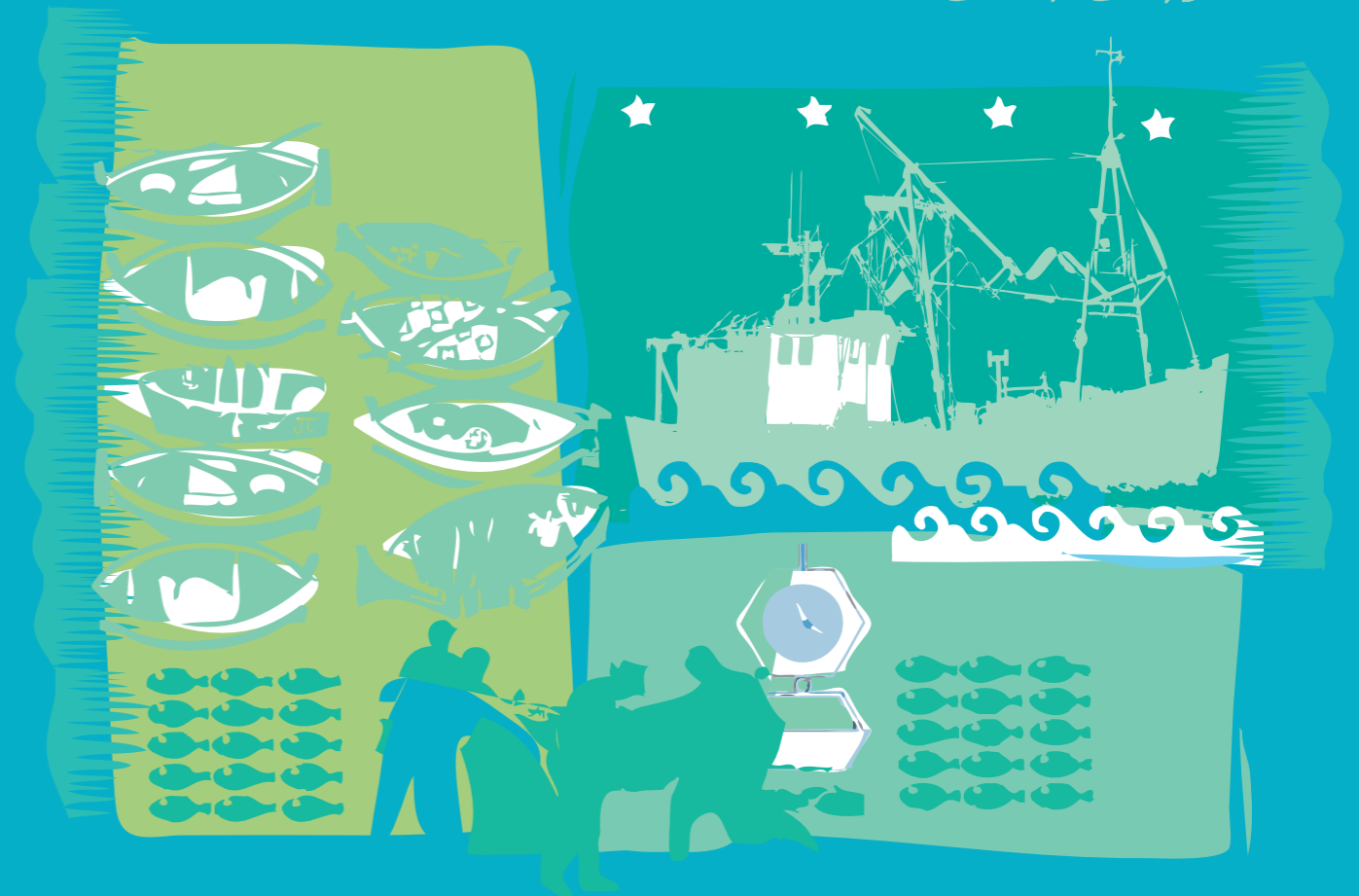


European Fisheries Fund

2007-2013



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INTRODUCTION

The new Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund⁽¹⁾ (hereinafter referred as the EFF) sets out the basic regulatory framework for the preparation of the programming documents for the period 2007-2013.

The rules for implementing Regulation (EC) No 1198/2006 are set out by Regulation 498/2007 of 26 March 2007.⁽²⁾ (hereinafter referred as IR).

In addition to those two Regulations, these guidelines provide advice on the implementation for the 2007-2013 programming period. They bring together different parts of the legal texts in a structured way to create operational advice on the implementation of different provisions of these texts. These guidelines do not replace the basic legal texts. They have been prepared as a guide to help Member States and Commission services to implement the Regulations consistently. In the interest of transparency, these guidelines will be presented to the European Fisheries Fund Committee and shall be made available to the Member States.

The text may need to be modified and up-dated in the light of practical experience during the implementation period. Any modifications will be developed in close cooperation with the Member States.

Interpretations given in these guidelines do not prejudice an eventual decision of the Court of Justice, which alone is competent to give binding legal opinions on the validity and the interpretations of acts adopted by the community institutions.

These guidelines are divided into two chapters. Each chapter can be read as a stand-alone document. The relevant articles of the EFF and the IR are provided within the text of each chapter to facilitate the reading and understanding of the legal requirements.

These guidelines are a key document as we look ahead to the new operational programmes.



Fokion Fotiadis
Director General

CHAPTER I

Summary of the main elements

This chapter provides clarifications on some definitions, objectives and general rules of assistance. The main elements treated in this Chapter are:

- the definition employed under the EFF of “fishing vessel”, “aquaculture vessel” and “vessel operating in inland waters”;
- the definition of beneficiary;
- the objective of sustainable aquaculture provided for under Article 4(a) of the EFF;
- the principles of complementarity, consistency and proportionality and
- the verifiability and controllability of measures and eligibility rules.

1. DEFINITIONS

1.1. Definition of a fishing vessel, aquaculture vessel and vessel operating in inland waters

ARTICLE 3 (c) AND (d) OF THE EFF

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(c) “fishing vessel”: any vessel within the meaning of Article 3 point (c) of Regulation (EC) No 2371/2002;

(d) “aquaculture”: the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment; the organisms remain the property of a natural or legal person throughout the rearing or culture stage, up to and including harvesting.

ARTICLE 33 (1) OF THE EFF INLAND FISHING

1. For the purpose of this Article “inland fishing” means fishing carried out for commercial purposes by vessels operating exclusively in inland waters or by other devices used for ice fishing.

ARTICLE 10 (2) OF IR

Measures for productive investments in aquaculture

2. The support provided for in Article 29 of the basic Regulation, may cover aquaculture service vessels. Fishing vessels as defined in Article 3 (c) of Council Regulation (EC) No 2371/2002 shall not be regarded as aquaculture service vessels even where they are exclusively used in aquaculture.

ARTICLE 13 (1) OF IR

Inland fishing

1. For the purpose of Article 33 of the basic Regulation, “vessels operating exclusively in inland waters” shall mean vessels engaged in commercial fishing in inland waters and not included in the Community fishing fleet register.

- A **fishing vessel** is defined under the EFF, in accordance with Article 3 (c) of Regulation (EC) No 2371/2002⁽³⁾, as any fishing vessel equipped for the *commercial exploitation of living aquatic resources*. The term “**living aquatic resources**” employed in the definition of the fishing vessel refers to *available and accessible* aquatic species, including anadromous and catadromous species during their marine life.

The term “**commercial exploitation**” also employed in the above definition of the fishing vessel, refers to the commercial exploitation of available and accessible living marine aquatic species and, therefore, does not cover aquaculture.

- “**A vessel operating exclusively in inland waters**” is, in accordance with Article 33 of the EFF and Article 13(1) of the IR, a vessel equipped for the commercial exploitation of inland water living resources and not registered in the Community fleet register. The words “and not included”, employed in Article 13 (1) of the IR, means a vessel not currently included in the Community fleet register and which will not be included at any time during the five years following the date of the financing decision of the competent national authority in accordance with Article 56 of the EFF.

(3) OJ L 358, 31.12.2002, p. 59.

- **“Aquaculture service vessel”** as it can be deducted from Article 3 (d) of the EFF, is a vessel used for the commercial exploitation of organisms which remain the property of a natural or a legal person throughout the rearing or culture stage, up to and including harvesting. “Harvest” is not limited to “adult fish”, as for example, juvenile fish may be harvested for further use.

The term **“aquatic organisms”** employed in Article 3 (d) of the EFF includes all water- dwelling species of fish, crustaceans, molluscs, other invertebrates, seaweeds and other algae.

In accordance with the above, vessels operating exclusively in inland waters and aquaculture service vessels are excluded from support under priority axis 1 of the EFF. Vessels, however, operating exclusively in inland waters may benefit from the EFF support under both Article 33 and under the relevant provisions of priority axes 3 (i.e. Articles 37 and 41) and 4 of the EFF. Aquaculture service vessels may, however, benefit from the relevant provisions of priority axes 2 (i.e. Article 29), 3 (i.e. Articles 37 and 41) and 4 of the EFF.

1.2. Beneficiary

ARTICLE 3 (I) OF EFF

I) **“beneficiary”**: a natural or legal person who is the ultimate recipient of public aid.

Annex II of the EFF fixes a limit to public contribution granted to an operation and, where appropriate, the minimum contribution by private beneficiaries.

Article 3(I) of the EFF defines the **“beneficiary”** as a natural or legal person who is the ultimate recipient of public aid.

In order to determine the intensity of aid when applying Annex II of the EFF, a public enterprise acting as a normal commercial enterprise (i.e. according to the rules and practices of the market economy) shall be considered in this case as a private beneficiary. Consequently any operations implemented by it shall fall within the same group as identical operations implemented by natural or legal private persons.

2. OBJECTIVES

2.1. Sustainable aquaculture

ARTICLE 4 (a) OF EFF

Objectives

Assistance under EFF shall aim to:

(a) **support the common fisheries policy so as to ensure exploitation of living aquatic resources and support aquaculture in order to provide sustainability in economic, environmental and social terms.**

Sustainable aquaculture should be wherever possible, organised through spatial planning or mapping of collective sites. In this respect, Member States should differentiate between different interests (tourism, industry, housing, environmental protected areas, etc.) when setting up new aquaculture enterprises. Member States are encouraged to identify in advance the sites for the development of aquaculture in order to avoid or minimise conflicts for space when an application for an aquaculture project is submitted. The development, restructuring or improvement of these sites, may be supported under Article 37 (g) of the EFF.

3. PRINCIPLES OF ASSISTANCE

3.1. Complementarity and consistency

ARTICLE 6 OF THE EFF

Complementarity, consistency and compliance

1. The EFF shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.
2. The Commission and the Member States shall ensure that assistance from the EFF is consistent with the policies, priorities and activities of the Community and complementary to other financial instruments of the Community. This consistency and complementarity shall be indicated in particular in the operational programme.
3. Operations financed by the EFF shall comply with the provisions of the Treaty and of the acts adopted thereunder.
4. In accordance with their respective responsibilities, the Commission and the Member States shall ensure coordination between assistance from the EFF and the European Agricultural Fund for Rural Development (EAFRD), established by Council Regulation (EC) No 1290/2005 [9], the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund and of other Community financial instruments.
5. Operations financed by the EFF shall not increase fishing effort.

ARTICLE 20 (1) (e) OF THE EFF

Content of the operational programme

1. The operational programme shall contain:
 - (e) information on complementarity with the measures under the EAFRD, the Structural Funds and the Cohesion Fund, where relevant.

ARTICLE 44 (6) OF THE EFF

Eligible measures

6. If a measure under this Article is also eligible under another Community support instrument, the Member State shall make clear in drawing up its operational programme whether it is supported by the EFF or by another Community support instrument.

