on their commitment to try to avoid an interruption of fishing activities under Sustainable Fisheries Partnership Agreements

“The Council and the Commission remain committed to trying to avoid an interruption of fishing activities under Sustainable Fisheries Partnership Agreements by striving towards the timely renewal of Sustainable Fisheries Partnership Agreements and their implementing Protocols.”

Statement by the Commission State Aid for the renewal of the fleets in the outermost regions

“The Commission takes note of the difficulties encountered up to now to grant state aid for the renewal of the fleets in the outermost regions. With a view to the sustainable development of those regions, the Commission will endeavour to assist the Member States to improve the

collection of scientific data necessary to comply with the eligibility condition set in the State aid guidelines with a view to facilitating the application of the guidelines for the examination of State aid to the fishery and aquaculture sector in the Outermost Regions.”

Statement by the Commission on the modernisation of the existing control tools and the use of new monitoring technologies

“The Commission has accepted the eligibility of investments on board related to fisheries control and enforcement, be they mandatory or not, and for all Union fishing vessels. The Commission considers that these investments will enable Member States to make full use of the financial resources available in the EMFAF for control and enforcement, to fulfil their obligations under the Control Regulation and other rules of the Common Fisheries Policy and to substantially improve the culture of compliance in the fishing sector.

Moreover, the Commission expects that – in the context of the ongoing review of the Control Regulation – the European Parliament and the Council will support the modernisation of the existing control tools and the use of new technologies as proposed by the Commission. This means in particular introducing smart solutions for the tracking and catch reporting of small scale vessels, installing systems for the continuous monitoring of engine power, moving to fully digitised traceability systems covering all fishery products (fresh, frozen and processed), and introducing mandatory remote electronic monitoring systems on board fishing vessels and based on risk assessment, as the only effective means to control the application of the landing obligation and the bycatch and discard of sensitive species.”