Annex I PART A CONTENT OF AN OPERATIONAL, PROGRAMME, point 6 (b) (5) of the IR

- (5) information on demarcation with similar activities financed by the European Agricultural Fund for Rural Development, the Structural Funds and by the Cohesion Fund, as well as measures taken to ensure complementarity with these funds and other existing financial instruments, where appropriate.

Member States must provide in their Operational Programme information on the demarcation with similar activities financed by the European Agricultural Fund for Rural Development, the Structural Funds and the Cohesion Fund. Member States should, where appropriate, also provide information on the measures that ensure complementarity with these funds and other existing financial instruments. In general, eligibility of a measure or an area under the EFF should not lead to exclusion of all other types of Community support as long as demarcation criteria are specified in the operational programme. However, in accordance with article 54 of EFF, expenditure co-financed by the EFF shall not receive assistance from another Community financial instrument.

This information should include:

- Appraisal and explanation of the complementarity with the activities, policies and priorities of the Community and in particular, with the objectives of the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund and the European Agricultural Fund for Rural Development (EAFRD).
- Demarcation criteria in relation to the measures supported under priority axes 1, 2 and 3.
- Demarcation criteria must be included in particular with regard to measures supported by the EFF under Articles 26 (3) and (4) (small scale coastal fishing), 27 (socio- economic compensation for the management of the Community fishing fleet), 28 (3) (lifelong learning for aquaculture production), 29 (measures for productive investments in aquaculture), 30 (aqua environmental measures), 35 (eligible measures in processing and marketing), 37 (i) (collective actions aiming to upgrade professional skills or develop new training methods and tools) and 39 (fishing ports, landing sites and shelters).
- In relation to priority axis 2, Article 30 (2) (a) “forms of aquaculture comprising protection and enhancement of the environment”, a demarcation criterion could be the nature of the “environmental commitment” referred to in Article 30 (3) of the EFF combined with the nature of the beneficiary. The EFF may intervene for operations where the beneficiary commits itself to environmental requirements that concern aquaculture ponds, while agri-environmental measures under EAFRD might continue to support environmental commitments related to farmland ponds (and other wet areas) , environmental commitments related to fishponds, environmental

commitments on the surrounding farmland that can affect environmental quality of fish ponds, commitments where the aquaculture activity is not carried out on a commercial basis as defined in the national legislation, and those aqua-environmental commitments are carried out in the framework of agri-environmental measures in mixed holdings where aquaculture is only a minor economic activity of the mixed holding.

- In relation to the measures supported under priority axis 4, demarcation criteria for the local development strategies falling within priority axis 4 with regard to local development strategies implemented by the “local action groups” under the EAFRD.
- In relation to measures supported under priority axis 5, demarcation criteria with regard to the technical assistance measures financed under EAFRD, the ERDF, the ESF and the Cohesion Fund.

3.2. Proportionality

ARTICLE 9 OF EFF

Proportionality

1. Implementation of an operational programme shall be the responsibility of the Member State. That responsibility shall be exercised at the appropriate territorial level in accordance with the institutional arrangements of each Member State and this Regulation.
2. The means employed by the Commission and Member States may vary according to the total amount of public expenditure allocated to the operational programme. Such variation shall apply in particular to the means used for evaluation, control, and participation by the Commission in the monitoring committee provided for in Article 63 and for the annual reports on implementation of operational programmes.

ARTICLE 2 OF THE IR

Specific arrangements for certain operational programmes.

For operational programmes for which the total eligible public expenditure does not exceed EUR 90 million at 2004 prices, specific arrangements are laid down in Articles 28 (2), and Articles 51, 52 and 53.

ARTICLE 28 OF THE IR

Description of the information and publicity measures in the operational programme and in the annual and final reports on implementation

1. For the purpose of Article 20 (1) (g), (v) of the basic Regulation, the operational programme shall include at least the following elements:
 - (a) the content of the information and publicity measures to be taken by the Member State or the managing authority aimed at potential beneficiaries and beneficiaries and their indicative budget;
 - (b) the content of the information and publicity measures to be taken by the Member State or the Managing authority for the public and their indicative budget;
 - (c) the administrative departments or bodies responsible for the implementation of information and publicity measures;
 - (d) an indication of how the information and publicity measures are to be evaluated in terms of visibility and awareness of the operational programme and of the role played by the Community.
2. For the operational programmes referred to in Article 2, paragraphs 1 (c) and (d) of this Article shall not apply.
3. The annual reports and final report on implementation of an operational programme, referred to in Article 67 of the basic Regulation, shall include:
 - (a) information and publicity measures carried out;
 - (b) the arrangements for the information and publicity measures referred to in point (d) of the second paragraph of Article 31 of this Regulation including, where applicable, the electronic address where such data may be found.

The annual report on implementation covering the year 2010 and the final report on implementation referred to in Article 67 of the basic Regulation shall contain a chapter assessing the results of the information and publicity measures in terms of visibility and awareness of the operational programme and of the role played by the Community, as provided for in paragraph 1(d) of this Article.

ARTICLE 51 OF THE IR

General Derogations

1. For the operational programmes referred to in Article 2 of this Regulation, the audit authority shall not be required to present to the Commission an audit strategy as provided for in Article 61 (1) (c) of the basic Regulation.
2. For the operational programmes referred to in Article 2 of this Regulation, where the opinion on the compliance of the system referred to in Article 71 (2) of the basic Regulation is without reservations, or where reservations have been withdrawn following corrective measures, the Commission may conclude:

- (a) that it may rely principally on the opinion referred to in Article 61 (1) (e) (ii) of the basic Regulation with regard to the effective functioning of the systems,
 - (b) that it will carry out its own on the spot audits only if there is evidence to suggest shortcomings in the system affecting expenditure certified to the Commission in a year for which an opinion under Article 61 (1) (e) (ii) of the basic Regulation has been provided which contains no reservation in respect of such shortcomings.
3. Where the Commission reaches the conclusion referred to in paragraph 2 of this Article, it shall inform the Member State concerned accordingly.

Where there is evidence to suggest shortcomings, it may require the Member State concerned to carry out audits in accordance with Article 72 (3) of the basic Regulation or it may carry out its own audits under Article 72 (2) of that Regulation.

ARTICLE 52 OF THE IR

Establishment of bodies and procedures under national law

1. For the operational programmes referred to in Article 2, a Member State may in addition to the general derogations provided for in Article 51, exercise the option of establishing in accordance with national rules the bodies and procedures for carrying out:
- (a) the functions of the managing authority in relation to the verification of the co-financed products and services and expenditure declared under Article 59 (b) of the basic Regulation;
 - (b) the functions of the certifying authority under Article 60 of the basic Regulation;
 - (c) the functions of the audit authority under Article 61 of the basic Regulation.
2. Where a Member State exercises the option referred to in paragraph 1 of this Article, it shall not be required to designate a certifying authority and an audit authority as provided for in Article 58 (1) (b) and (c) of the basic Regulation.
3. Where a Member State exercises the option referred to in paragraph 1 of this Article, the provisions of Article 71 of the basic Regulation shall apply *mutatis mutandis*.

ARTICLE 53 OF THE IR

Specific provisions for bodies and procedures established under national law

1. This Article shall apply to operational programmes in respect of which a Member State has exercised the option provided for in Article 52 (1).
2. The verifications referred to in Article 39 (2) shall be carried out by the national bodies referred to in Article 52 (1).
3. The audits of operations referred to in Article 61 (1) (b) of the basic Regulation shall be carried out in accordance with national procedures. Articles 42 and 43 of this Regulation shall not apply.
4. Article 44 (2) to (5) shall apply *mutatis mutandis* to the preparation of the documents issued by the national bodies referred to in Article 52 (1).
- The annual control report and the annual opinion shall, be drawn up following, as appropriate the models set out in Annex VI.
5. The obligations laid down in Article 46 (2) shall be carried out by the national bodies referred to in Article 52 (1).
- The statement of expenditure shall be drawn up following the models set out in Annexes IX and XI.
6. The information to be included in the description of the management and control systems referred to in Articles 47, 48 and 49 shall, where applicable, include the information concerning the national bodies referred to in Article 52 (1).

Proportionality and further simplification of the operational programmes management, particularly financial management and control, should go hand-in-hand with stricter sanctions and prompt recoveries in case of irregularities or fraud.

The Commission is committed to find an adequate balance between the requirement of a uniform approach, where needed, and whenever appropriate, the need for greater flexibility in the way rules are implemented. To this end, the extent to which common rules are really necessary and whether the Member State, in their capacity of managing, audit or certifying authorities, is the most appropriate level to take action with a view to fulfilling the responsibilities stated in the Community legislation, have been taken into account in the IR.

The translation of these general principles is set out in Article 2 of the IR. It primarily concerns the means employed by the Commission and the Member States in the management and control of the operational programme that could be modulated according to the size of public contribution.

Whenever appropriate the Commission has taken into account the need to adapt the provisions governing the EFF and provide special rules in certain cases for the operational programmes for which the total public eligible expenditure does not exceed EUR 90 million at 2004 prices (hereinafter referred to as small operational programmes)

Taking into consideration the amount of the EFF allocation to each Member State, the maximum and minimum co-financing rates established in the EFF, the following indicative list of Member States concerned by the proportionality arrangements has been established: AT, BE, CY, CZ, FI, HU, IE, LT, MT, NL, SK and SI.

For small operational programmes the following special rules apply:

- **With regard to management and control systems**, these rules are the set out in Articles 28 (2), 51, 52 and 53 of the EFF implementing Regulation.
- **With regard to evaluations**, the information listed in the Working Document on ex-ante evaluation C(2007)2578 could be presented in less detail. Nevertheless, for the evaluations to be considered acceptable they should contain all the information listed in the above working document.

With regard to the specific requirement that when a SEA is carried out ex-ante evaluations should address the requirements of the SEA Directive, the summary statement and the description of the monitoring measures as laid down in Article 9 of that Directive, these elements may also be presented in less detail.

If an environmental assessment according to the SEA Directive is not required, the ex ante evaluation should refer to the environmental parameters of the operational programme, in particular of those environmental sectors likely to be affected, to the integration of the environmental dimension into the operational programme and to the arrangements for ensuring compliance with the Community rules on the environment.

- **With regard to annual reports and final reports on implementation**, the information listed in article 67 (2) of the EFF could be presented in less detail. Nevertheless, in accordance with Article 67 (3) of the EFF, these reports should contain all the information listed in Article 67 (2) of the EFF in order to be judged acceptable.

3.3. Common provisions

3.3.1. Verifiability and controllability of measures and eligibility rules

In accordance with the provisions of Title VII of the EFF, Member States must ensure that all the measures they intend to implement are verifiable and controllable. To this end, Member States must define appropriate control arrangements which give reasonable assurances that eligibility and other commitments are respected.

Member States must also ensure that the level of premiums and compensations are fixed at a level which prevents overcompensation. When defining the level of premiums, MS should seek the optimum cost effectiveness ratio. For cases provided for in Article 30 (4) (b) and (d) of the EFF, the premiums must not either exceed the losses actually incurred by the beneficiary or the increased costs.

The costs for an operation shall be considered eligible only if they are necessary for the implementation of the operation and if they would not have been incurred if the operation was not in place. Normal operating costs are not eligible for support under the EFF unless provided for explicitly under the EFF or the IR.

When support is granted for investments, beneficiaries may, in accordance with the national rules, receive an advance payment from the competent body designated to make payments to the beneficiaries. However, it must be underlined that, in accordance with Article 78 of EFF, only expenditure paid by the beneficiaries and in the case of operations not implying expenditure by the beneficiaries, only the public aid paid to the beneficiaries, after the date of the submission of the OP to the Commission or 1 January 2007, whichever is the earlier, can be included in the statement of expenditure and be eligible for a contribution from EFF.

CHAPTER II

Priority axes Summary of the main elements

This chapter provides clarifications on the implementation of different measures and on the terminology used. The main elements that are treated here are:

- with regard to priority axis 1 (measures for the adaptation of the Community fishing fleet): the content of the national fishing effort adjustment plans and the national decommissioning schemes, recommendations on the control of the temporary cessation of fishing activities and examples of objective criteria for the calculation of the relevant premiums, clarifications on the investments on board concerning the condition for reduction of engine power as well as clarifications on the measures provided for small scale coastal fishing;
- with regard to priority axis 2 (measures for productive investments in aquaculture): the definitions of several terms, examples of eligible measures and costs and the scope of support provided for inland fishing;
- with regard to priority axis 3 (measures of common interest): clarifications on the eligible beneficiaries, definitions of several terms, indicative or exhaustive lists of eligible costs under the relevant measures, the purpose of pilot projects and the field of application of Article 42 (modification for the reassignment of fishing vessels) of the EFF;
- with regard to priority axis 4 (sustainable development of fisheries areas): clarifications on the size of the territories covered by one group, the structure of the groups, the content of the local development strategy and the eligible costs for the acquisition of the skills and the facilitation of the preparation and implementation of the local development strategy and
- with regard to priority axis 5 (technical assistance): clarifications on the community network for the networking of groups, scope of support for the improvement of administrative capacity.

4. PRIORITY AXIS 1: MEASURES FOR THE ADAPTATION OF THE COMMUNITY FISHING FLEET

4.1. Scope and Content of fishing effort adjustment plans (Article 21 and 22 of the EFF, Part A of Annex I of IR)

ARTICLE 21

Scope

Support from the EFF targeting the adaptation of the Community fishing fleet shall concern:

(a) public aid for owners of fishing vessels and fishers affected by fishing effort adjustment plans where these form part of the following:

- recovery plans as referred to in Article 5 of Regulation (EC) No 2371/2002;
- emergency measures as referred to in Articles 7 and 8 of Regulation (EC) No 2371/2002;
- the non-renewal of a fisheries agreement between the Community and a third country or a substantial cut in fishing opportunities under an international agreement or other arrangement;
- management plans as referred to in Article 6 of Regulation (EC) No 2371/2002;
- measures as referred to in Articles 9 and 10 of Regulation (EC) No 2371/2002;
- national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002 on the adjustment of fishing capacity of the Community fishing fleet.

ARTICLE 22 OF EFF

Content of fishing effort adjustment plans

- Each Member State shall lay down in its national strategic plan its policy for adjusting fishing effort, with a view to fulfil the obligations laid down in Article 11 (1) of Regulation (EC) No 2371/2002. It shall accord priority to the financing of the operations referred to in Article 21 (a) (i).
- Fishing effort adjustment plans may include all the relevant measures provided for in this Chapter.
- In the cases provided for in Article 21 (a) (i), (ii) and (iv), the fishing effort adjustment plans shall be adopted by the Member States within six months following the date of the Council or Commission decision.

In the cases provided for in Article 21 (a) (iii), the Member States shall adopt the fishing effort adjustment plans for the fishing vessels and fishers affected, within six months following the notification by the Commission.

4. Each year the Member States shall communicate in the annual and final reports on implementation referred to in Article 67 the results achieved in implementing their fishing effort adjustment plans. The results shall be measured using the relevant indicators defined in the operational programmes.

Article 21 of the EFF defines the scope of support under the EFF targeting the adaptation of the Community fishing fleet. This scope covers public aid for owners of fishing vessels and fishers affected by fishing effort adjustment plans when these plans form part of the cases listed under this article.

Article 22 of the EFF defines the content of the fishing effort adjustment plans.

The fishing effort adjustment plans constitute the main instrument to implement reductions in fishing effort, as defined in Article 3 (h) of Council Regulation 2371/2002. They should contain the following elements:

- (a) description of the context: fisheries (fleets, areas and fish stocks) concerned. Where relevant, biological status of the resources and current levels of capacity and fishing effort;
- (b) legal framework: reference to the legal texts giving support or justification to the plan relating to either conservation measures as provided for in Chapter II and III of Council Regulation (EC) 2371/2002 or the non-renewal of fisheries agreement;
- (c) expected results in terms of fishing effort levels and where relevant, contribution to improvement of the stocks or the profitability of the fleet concerned;
- (d) measures contemplated in the plan, spelling out which ones are envisaged for funding and which ones are not and
- (e) monitoring schemes, including indicators, and revision procedures.

Member States may adopt more than one fishing effort adjustment plan(s).

Member States should explain in their operational programme how they intend to adopt and implement the fishing effort adjustment plan(s). They must also explain in their operational programme how they intend to prioritise financing of recovery plans in accordance with Article 22 (1) of the EFF and Part A of Annex I (content of the operational programme) of the IR.

4.2. Public aid for permanent cessation of fishing activities (Article 23 of the EFF and Article 4 of IR)

4.2.1. National decommissioning schemes

ARTICLE 23 (2) OF THE EFF

Public aid for permanent cessation of fishing activities

2. The permanent cessation of fishing activities of fishing vessels shall be programmed in the form of national decommissioning schemes which shall not exceed two years from the date of their entry into force.

The national decommissioning schemes should include the following elements:

- (1) an objective in terms of capacity reduction, broken down into the main parts of the fleet concerned,
- (2) an indicative budget for the period of the national decommissioning scheme,
- (3) how the Member State is going to take into account, on the basis of the catch records, the real fishing capacity of the vessels subject to permanent cessation,
- (4) provisions guaranteeing that vessels subject to decommissioning have carried out sufficient previous fishing activities in the last two years,
- (5) a description of how Member States intend to implement the national decommissioning schemes.

The following should also be taken into account:

- (a) a decommissioning scheme may be renewed or adapted in conformity with national rules and the Community guidelines for the examination of state aid to fisheries and aquaculture,
- (b) a single fishing effort adjustment plan could include one or more decommissioning schemes covering different periods of time for the same fleet,
- (c) a fishing effort adjustment plan could include one or more decommissioning schemes for different parts of the fleet,

- (d) before setting up a new decommissioning scheme in a fishing effort adjustment plan, an assessment of the previous one should be completed,
- (e) in accordance with Article 23 of the EFF, a decommissioning scheme can only relate to permanent cessation of fishing activities.

4.2.2. Level of premiums for permanent cessation of fishing activities

ARTICLE 23(3) OF THE EFF

3. To facilitate the implementation of fishing effort adjustment plans, the Member States may make public calls for tenders or calls for proposals.

The Member States may also set the level of public aid taking into account the best cost/effectiveness ratio on the basis of objective criteria, such as:

- (a) the price of the fishing vessel recorded on the national market or its insurance value;
- (b) the turnover of the fishing vessel;
- (c) the age of the fishing vessel and its tonnage expressed in GT or engine power expressed in kW.

ARTICLE 4(2) OF IR

Public aid for permanent cessation of activities

2. The operational programme shall specify the methods for calculating the premiums granted under Article 23 of the basic Regulation.

Member States may set the level of the premium for permanent cessation of fishing activities using either the scales of the Annex IV of Regulation 2792/1999 or similar scales under the condition that they demonstrate that the level of the premium represents the best cost/effectiveness ratio for them.

In accordance with Article 4 (2) of the IR the operational programme shall specify the method for calculating the premiums granted under Article 23 of the EFF. The term “method” includes both the criteria and the formula for calculating the above premiums.

4.3. Public aid for temporary cessation of fishing activities (Article 24 of the EFF and Article 5 of IR)

4.3.1. Temporary cessation of fishing activities

ARTICLE 24 OF EFF

Public aid for temporary cessation of fishing activities

1. The EFF may contribute to the financing of aid measures for the temporary cessation of fishing activities for fishers and the owners of fishing vessels for a maximum duration, during the period 2007 to 2013, of:

- i) 12 months, which may be extended by up to 12 months, in the context of the fishing effort adjustment plans referred to in Article 21 (a) (i);
- ii) three months in the event of Member States emergency measures as referred to in Article 8 of Regulation (EC) No 2371/2002, in the context of the fishing effort adjustment plans referred to in Article 21 (a) (ii);
- iii) six months in the event of Commission emergency measures as referred to in Article 7 of Regulation (EC) No 2371/2002, in the context of the fishing effort adjustment plans referred to in Article 21 (a) (ii);
- iv) six months, which may be extended by up to six months, in the context of the fishing effort adjustment plans referred to in Article 21 (a) (iii);
- v) eight months, in the context of the fishing effort adjustment plans referred to in Article 21 (a) (iv), and of management plans adopted at national level within the framework of Community conservation measures, and where such plans provide for gradual reductions of fishing effort;
- vi) three months, in the context of rescue and restructuring plans referred to in Article 21 (f) during the period of replacement of engines;
- vii) six months, in the event of a natural disaster, closures of fisheries decided by Member States for reasons of public health or other exceptional occurrence which is not the result of resource conservation measures.

2. The financial contribution from the EFF to the measures referred to in points (i) to (vi) of paragraph 1 per Member State for the entire period 2007 to 2013 may not exceed the higher of the following two thresholds: EUR 1 million or 6 % of the Community financial assistance allocated to the sector in the Member State concerned.

However, these thresholds may be exceeded in accordance with the procedure referred to in Article 101 (3).

3. A recurrent seasonal suspension of fishing shall not be taken into account for the grant of allowances or payments under this Regulation.

Article 24 of the EFF defines the conditions for the financing of aid measures for the temporary cessation of fishing activities for fishers and owners of fishing vessels.

For such measures to be financed, the fishing activities carried out by the vessel concerned and its fishers must be temporarily suspended.

The proof of the effective cessation of fishing activities must be provided to the competent national authority by the vessel-owner or the fishers concerned.

The competent national authority must guarantee and be able to provide evidence that the fishing vessel concerned has stopped all fishing activities during the period concerned by the temporary cessation.

For inspection and control purposes, the most effective way to guarantee that the fishing vessel concerned has stopped all fishing activities during the period concerned is to suspend the fishing license according to Commission Regulation (EC) 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein (4).

In conformity with the provisions of Article 3 of EFF Regulation Member States could recognise “crewmembers” as fishers.

4.3.2. Level of premiums for the temporary cessation of fishing activities

ARTICLE 5 OF IR

Public aid for the temporary cessation of fishing activities

1. The operational programme shall specify the methods for calculating the premiums granted under Article 24 of the basic Regulation.
2. For the purposes of Article 24 (2) of the basic Regulation, “Community financial assistance allocated to the sector” shall mean the EFF contribution to the operational programme of the Member State concerned.

The operational programme shall specify the methods for calculating the premiums granted under Article 24 of the EFF. Member State should set the level of the premium for temporary cessation of fishing activities taking into account objective criteria, such as:

- (a) the fixed cost incurred by the vessel owners when the vessel is tied-up in the port (port charges, insurance cost, maintenance costs),
- (b) whenever appropriate, the financial costs related to loans covering the period of the temporary cessation,
- (c) part of the loss of revenue incurred by the fishers and the vessel owners,
- (d) part of the basic salary currently received by the fishers.

4.4. Investments on board fishing vessels and selectivity [Articles 25 and 26 (2) of the EFF and Article 6 of IR]

4.4.1. Support for the replacement of engine. Reduction of engine power

ARTICLE 25 (3), (4) AND (5) OF THE EFF

3. The EFF may contribute to one replacement of the engine per vessel, provided that:

- (a) for vessels as defined in Article 26 (1) the new engine has the same power as the old one or less;
- (b) for vessels up to 24 metres in overall length other than those referred to in point (a), the new engine has at least 20% less power than the old one;
- (c) for trawlers of more than 24 metres in overall length, the new engine has at least 20% less power than the old one, the vessel is subject to a rescue and restructuring plan as referred to in Article 21 (f) and changes to a less fuel-intensive fishing method.

(4) OJ L 203, 4.08.2005, p.3.

4. The reduction of engine power referred to in paragraph 3(b) and (c) may be achieved by a group of vessels for each category of vessels referred to in points (b) and (c) of that paragraph.
5. The conditions for the implementation of the operations provided for in paragraph 4 may be set out in accordance with the procedure referred to in Article 101 (3).

ARTICLE 6 (3) AND 4 OF IR

Investments on board fishing vessels and selectivity

3. The 20% reduction in engine power may be achieved by a group of vessels as provided for in Article 25(4) of the basic Regulation, subject to all the following conditions:
 - (a) all the vessels belonging to the same group are individually identified;
 - (b) all the vessels belonging to the same group operate in the same management areas;
 - (c) all the vessels belonging to the same group use the same main fishing gear as listed in Appendix III (section c) of Commission Regulation (EC) No 1639/2001 and;
 - (d) all the vessels belonging to the same group do not exceed fifty in the number.
4. The exits from the fishing fleet of fishing capacity with public aid shall not be taken into account in the calculation of the 20% reduction in power that may be achieved by a group of vessels as provided for in Article 25 (4) of the basic Regulation.

For vessels referred to in Article 24 (3) (b) (i.e. vessels up to 24 meters other than small scale vessels) and 24 (3) (c) of the EFF (i.e. for trawlers of more than 24 meters subject to a rescue and restructuring plan), support under the EFF is granted for the replacement of the engine under the condition that the new engine has at least 20% less power than the old one. This reduction of power shall be definitively lost and the Commission will reduce the reference levels for the fishing fleet of the Member State concerned accordingly.

For the calculation of the 20% reduction in engine power achieved by group of vessels, the following rule shall apply:

Final power ≤ Initial power - 20% Power reduction

Where,

Initial power = power of all the vessels belonging to the group before any replacement has taken place,

20% Power reduction = 20% of the power of the **engines being replaced** with public aid,

Final power = power of all the vessels belonging to the group after the engines have been replaced.

In accordance with Article 25 (3) (c) of the EFF, Member States may finance investment on board for trawlers of more than 24 meters, in the framework of a Rescue and Restructuring Plan in conformity with Community guidelines on state aid for rescue and restructuring firms in difficulty⁽⁵⁾.

The “Public aid in the framework of Rescue and Restructuring Plans” referred to in Article 21 (f) of the EFF covers the public aid (national and EU) granted under the EFF in addition to the national aid granted in the framework of Rescue and Restructuring schemes.

4.5. Small scale coastal fishing [Articles 26 and 37 (l) of the EFF and Article 7 of IR]

4.5.1. Eligible measures for small scale coastal fishing

ARTICLE 26 OF EFF

Small-scale coastal fishing

1. For the purpose of this Article, “small-scale coastal fishing” means fishing carried out by fishing vessels of an overall length of less than 12 meters and not using towed gear as listed in Table 3 in Annex I of Commission Regulation (EC) No 26/2004 of 30 December 2003 regarding the fishing vessels register of the Community [12].
2. Where the EFF provides financing for measures under Article 25 in favour of small-scale coastal fishing the private financial participation rate shown in Group 2 of the Table in Annex II may be reduced by 20 percentage points.
3. The EFF may contribute to the financing of socio-economic measures provided for under Article 27 in favour of small-scale coastal fishing.
4. The EFF may contribute to the payment of premiums for fishers and owners of fishing vessels involved in small-scale coastal fishing in order to:
 - (a) improve management and control of access conditions to certain fishing areas;
 - (b) promote the organisation of the production, processing and marketing chain of fisheries products;

⁽⁵⁾ OJ C 244, 1.10.2004, p.2.

- (c) encourage voluntary steps to reduce fishing effort for the conservation of resources;
- (d) encourage the use of technological innovations (more selective fishing techniques which go beyond existing regulatory obligations under Community law or innovations to protect the gear and catches from predators) that do not increase fishing effort;
- (e) improve professional skills and safety training.

All the measures provided for the fleet under priority axis 1 of the EFF are also available for small scale vessels (i.e. permanent and temporary cessation of fishing activities, investments on selectivity and socioeconomic compensation for the management of the community fishing fleet, etc.). However, the intensity of aid for investments on board vessels and selectivity is more favourable for small scale vessels in comparison to the rest of the fleet, as provided for in Article 26(2) of the EFF. The conditions for aid for the replacement of engine are also more favourable for small scale vessels.

Moreover, Articles 26 (4) and 37 (I) of the EFF provide for additional support to small scale coastal fishing (see point 4.5.2). This support is not provided for the rest of the fleet.

4.5.2. Support under Article 26 (4) of the EFF and Support under Article 37 (I) of the EFF

ARTICLE 26 (4) OF EFF

Small-scale coastal fishing

4. The EFF may contribute to the payment of premiums for fishers and owners of fishing vessels involved in small-scale coastal fishing in order to:

- (a) improve management and control of access conditions to certain fishing areas;
- (b) promote the organisation of the production, processing and marketing chain of fisheries products;
- (c) encourage voluntary steps to reduce fishing effort for the conservation of resources;
- (d) encourage the use of technological innovations (more selective fishing techniques which go beyond existing regulatory obligations under Community law or innovations to protect the gear and catches from predators) that do not increase fishing effort;
- (e) improve professional skills and safety training.

ARTICLE 37 (I) OF THE EFF

Collective actions

The EFF may support measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisations recognised by the Member State and which aim, in particular, to:

- I) contribute to the objectives laid down for small-scale coastal fishing in Article 26 (4).

The EFF provides:

- under Article 26 (4) of the EFF, support for individual premiums for fishers and owners of fishing vessels involved in small scale coastal fishing and
- under Article 37 (I) of the EFF, support for the measures that contribute to the objectives of small scale coastal fishing in Article 26(4).

The following should be taken into account when designing these measures:

- Activities under point (d) and (e) of Article 26 of the EFF can be implemented individually.
- Support provided for under Article 26 (4) (a), (b) and (c) of the EFF concerns measures whose objectives can be attained only if implemented by individual operators acting collectively or by organisations acting on behalf of them or by other organisations recognised by the Member States as more appropriate for the attainment of these objectives.
- For example the objective of “improving management and control of access conditions to certain fishing areas” cannot be attained if the measure is undertaken only by one or even several owners of fishing vessels. Such a measure would need the active support of a sufficient number of owners of fishing vessels in the fishing area concerned. The support, however, provided for under Article 26 (4) of the EFF covers only the premiums that will be granted to fishers and owners of fishing vessels who participate to the operation concerned. In this respect, even if the operation is undertaken by an organisation acting on behalf of them, support under Article 26 (4) of the EFF shall cover the premium granted to the members of this organisation participating to the operation concerned. The support for any expenditure incurred by the relevant organisation for the operation concerned it may be provided under Article 37 (I) of the EFF.
- Support provided for under Article 37 (I) of the EFF may be granted for measures that contribute to the same objectives as laid down in Article 26 (4) of the EFF. However the eligible expenditure can only be that incurred by the organisation undertaking the operation and not that incurred by the fishers and owners of the fishing vessels involved in the operation.

5. PRIORITY AXIS 2: AQUACULTURE, INLAND FISHING, PROCESSING AND MARKETING OF FISHERY AND AQUACULTURE PRODUCTS

5.1. Scope of the support targeting aquaculture production

ARTICLE 28 OF THE EFF

Scope of intervention in aquaculture production

1. Support for targeting aquaculture production may be granted for the following:

- (a) measures for productive investments in aquaculture;
- (b) aqua-environmental measures;
- (c) public health measures;
- (d) animal health measures.

2. Transfer of ownership of a business shall not be eligible for Community aid.

3. Support under paragraph 1 may contribute to lifelong learning.

4. With regard to operations provided for under Articles 29, 31 and 32 when realised for the purpose of guaranteeing compliance with standards under Community law on the environment, human or animal health, hygiene or animal welfare, aid may be granted until the date on which the standards become mandatory for the enterprises.

5. Member States shall ensure that adequate mechanisms exist to avoid counterproductive effects, particularly the risk of creating surplus production capacity or adversely affecting the policy for conservation of fishing resources.

6. For operations provided for in Annex II of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [13], aid shall be granted only when the information laid down in Annex IV of that Directive has been provided.

ARTICLE 9 OF IR

Scope of intervention in aquaculture production

Support under Article 28 (6) of the basic Regulation may cover the costs of assessments provided for in Directive 85/337/EEC⁽⁶⁾.

ARTICLE 26 OF IR

Common provisions for priority axes 1 to 4

The following expenditure shall not be eligible for a contribution from the EFF:

- (a) for the purposes of the Articles 28 (3) and 34 (3), point (i) of the first paragraph of Article 37 and Article 44 (2) of the basic Regulation, the purchase of infrastructure used for lifelong learning for an amount exceeding 10% of total eligible expenditure of the operation concerned.
- (b) the part of the cost of vehicles not directly linked to the operation concerned.

The measures targeting aquaculture production eligible under the EFF are the measures for productive investments in aquaculture as provided for under Article 29 of the EFF, the aqua -environmental measures as provided for under Article 30 of the EFF, the public health measures as provided for under Article 31 of the EFF, and the animal health measures as provided for under Article 32 of the EFF.

The aquatic organisms produced may be destined for direct human consumption as food or for other purposes such as feed for farmed fish (e.g. brine shrimp, Artemia), ornamental fish, aquatic animals destined to restocking, or live bait (marine worms).

Support provided for under Articles 29, 30, 31 and 32 of the EFF may also be granted for lifelong learning, including material and non material investments. In this context, when ponds and other aquaculture facilities are purchased or constructed for training purposes only, support may be granted for an amount not exceeding 10% of the total eligible expenditure of the operation concerned in accordance with article 26 (a) of the IR.

5.1.1. Measures for productive investments in aquaculture (Articles 28 and 29 of the EFF, Articles 9, 10 and 26 of IR)

5.1.1.1. Diversification towards new species and production of species for good market prospects

(6) OJ L 175, 5.7.1985, p.40.

ARTICLE 29 (1) (a) OF THE EFF**Measures for productive investments in aquaculture**

1. The EFF may support investments in the construction, extension, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment. Investments shall contribute to one or more of the following objectives:
- (a) diversification towards new species and production of species with good market prospects.

ARTICLE 10 (1) (a) (b) OF IR**Measures for productive investments in aquaculture**

1. For the purpose of Article 29 (1) (a), (b) and (c) of the basic Regulation, the following definitions shall apply:
- (a) “new species”: species for which aquaculture production in the Member State is low or non-existent and for which there are good market prospects;
- (b) “species with good market prospects”: species for which the forecast medium-term trend shows that market demand is likely to exceed supply.

The economic viability of investments contributing to the diversification towards new species and production of species with good market prospects must be ensured by a prospective market analysis on aquaculture species conducted either by the Member State or the beneficiaries. When the analysis is conducted by the Member State it may be financed by the technical assistance referred to in Article 46 (2) of the EFF.

The results of the above analysis must be made available to the Managing Authority, who must verify the compliance with Article 28 (5) of the EFF. For investments contributing to the diversification towards new species, Member States must ensure that the rearing techniques for these new species are technically well established and tested.

5.1.1.2. *Aquaculture methods substantially reducing the negative impact on the environment*

ARTICLE 29 (1) (b) OF THE EFF**Measures for productive investments in aquaculture**

1. The EFF may support investments in the construction, extension, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment. Investments shall contribute to one or more of the following objectives:
- (b) implementation of aquaculture methods substantially reducing negative impact or enhancing positive effects on the environment when compared with normal practice in the aquaculture sector.

ARTICLE 10 (1) (c) OF IR**Measures for productive investments in aquaculture**

1. For the purpose of Article 29 (1) (a), (b) and (c) of the basic Regulation, the following definitions shall apply:
- (c) “normal practice in the aquaculture sector”: aquaculture activities carried out in compliance with binding legislation, whether it relates to health, veterinary or environmental matters.

Aquaculture methods considered to substantially reduce the negative impact on the environment are:

- (a) Off-shore culture, i.e. marine aquaculture located in unprotected zones of the sea.
In the case of finfish “Off-shore (or ‘high-seas’) fish cages” refers to the execution of farming activities in sites that are subject to strong waves. This increased exposure is linked to the distance from the shore or lack of shelter from topographical features. So, in the definition of “offshore (or ‘high seas’) cages” it is more the degree of exposure that is taken into consideration, than the distance from the coast. Moreover, this increased exposure is not linked to the juridical status of the area involved. In the case of marine mollusc farming, offshore rafts and long-lines may have positive effects in the reduction of pollution.
- (b) Water recirculation culture.
On-land closed or partially closed systems employed in aquaculture production where the effluent water from the system is treated to enable its further use. These are highly technological fish production systems with little or no impact on the environment because they are able to filter and re-circulate waste products (thus limiting emissions), eliminate the risk of escapees and in general solve the problems of space and water availability.

5.1.1.3. *Traditional aquaculture activities important for preserving and developing both the economic and social fabric on the environment*

ARTICLE 29 (1) (c) OF THE EFF

Measures for productive investments in aquaculture

1. The EFF may support investments in the construction, extension, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment. Investments shall contribute to one or more of the following objectives:
- (c) support for traditional aquaculture activities important for preserving and developing both the economic and social fabric and the environment.

ARTICLE 10 (1) (d) OF IR

Measures for productive investments in aquaculture

1. For the purpose of Article 29 (1) (a), (b) and (c) of the basic Regulation, the following definitions shall apply:
- (d) “traditional aquaculture”: time-honoured practices which are linked to the social and cultural heritage of a given area.

Examples of activities which are considered to be “traditional aquaculture”:

- oyster farming on the French Atlantic coast, as well as mussel farming in many European coastal areas,
- the lagoon extensive or semi-intensive farming of seabass and seabream as they exist in areas within the north of Italy and southern Spain etc. The intensive net cage farming of these species is not considered traditional aquaculture,
- carp extensive pond farming in some areas of Central Europe.

5.1.1.4. *Eligible investments under measures for productive investments in aquaculture*

ARTICLE 29 (1) OF EFF

Measures for productive investments in aquaculture

1. The EFF may support investments in the construction, extension, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment. Investments shall contribute to one or more of the following objectives.

ARTICLE 10 (3) OF IR

3. Without prejudice to Article 35(6) of the basic Regulation, support under Article 29 of that Regulation may cover investments related to on-farm retail trade where such trade forms an integral part of the aquaculture farm.

Support provided for in Articles 29 (1) (a) (b) (c) (d) and (e) of the EFF may cover:

- Construction costs, extension costs, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment.

However, the purchase of broodstock and juveniles of the species to be farmed is considered operating cost and therefore it is not eligible for support. The transfer of ownership is also not eligible for support under the EFF. (see point 5.1.)

- Investments related to on farm retail trade. “On farm retail trade” is a shop located inside a fish farm, where the production of the fish farm is sold directly by the fish farmer to consumers.
- Lifelong learning, including material and non material investments (see also point 5.1).

5.1.1.5. *Eligible enterprises for measures for productive investments in aquaculture*

ARTICLE 29 (2) OF THE EFF

2. Investment aid shall be limited to:

- (a) micro, small and medium-sized enterprises, and
- (b) enterprises that are not covered by the definition in Article 3 (f), with less than 750 employees or with a turnover of less than EUR 200 million.

3. By way of derogation from paragraph 2, in the outermost regions and the outlying Greek islands, aid may be granted to all enterprises.

For measures eligible under productive investments in aquaculture, support is limited to the following categories of enterprises:

- category (a) micro, small and medium enterprises as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.
- according to Article 2 (1) of the Annex of this Recommendation, the category of micro, small and medium enterprises are the enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million and
- category b) enterprises that employ equal to or more than 250 employees and which have an annual turnover exceeding EUR 50 million and/or an annual balance sheet total exceeding EUR 43 million but employ less than 750 employees or have a turnover of less than EUR 200 million.

In accordance with Article 29 (2) (a) and (b) of the EFF, in order to assess whether an enterprise is eligible for support under the EFF with regard to productive investments in aquaculture, a Member State will have to determine if this enterprise falls within 29 (2) (a) or (b) of the EFF. In order to determine the latter, Member States must use the tools provided for under Commission Recommendation 2003/361/EC of 6 May 2003 in all cases. Consequently, a firm that does not fulfil the conditions to be considered as micro, small or medium sized enterprise, and thus is not eligible under Article 29 (2) (a) of the EFF, has still to use the tools provided for under Commission Recommendation 2003/361/EC of 6 May 2003 (e.g. add a part or total of its partner and linked enterprises financial and headcount data to its own figures etc) before it can proceed in verifying its Status and its eligibility under Article 29 (2) (b) of the EFF.

5.1.1.6. *Priority to micro and small sized enterprises*

ARTICLE 29 (4) OF THE EFF

4. Member States shall ensure that priority is given to micro and small-sized enterprises.

ARTICLE 10 (5) OF IR

5. For the measures provided for in Article 29 of the basic Regulation, Member States shall describe in their operational programme how aid will be prioritised to micro and small enterprises.

For measures for productive investments in aquaculture, Member States must ensure that priority support is given to micro and small sized enterprises through clear mechanisms such as:

- setting aside more than 50% of the support available for productive investments in aquaculture to micro and small sized enterprises or
- using the size of enterprise as a priority point when ranking/selecting beneficiaries for funding.

Member States must describe the mechanisms used to ensure priority is given to micro and small sized enterprises in their operational programmes.

5.1.2. *Aqua – environmental measures [Articles 28 (1) (b), 28 (2) to (6) and 30 of the EFF, Article 9 and 11 of IR]*

5.1.2.1. *Scope of Aqua Environmental measures*

ARTICLE 30 (1), (3) AND (4) OF THE EFF

Aqua-environmental measures

1. The EFF may support granting compensation for the use of aquaculture production methods helping to protect and improve the environment and to conserve nature.
3. In order to receive compensation under this Article, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. For the support provided for under paragraph 2 (a), the environmental benefits of such commitments must be demonstrated by a prior assessment conducted by competent bodies designated by the Member State.
4. Member States shall calculate compensation on the basis of one or more of the following criteria:
 - (a) the loss of revenue incurred;
 - (b) the additional cost which may result from the application of aqua-environmental methods;
 - (c) the need to provide financial support for carrying out the project;
 - (d) the specific disadvantages or investment costs for units located inside or near NATURA 2000 areas.

ARTICLE 11 (5) OF IR

Aqua-environmental measures

5. For the purpose of Article 30 (3) of the basic Regulation, “normal good aquaculture practice” shall mean compliance with binding legislation, whether it relates to health, veterinary or environmental matters, and the use of production protocols that prevent the wastage of resources and avoidable pollution.

Support for aqua environmental measures under the EFF may be granted only for the use of aquaculture production methods in aquaculture farms and is not intended for the improvement of environment outside these farms.

One enterprise may apply for more than one form of support provided for under Article 30 (2) of the EFF.

Support under Article 30 of the EFF must be allocated in the form of compensation and must be calculated on the basis of the criteria provided for under Article 30 (4) of the EFF. In particular, support under Article 30 (2) (a), c) and (d) of the EFF must be allocated in the form on one off compensation in accordance with Article 30 (5) of the EFF. “**One-off compensation**” means that the compensation is only calculated once at the beginning of the operation for the whole period of the implementation of the operation. However the compensation may be paid once or in instalments, in particular in the case of commitments covering several years. The rhythm of instalments is decided by the managing authority.

In order to receive compensation under Article 30 of the EFF, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. An “**environmental requirement which go beyond the mere application of normal good aquaculture practice**” is understood as the use of aquaculture methods that have a positive impact on the environment going beyond the application of normal good aquaculture practice as defined in Article 11 (5) of the IR. For instance, such aquaculture methods are aquaculture methods which reduce pollutions which are exogenous to the aquaculture systems and/or, provide shelter and food for protected bird species and/or contribute to the maintenance of the landscape and traditional features of rural areas. The mere reduction or control of a negative environmental impact is considered normal good aquaculture practice within the meaning of Article 11 (5) of the IR and therefore does not comply with the conditions set out in Article 30 (3) of the EFF.

5.1.2.2. Forms of aquaculture comprising protection and enhancement of the environment

ARTICLE 30 (2) (a), (3) (4) AND (5) OF THE EFF

Aqua-environmental measures

2. The purpose of the support is to promote:

(a) forms of aquaculture comprising protection and enhancement of the environment, natural resources, genetic diversity, and management of the landscape and traditional features of aquaculture zones;

3. In order to receive compensation under this Article, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. For the support provided for under paragraph 2 (a), the environmental benefits of such commitments must be demonstrated by a prior assessment conducted by competent bodies designated by the Member State.

4. Member States shall calculate compensation on the basis of one or more of the following criteria:

(a) the loss of revenue incurred;

(b) the additional cost which may result from the application of aqua-environmental methods;

(c) the need to provide financial support for carrying out the project;

(d) the specific disadvantages or investment costs for units located inside or near NATURA 2000 areas.

5. A one-off compensation shall be allocated:

(a) under paragraph 2 (a), on the basis of a maximum amount per hectare of the area of the enterprise to which aqua-environmental commitments apply.

“**Forms of aquaculture comprising protection and enhancement of the environment**” refers in particular to certain extensive or semi-extensive production methods like:

- the multi-species farming systems applied in coastal lagoons along the Mediterranean coasts and in Portugal. These aquaculture practices may be an integral part of the brackish-water coastal ecosystem, removing nutrients and limiting primary production to a sustainable level, thus avoiding that the lagoons become naturally eutrophic and collapse. Also, works are carried out (digging channels, etc.) in order to maintain a good water flux in the

lagoon and avoid it filling up with mud. Such fish culture systems are compatible with maintaining wetlands at a favourable conservation status, including for waterfowl resting and nesting.

- the same applies to Central Europe inland pond systems, which may in addition have a buffer role between high nutrient inputs from agricultural land runoff and the receiving river systems. So, extensive carp culture can play an important ecological role in areas where agricultural production is dominating.

In extensive and semi-extensive systems labour efficiency and productivity are low compared with the standard of intensive fish farming, because of the limited speed of the natural production cycles.

Compensations provided for under Article 30 (2) (a) of the EFF should be calculated taking into account economic criteria based on the average income of the local aquaculture farms. Compensations may cover, in particular, especially high or frequent maintenance costs of the farming structures, losses due to the predation by protected wild species protected under Council Directives 79/409/EEC ⁽⁷⁾ and 92/43/EEC ⁽⁸⁾, lack of revenue due to the low farming densities, etc.

It is preferable to reserve the compensations for losses due to the predation by protected wild species for large ponds or lagoons, like those usually farmed extensively. These cannot be protected by nets or other equipment protecting the farms from wild predators that are eligible under Article 29 of the EFF.

A loss of revenue due to the predation by protected wild species may be compensated only under Articles 30 (2) (a) or 30 (2) (d) of the EFF.

5.1.2.3. *Participation in the Community eco-management and audit scheme*

ARTICLE 30 (2) (b) OF THE EFF

2. The purpose of the support is to promote:

- (b) participation in the Community eco-management and audit scheme created by Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) [14].

ARTICLE 11 (2) OF IR

Aqua-environmental measures

2. Support provided for in Article 30 (2) (b) of the basic Regulation, shall concern only costs for participation in a Community an eco-management and audit scheme (EMAS) that are prior to the approval of the scheme for an individual enterprise.

Support provided for participation in an EMAS may cover the consultancy costs for the initial elaboration of the scheme, the environmental review by an independent consultant, the verification by the independent verifier and the registration fees.

Material investments related to the implementation of an EMAS may be supported under Article 29 of the EFF.

5.1.2.4. *Organic aquaculture*

ARTICLE 30 (2) (c), 3, 4 AND (5) (b) OF THE EFF.

Aqua-environmental measures

2. The purpose of the support is to promote:

- (c) organic aquaculture within the meaning of Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [15];
- 3. In order to receive compensation under this Article, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. For the support provided for under paragraph 2 (a), the environmental benefits of such commitments must be demonstrated by a prior assessment conducted by competent bodies designated by the Member State.
- 4. Member States shall calculate compensation on the basis of one or more of the following criteria:
 - (a) the loss of revenue incurred;
 - (b) the additional cost which may result from the application of aqua-environmental methods;
 - (c) the need to provide financial support for carrying out the project;

(7) OJ L 103, 25.4.1979,p.1
 (8) OJ L 206, 22.7.1992,p.7

(d) the specific disadvantages or investment costs for units located inside or near NATURA 2000 areas.

5. A one-off compensation shall be allocated:

(b) under paragraph 2 (c), for a maximum of two years during the period of the conversion of the enterprise to organic production.

ARTICLE 11 (3) OF IR

3. For the purpose of Article 30(2)(c) of the basic Regulation, “organic aquaculture” shall mean the aquaculture activities producing farmed aquatic species in accordance with the organic production method within the meaning of Article 2 of Council Regulation (EEC) No 2092/91 and which bear indications to that effect. Until the adoption of detailed production rules by the Community, including rules on conversion, applicable to organic aquaculture, national rules or, in the absence thereof, private standards, applicable to organic aquaculture, accepted or recognised by the Member States, shall apply.

The present regulatory framework on organic production is set out by Council Regulation (EC) No 2092/91⁽⁹⁾ which is currently under revision. This Regulation does not include yet rules on production and labelling of organic aquaculture, or a definition of organic aquaculture. However Member States may grant compensation under the EFF to organic farming recognised by national rules or recognised/accepted private standards.

As provided for under Article 1 (2) of Regulation 2092/91, in the absence of common rules, the Member States can adopt national rules or recognise/accept private standards. Consequently, national rules may be adopted and provide for a definition of organic aquaculture as long as no Community standards are established.

In accordance with Article 30 (5) (b) of the EFF, transitional support may be granted to switch from conventional to organic production. This support may be granted until the conversion to organic aquaculture is attained and in any case for no more than two years. If the conversion period is shorter than two years, compensation shall only be given for the duration of the conversion period. If the conversion period is longer than two years, the support may be granted in any moment during the conversion period, but cannot last for more than two years.

Compensation under Article 30 (2) (c) of the EFF may cover in particular, the decrease in production volume due to lower stocking densities and sales that may occur during the conversion period, increased production costs (e.g. organic feed, environmental monitoring) and inspection and certification costs.

5.1.2.5. *Sustainable aquaculture compatible with specific environmental constraints resulting from the designation of NATURA 2000 areas*

ARTICLE 30 (2) (d) AND 5 (c)

Aqua-environmental measures

2. The purpose of the support is to promote:

(d) sustainable aquaculture compatible with specific environmental constraints resulting from the designation of NATURA 2000 areas in accordance with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [16].

3. In order to receive compensation under this Article, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. For the support provided for under paragraph 2 (a), the environmental benefits of such commitments must be demonstrated by a prior assessment conducted by competent bodies designated by the Member State.

4. Member States shall calculate compensation on the basis of one or more of the following criteria:

- (a) the loss of revenue incurred;
- (b) the additional cost which may result from the application of aqua-environmental methods;
- (c) the need to provide financial support for carrying out the project;
- (d) the specific disadvantages or investment costs for units

5. A one-off compensation shall be allocated:

(c) under paragraph 2(d), for a maximum of two years subsequent to the date of the decision establishing the NATURA 2000 area and only for aquaculture units existing prior to that decision.

ARTICLE 11 (4) OF IR

4. Support provided for in Article 30 (2) (d) of the basic Regulation, may be granted only for specific restrictions or requirements for NATURA 2000 areas, imposed by the relevant national measures for the implementation of the Directives 79/409/EEC and 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

⁽⁹⁾ OJ L, 198, 22.7.1991, p.1.

Support provided for under Article 30 (2) (d) of the EFF may be granted only to aquaculture farms experiencing specific restrictions or prescriptions due to the fact that they are located in or near a Natura 2000 area, and only when the specific environmental restrictions or prescriptions are imposed to the aquaculture enterprise either through national legislation or through legally binding site management contracts or plans.

The rationale for the provisions of this Article is to compensate those aqua-farmers who are obliged to make additional investments (or which are experiencing losses of revenue) due to the establishment of a Natura 2000 area.

In accordance with Article 30 (5) (c) of the EFF, support may be granted only for a maximum of two years subsequent to the date of the decision establishing the Natura 2000 area, and may be paid only to aquaculture farms existing prior to that decision. The decision establishing the Natura 2000 area may have been taken even prior to the beginning of the programming period (i.e. 1 of January 2007).

Support provided for under Article 30 (2) (d) of the EFF may cover compensations in particular for the following costs:

- extensive aquaculture- reduction of pesticides and antibiotics, use of manure,
- modification or displacement of structures, including vegetation,
- compulsory purchase of new equipment,
- loss of income due to reduced stocking densities or other restrictions on essential economic activities (e.g. temporal and/or spatial restriction on changes to water levels; limiting removal of trees/shrubs, temporal restriction on essential cutting),
- economic losses due to prolonged drainage or flooding,
- purchase of equipment for the protection from wild predators or losses of income due to the predation by wild species,
- reeds management (trees/shrubs/reeds). Reeds harvested only in winter period,
- pond morphology,
- specific requirements for draining, filling and water fluctuation (during breeding season) and
- training and education for employees.

5.1.3. Public health measures [Articles 28 (1) (c), 28 (2) to (6) and 31 of the EFF and Article 9 of IR]

5.1.3.1. Level of compensation

ARTICLE 31 OF THE EFF

Public health measures

The EFF may contribute to compensation to mollusc farmers for the temporary suspension of harvesting of farmed mollusc. The compensation may be granted where contamination of molluscs owing to the proliferation of toxin-producing plankton or the presence of plankton containing biotoxins entails, for public health protection reasons, suspension of the harvest:

- for more than four months consecutively; or
- where the loss suffered as a result of suspension of the harvest amounts to more than 35% of the annual turnover of the business concerned, calculated on the basis of the average turnover of the business over the preceding three years.

The maximum duration for which compensation may be granted shall be 12 months over the entire programming period.

Compensation provided for in Article 31 of the EFF may cover the loss suffered during the suspension of the harvest. This loss may arise in particular from:

- actual losses of the animals farmed, in case of extremely long closures,
- lower value of the molluscs in the market due to excessive size (oysters and mussels may become too big for the fresh market, and in this case they have to be sold for lower prices to the processing industry),
- lower market prices at the moment of the restarting of harvesting (mussels and in particular oysters have peak consumption periods where the prices are higher; these peak periods often represent the bulk of the enterprise's yearly income),
- financial losses (enterprises may have operating costs even when harvesting is closed).

In case of a single suspension lasting for more than twelve months, or of repeated suspensions imposed to the same enterprise lasting more than four months each and totalling more than twelve months, the compensation is calculated over the entire period but is paid only up to a fraction corresponding to maximum twelve months of suspension. For example: a single suspension lasting fifteen months, and creating economic losses for 15.000 €, will receive a maximum compensation of 12.000 € $[(15.000/15) * 12]$.

5.1.4. Animal health measures. [Articles 28 (1) (d), 28 (2) to (6), 32 of the EFF and Articles 9 and 12 of IR]

5.1.4.1. Compliance with the terms of Council Decision 90/424/EEC

ARTICLE 32 OF THE EFF

Animal health measures

The EFF may contribute to the financing of the control and eradication of diseases in aquaculture under the terms of Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field [17].

ARTICLE 12 OF IR

Animal health measures

1. Support provided for in Article 32 of the basic Regulation may cover:

- (a) for exotic diseases in aquaculture as listed in Article 3 of Council Decision 90/424/EEC, the control measures applied pursuant to Section 3 of Chapter V of Directive 2006/88/EC.
- (b) for non-exotic diseases in aquaculture as listed in the Annex of Decision 90/424/EEC, eradication programmes drawn up and approved pursuant to Article 44 (2) of Directive 2006/88/EC.

2. The managing authority of the operational programme shall decide whether it will contribute to the financing of control measures referred to in paragraph 1 (a), or an eradication programme referred to in paragraph 1 (b), and adopt the detailed arrangements for its financial participation before submitting the measures or the programme, respectively, in accordance with the provisions of Decision 90/424/EEC.

3. If the Commission does not approve, in accordance with Article 24 of Decision 90/424/EC, the control measures or the eradication programme referred to in paragraph 1 of this Article, the committed contribution shall be immediately returned to the budget of the operational programme.

4. If the value of the eligible costs in the action approved by the Commission in accordance with Article 24 of Decision 90/424/EC is less than the sum committed by the management authority, the difference released in this way may be reused by the Member State for its operational programme.

5. Support provided for in Article 32 of the basic Regulation, shall not cover surveillance activities intended to demonstrate freedom from a disease in order to obtain the recognition of the officially disease free status or fixed costs such as the costs of official veterinary services.

When designing animal health measures the following should be taken into consideration:

- Control measures for exotic diseases [Art 12 (1) (a) of the IR]

In order to ensure control for exotic diseases, the Member State must (Article 47 of Directive 2006/88/EC) draw up a contingency plan specifying the national measures required to maintain a high level of disease awareness and preparedness. Details on the content of the contingency plan are in article 47 and Annex VII of Directive 2006/88/EC. The plan must contain provisions to ensure access to emergency funds, budgetary means and financial resources in order to cover all aspects of the fight against exotic diseases. It is not compulsory that these financial resources come from the EFF. Member States shall submit the contingency plan to the Commission for approval in accordance with the procedure referred to in Article 62 (2) of Directive 2006/88/EC. According to Article 54 of Directive 2006/88/EC, each Member State shall designate its Competent Authorities for the purposes of the Directive, which are responsible for the drawing up and submission of the contingency plan. The contingency plan shall be implemented in the event of an outbreak of exotic diseases listed in Article 3 of Council Decision 90/424/EEC; when it is co-financed by the EFF, the procedures laid down in Article 3 (3), (4) and (5) of Council Decision 90/424/EEC shall apply.

- Eradication programmes for non exotic diseases [Art 12 (1) (b) of the IR]

In order to eradicate a disease listed in the Annex of Council Decision 90/424/EEC, the Member State may [pursuant to Article 44 (2) of Directive 2006/88/EC] draw up an eradication programme for one or more of those diseases. The Member State shall submit the programme for approval to the Commission in accordance with the procedure referred to in Article 62 (2) of Directive 2006/88/EC. There is no obligation of submitting eradication programmes, and no obligation of financing them by the EFF. The implementation of every eradication programme co-financed by the EFF will be made in accordance with Article 24 of Council Decision 90/424/EEC.

- The EFF is the only possible source of Community financing for control measures for exotic diseases and eradication programmes for non exotic diseases.

- The managing authority of the EFF Operational Programme should set up coordination with the designated Competent Authorities in order to:
 - a) identify the detailed arrangements for the budgetary means and financial resources to be allocated to the contingency plan for control measures, if the plan is to be co-financed by the EFF;
 - b) estimate the financial resources to be allocated to eradication programmes for non exotic diseases to be financed by the EFF, if any. These programmes will be in the future submitted to the Commission for approval in accordance with the procedure referred to in Article 62 (2) of Directive 2006/88/EC. The commitment of the EFF financial participation to every eradication programme to be financed by the EFF will be made prior to its submission to the Commission.
- Eligible expenditure.

The eligible costs for control measures for exotic diseases [Art 12 (1) (a) of Implementing Regulation] are set out in Article 3 of Decision 90/424/EEC and are further detailed in Commission Regulation 349/2005/EC⁽¹⁰⁾.

The eligible costs for an eradication programme for non exotic diseases (Art 12 (1) (b) of the Implementing Regulation) are set in the Commission decision approving the programme. An indicative list of eligible costs is given in Table 8 of Commission Decision 2004/450/EC⁽¹¹⁾.

- Control measures for exotic diseases which are not listed in Article 3 of Council Decision 90/424/EEC are not eligible to the EFF or any other EU financial instrument.
- Eradication measures for diseases in aquatic animals which are not listed in the Annex of Council Decision 90/424/EEC are not eligible to the EFF or any other EU financial instrument. The provisions of Article 43 of Directive 2006/88/EC apply to these diseases.

5.2. Inland fishing (Article 33 of the EFF and Article 13 of IR)

5.2.1. Scope of support provided for inland fishing

The purpose of Article 33 of the EFF is to support *inland fishing* i.e. fishing carried out for commercial purposes in *inland waters* either by vessels either by devices used for ice fishing.

Support under this Article is limited to:

- inland fishing facilities, in accordance with Article 33 (2) first paragraph of the EFF.
- vessels operating exclusively in inland waters, in accordance with Articles 33 (2) second paragraph and 33 (3) of the EFF and
- premiums for the fishers and owners of vessels operating exclusively in inland waters, in accordance with Article 33 (4) of the EFF.

5.2.2. Investments for inland fishing facilities

ARTICLE 33 (2) OF THE EFF

Inland fishing

2. Support for inland fishing may cover investments for the construction, extension, equipment and modernisation of inland fishing facilities, with a view to improving safety, working conditions, hygiene and product quality, human or animal health, or to reducing negative or having beneficial impact on the environment.

Inland fishing facilities include also quaysides and plank-ways for the use of vessels operating in inland waters, mobile freezing lines, fish delivery centers, transportable infrastructure, investments linked to marketing.

The term “equipment” employed under Article 33 (2) of the EFF covers also other devices used for ice fishing in inland waters such as ice scooters etc.

Investment linked to the management of the environment of inland waters with the aim of increasing fishing possibilities, like the cutting of reeds and the removal of sludge from lakes, is not eligible under Article 33 of the EFF.

⁽¹⁰⁾ Commission Regulation (EC) No 349/2005 of 28 February 2005 laying down rules on the Community financing of emergency measures and of the campaign to combat certain animal diseases under Council Decision 90/424/EEC OJ L 55 of 01.03.2005.

⁽¹¹⁾ Commission Decision 2004/450/EC of 29 April 2004 laying down standard requirements for the content of applications for Community financing for programmes for the eradication, monitoring and control of animal diseases, OJ L 92 of 12.04.2005.

However, support for such investments may be provided under Article 38 of the EFF under the condition that they are necessary in order to protect and develop aquatic fauna and flora.

5.3. Investments in processing and marketing (Article 34 of the EFF and Articles 14 and 26 of the IR)

5.3.1. Definition of Processing and marketing

ARTICLE 34 (1) OF THE EFF

Investments in processing and marketing

1. The EFF may support investments in processing and marketing of fisheries and aquaculture products.

Processing and marketing of fisheries and aquaculture products within the meaning of Article 34 (1) of the EFF may cover the following operations:

- Preparation: operations affecting the anatomical wholeness such as gutting, heading, slicing, filleting, chopping, skinning, trimming, shucking, peeling, etc.
- Washing, cleaning, grading and purification of bivalve molluscs.
- Preservation, freezing, and packaging, including packaging under vacuum or in a modified atmosphere.
- Processing: chemical or physical processes such as heating, smoking, salting, dehydration or marinating, etc., of fresh, chilled or frozen products, whether or not associated with other foodstuffs, or any combination of various processes.
- Marketing: holding or displaying for sale, offering for sale, selling, delivering or any other form of placing on the market in the Community.

In accordance with Article 35 (6) of the EFF, investments in processing and marketing relating to retail trade are not eligible for support.

5.3.2. Eligibility of enterprises

Point 5.1.1.5. also applies to Article 34 of the EFF for determining the enterprises eligible for support.

5.3.3. Priority to micro and small enterprises

Point 5.1.1.6 also applies to Article 34 of the EFF.

6. PRIORITY AXIS 3: MEASURES OF COMMON INTEREST

6.1. Scope of intervention

ARTICLE 36 OF THE EFF

Scope of intervention

1. The EFF may support measures of common interest with a broader scope than measures normally undertaken by private enterprises and which help to meet the objectives of the common fisheries policy.
2. These measures may concern:
 - (a) collective actions;
 - (b) protection and development of aquatic fauna and flora;
 - (c) fishing ports, landing sites and shelters;
 - (d) development of new markets and promotional campaigns;
 - (e) pilot projects;
 - (f) modification for reassignment of fishing vessels.

Support under priority axis 3 of the EFF covers measures of 'common interest' with a broader scope than measures normally undertaken by private enterprises and which help to meet the objectives of the common fisheries policy. Measures are "*of common interest*" when they are contributing to the interest of a group of beneficiaries or the general public. Measures of common interest should not be of a directly commercial nature. Any profit generated of operations supported under measures of common interest should be deducted from the public aid granted to the operation.

Support under priority axis 3 covers five types of measures:

- (a) collective actions aiming at achieving value added over and above that reached through the sum of individual investments,
- (b) measures intended to protect and develop aquatic fauna and flora,
- (c) fishing ports, landing sites and shelters,
- (d) development of new markets and promotional campaigns,
- (e) pilot projects,
- (f) modification for reassignment of fishing vessels.

The list of the measures provided for under Articles 37 (collective actions) and 40 (development of new markets and promotional campaigns) of the EFF is not exhaustive. Support under these Articles for measures not explicitly provided for there under, must comply with the aim of priority axis 3 and the relevant conditions laid down in Articles 36, 37 and 40 of the EFF and Articles 15 and 18 of the IR, where relevant.

Support under priority axis 3 of the EFF may be provided in some cases for measures similar to the ones provided in priority axes 1 and 2 of the EFF. The type of measures in these cases may be similar but the scope of intervention shall differ i.e these measures are of common interest Without prejudice to the specific conditions set out under articles 36 to 42 of the EFF, when support under priority axis 3 is granted to measures similar to the ones provided for in priority axis 1 and 2 of the EFF, the relevant conditions laid down respectively in priority axes 1 and 2 shall be respected.

Without prejudice to the specific conditions set out under Articles 36 to 42 of the EFF, operations eligible under priority axis 3 may also be implemented by private enterprises

6.2. Collective actions (Article 37 of the EFF and 26 of IR)

6.2.1. Beneficiaries of collective actions

ARTICLE 37 OF THE EFF

Collective actions

The EFF may support measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisations recognised by the Member State and which aim, in particular, to:

As provided for under Article 37 of the EFF, “other organisations” may also implement collective actions. These organisations may be public or private bodies such as NGO’s, scientific or trade organisations, etc. They may be appointed by the Member State for the implementation of measures supported under Article 37 of the EFF when these measures due to their nature would be more effectively implemented by such organisations. For example, the removal of lost fishing gear from the sea bed in order to combat ghost fishing [Art.37 (c) of the EFF] may be implemented more effectively by an environmental organisation where upgrading of professional skills or development of new training methods and tools [Art.37 (i) of the EFF] may be implemented more effectively by a training center.

6.2.2. Clarifications on the measures listed under collective actions

ARTICLE 37 OF THE EFF

The EFF may support measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisations recognised by the Member State and which aim, in particular, to:

- (a) contribute sustainably to better management or conservation of resources;
- (b) promote selective fishing methods or gears and reduction of by-catches;
- (c) remove lost fishing gear from the sea bed in order to combat ghost fishing;
- (d) improve working conditions and safety;
- (e) contribute to the transparency of markets in fisheries and aquaculture products including traceability;
- (f) improve quality and food safety;
- (g) develop, restructure or improve aquaculture sites;
- (h) investments concerning production, processing or marketing equipment and infrastructure including for waste treatment;
- (i) upgrade professional skills, or develop new training methods and tools;
- (j) promote partnership between scientists and operators in the fisheries sector;

- (k) networking and exchange of experience and best practice among organisations promoting equal opportunities between men and women and other stakeholders;
- (l) contribute to the objectives laid down for small-scale coastal fishing in Article 26 (4);
- (m) improve management and control of access conditions to fishing areas, in particular through the drawing up of local management plans approved by the competent national authorities;
- (n) create producer organisations recognised under Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products [18], their restructuring and the implementation of their plans to improve quality;
- (o) carry out feasibility studies relating to promotion of partnerships with third countries in the fisheries sector.

Aid referred to in point (n) shall be granted for a maximum of three years following the date of recognition or following the date of the decision on restructuring of the producer organisation and shall be degressive over these three years.

ARTICLE 15 OF IR

Collective actions

1. Support provided for in Article 37 of the basic Regulation shall not cover costs related to exploratory fishing.
2. Support provided for in point (n) of the first paragraph of Article 37 of the basic Regulation may be granted for:
 - (a) the creation of producer organisations in order to facilitate the setting up and administrative operation of producers organisation recognised under Council Regulation (EC) No 104/2000 after 1 January 2007,
 - (b) the implementation of plans of producer organisations that have been specifically recognised under Article 12 of Regulation (EC) No 104/2000 in order to facilitate the implementation of their plans to improve the quality of their products or
 - (c) the restructuring of producers' organisations in order to increase their efficiency in line with market requirements.
3. The support referred to in paragraph 2 (b) of this Article shall be degressive over three years following the date of the specific recognition under Article 12 of Regulation (EC) No 104/2000.

ARTICLE 26

Common provisions for priority axes 1 to 4

The following expenditure shall not be eligible for a contribution from the EFF.

- (a) For the purposes of the Articles 28 (3) and, 34 (3), point (i) of the first paragraph of Article 37 and Article 44 (2) of the basic Regulation, the purchase of infrastructure used for lifelong learning for an amount exceeding 10% of total eligible expenditure of the operation concerned;
- (b) the part of the cost of vehicles not directly linked to the operation concerned.

The measure listed under Article 37 of the EFF are indicative.

In accordance with *Articles 15 and 26 (a) of the IR*:

- (a) The costs related to exploratory fishing are not eligible. The term "Exploratory fishing" employed under Article 15(1) of the IR means the use of various types of fish-searching equipment and fishing gear to ascertain what kind of fish are present in an area, and in which quantities, so as to obtain some idea of the magnitude of the stocks in this area and of the economic viability of their commercial exploitation.
- (b) "Infrastructure used for lifelong learning" is eligible only for an amount NOT exceeding 10% of the total eligible expenditure of the operation concerned. For the purposes of the EFF "infrastructure used for lifelong learning" means "material investment in large facilities" like buildings, vessels or fish farms. Computers and other equipment needed for training are indeed not considered as infrastructure used for lifelong learning and therefore the threshold of 10% does not apply.

Furthermore, the following should be taken into account regarding the measures listed under Article 37 of the EFF:

- (a) Support for measures which aim of improving management and control of access conditions to fishing areas (Article 37 (m) of the EFF) may cover the drafting of local management plans (consultancy, meetings, etc.), studies and other actions that improve the management and control of access conditions. The actual management and control of access conditions (e.g. temporary or permanent cessation of fishing activities, investments on board fishing vessels and selectivity) shall be supported only under priority axis 1.

When granting support under Article 37 (m) of the EFF, Member States must ensure that the relevant provisions of Chapter II of Regulation 2371/2002 are respected.

- (b) The level of support for the creation or restructuring of producer organisations, or the implementation of their plans [Article 37(n) of the EFF] and the degressivity of this support shall be fixed by the Member State.

Restructuring of producer organisations covers cases where a producer organisation undergoes significant changes such as membership, product's covered, volume of production etc., but these changes do not lead to the creation of a new producer organisation and its recognition under Council Regulation 104/2000 ⁽¹²⁾.

6.3. Measures intended to protect and develop aquatic fauna and flora (Article 38 of EFF and 16 of IR)

6.3.1. Measures relating to the construction and installation of static and movable facilities intended to protect and develop aquatic fauna and flora

ARTICLE 38 (1) (2) AND 3 OF THE EFF

Measures intended to protect and develop aquatic fauna and flora

1. The EFF may support measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment.
2. These measures shall relate to:
 - (a) the construction or installation of static or movable facilities intended to protect and develop aquatic fauna and flora,
3. The action must be implemented by public or semi-public bodies, recognised trade organisations or other bodies appointed for that purpose by the Member State.

ARTICLE 16 (1) AND (2) OF IR

Measures intended to protect and develop aquatic fauna and flora

1. Support provided for in point (a) of the first subparagraph of Article 38(2) of the basic Regulation shall concern measures for the construction and installation of artificial reefs or other facilities made up of long lasting elements.

Support may cover work preliminary to installation, including studies, components, signalling, transport and the assembly of the facilities and scientific monitoring.

2. Support provided for in Article 38 (2) of the basic Regulation shall not cover fish aggregating devices.

Artificial reefs are eligible under Article 38 (2) (a) of the EFF. They may however produce high Catch Per Unit Effort and increase catchability, thus resulting in increased fishing mortality. Therefore, these structures should only be used in situations where fishing mortality is regulated i.e. by suspension of fishing or technical measures.

The eligible costs under Article 38 (2) (a) of the EFF are:

- work preliminary to installation (prospecting, sounding, dredging, underwater inspection/work, studies),
- purchase/construction of the component parts of the reef (artificial units/rubble-work, boulders),
- cleaning of vessels to be sunk as part of the artificial reef,
- transport, including servicing equipment (vessels) rental,
- assembly and positioning, submersion,
- signalling and protection equipment (including for marine reserves) and
- scientific monitoring of projects.

The cost for the acquisition of a vessel to be submerged and used as an artificial reef is not eligible under Article 38 of the EFF.

In the case of a vessel reassigned for the creation of an artificial reef in accordance with Article 23 (1) (c) of the EFF, the public aid for the permanent cessation of fishing activities must be paid to the owner of the relevant fishing vessel in accordance with this Article.

Fish aggregating devices (FADs) are **not eligible under Article 38 of the EFF** in accordance with Article 16 (2) of the IR. FADs are man-made moored or free-floating structures placed in the open sea with the primary function of aggregating pelagic fish, thus easing and enhancing their catch therefore they are not eligible under the EFF.

(12) OJ L 17, 21.1.2000, p.22.

6.3.2. Measures relating to the protection and enhancement of the environment in the framework of NATURA 2000 [Article 38 (1), (2) (c) and (3) of the EFF and Article 16 (3) and (4) of IR]

ARTICLE 38 (1), (2) (c) AND (3) OF THE EFF

Measures intended to protect and develop aquatic fauna and flora

1. The EFF may support measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment.
2. These measures shall relate to:
 - (c) the protection and enhancement of the environment in the framework of NATURA 2000 where its areas directly concern fishing activities, excluding operational costs.

Direct restocking shall not be eligible for aid, unless explicitly foreseen as a conservation measure by a Community legal act.

3. The action must be implemented by public or semi-public bodies, recognised trade organisations or other bodies appointed for that purpose by the Member State.

ARTICLE 16 (3) AND (4) OF IR

Measures intended to protect and develop aquatic fauna and flora

3. Support provided for in point (c) of the first subparagraph of Article 38 (2) of the basic Regulation may cover the expenditure on the necessary conservation measures for sites belonging to the NATURA 2000 European Ecological Network. Support may cover the preparation of management plans, strategies and schemes, infrastructure including depreciation and equipment for reserves, training and education for the employees of reserves as well as relevant studies.
4. Support provided for in point (c) of the first subparagraph of Article 38 (2) of the basic Regulation shall not cover compensation for rights foregone, loss of income and salaries of employees.

Support under Article 38 (2) (c) of the EFF (i.e. measures relating to the protection and enhancement of the environment in the framework of NATURA 2000 where its areas directly concern fishing activities) may also cover costs for the consultation of stakeholders' during the discussion of management plans, studies for monitoring and surveying species and habitats including mapping and risk management (early warning systems, etc.) and the preparation of information and publicity material.

6.3.3. Direct Restocking [Article 38.2 last subparagraph of the EFF and Article 16(5) of IR]

ARTICLE 38 (2) OF THE EFF

Direct restocking shall not be eligible for aid, unless explicitly foreseen as a conservation measure by a Community legal act.

ARTICLE 16 (5) OF IR

5. For the purposes of second subparagraph of Article 38(2) of the basic Regulation, 'direct restocking' shall mean the activity of releasing live aquatic organisms, whether the animals are produced in hatcheries or fished elsewhere.

As provided for under Article 38 (2) of the EFF, when explicitly foreseen as a conservation measure by a Community legal act, direct restocking is eligible for support under the EFF. In such cases support may cover costs for the acquisition of the aquatic organisms to be released (or the costs for their production, where they are bred in hatcheries owned by the entity responsible for the restocking), and the cost of their transport to the location of release. Costs for infrastructure, buildings (like a hatchery) and equipment are not covered.

6.4. Fishing ports, landing sites and shelters

6.4.1. Scope of Article 39 of the EFF

ARTICLE 39 (1) AND (3) OF THE EFF

Fishing ports, landing sites and shelters

1. The EFF may support investments in existing public or private fishing ports, which are of interest to fishers and aquaculture producers using them, with the aim of improving the services offered.

The EFF may also support investments to restructure landing sites and to improve the conditions for fish landed by coastal fishers in existing fish landing sites designated by the competent national authorities.

3. In order to improve the safety of fishers, the EFF may also support safety related investments for the construction or modernisation of small fishing shelters.

ARTICLE 17 OF IR

Landing sites

Where support is given for investments to restructure landing sites and to improve the conditions for fish landed by coastal fishers in existing landing sites, as provided for in the second subparagraph of Article 39 (1) of the basic Regulation, Member States shall ensure compliance with the relevant sanitary rules and the enforcement of control measures in those said landing sites.

Support under Article 39 of the EFF concerns only *marine ports, landing sites* and *shelters* under the terms and conditions set under this Article and Article 17 of the IR.

Inland port facilities, landing sites and shelters are eligible under Article 33 (2) of the EFF. These investments are limited to the purposes expressed in Article 33 (2) of the EFF (improving safety working conditions, hygiene etc).

In accordance with the general principles for measures of common interest set out under Article 36 of the EFF and the conditions set out under Article 39 of the EFF, existing fishing ports (public or private) may receive support under the EFF only if investments undertaken are:

- of common interest
- of a broader scope than operations undertaken by private enterprises
- helping to meet the objectives of the common fisheries policy and
- aimed at improving the services offered.

The construction of fishing ports is excluded from support under Article 39 of the EFF.

6.5. Pilot projects (Article 41 of the EFF and Article 19 of IR)

6.5.1. General remarks

ARTICLE 41 (1) OF THE EFF

Pilot projects

1. The EFF may support pilot projects, including the experimental use of more selective fishing techniques, aimed at acquiring and disseminating new technical knowledge and carried out by an economic operator, a recognised trade association or any other competent body designated for that purpose by the Member State, in partnership with a scientific or technical body.

ARTICLE 19 OF IR

Pilot projects

1. No support shall be granted under Article 41 of the basic Regulation for exploratory fishing.
2. Where support is given for a pilot project, as provided for in Article 41 of the basic Regulation, the managing authority shall ensure that the pilot project includes adequate scientific follow up and that an adequate qualitative assessment of the technical reports referred to in Article 41 (3) of that Regulation is made.
3. Pilot projects shall not be of a directly commercial nature. Any profit generated during the implementation of a pilot project shall be deducted from the public aid granted to the operation.
4. Where the total costs of a pilot project exceed EUR 1 million, the managing authority shall, prior to its approval, require an assessment by an independent scientific body.

The EFF may support pilot projects only when they are coherent with the Common Fisheries Policy rules and principles. The provisions of Article 41 of the EFF cannot be used to avoid constraints or restrictions laid down in other Articles of the EFF.

Pilot projects supported by the EFF must be truly innovative. Small technical improvements of well known technologies are not sufficient to qualify for support under Article 41 of the EFF.

Pilot projects should also have limited cost and duration, in line with their experimental nature, hence the specific requirements for the pilot projects exceeding EUR 1 million, provided for under Article 19 (4) of IR.

In accordance with Article 41 of the EFF, experimental fishing is eligible under the EFF as long as it focuses on the testing of more selective fishing techniques and/or gears to determine their effect on fish stocks and/or the marine environment.

The term ‘economic operator’ employed under Article 41 (1) of the EFF, means a natural or legal person involved in commercial operations.

6.6. Modifications for reassignment of fishing vessels

6.6.1. Field of application of Article 42 of the EFF (Article 42 of the EFF and Article 20 of IR)

ARTICLE 42 OF THE EFF

Modification for reassignment of fishing vessels

The EFF may support the modification of fishing vessels for their reassignment, under the flag of a Member State and registered in the Community for training or research purposes in the fisheries sector or for other activities outside fishing. These operations shall be limited to public or semi-public bodies.

ARTICLE 20 OF IR

Modification for reassignment of fishing vessels

Support as provided for in Article 42 of the basic Regulation may be granted for the modification of a fishing vessel after its reassignment only if that vessel has been deleted permanently from the fishing fleet register and, where appropriate, the fishing license associated with it has been permanently cancelled.

The support provided for under Article 42 of the EFF for the modification for reassignment of a fishing vessel shall be paid to the public or semi-public body (e.g. school or research institute) undertaking the operation. This support shall cover the costs **for the modification** of a fishing vessel to make it fit for its new use outside fishing (e.g. training or research) **after** it has been reassigned.

The relevant vessel may have been previously reassigned under Article 23 of the EFF. In this case the support provided for under Article 23 of the EFF is paid to the original vessel owner and not to the public body.

The relevant vessel may have been purchased by the public body, or offered to it for free.

7. PRIORITY AXIS 4: SUSTAINABLE DEVELOPMENT OF FISHERIES AREAS (ARTICLES 43, 44 AND 45 OF THE EFF AND ARTICLES 21, 22, 23, 24, 25 AND 26 OF IR)

Introduction

The Commission has already presented to the Member States the following working documents for the implementation of axis 4:

- Sustainable development of fisheries areas: Guide for the application of Axis 4 of the EFF, document dated 29.5.2006,
- “Implementing axis 4 of the EFF – Some useful questions and suggestions”, document dated 08.01.2007.

These documents provide guidance to the Member States for the preparation and implementation of Axis 4 and must be taken into account when reading this Section of the Vademecum.

7.1. Scope of assistance

ARTICLE 21 OF IR

Objectives and measures

The support granted under Article 43 of the basic Regulation shall be for:

- (a) implementing local development strategies as referred to in Article 45 (2) of the basic Regulation and Article 24 of this Regulation with a view to achieving the objectives referred to in Article 43 (2) (a), (b) and (c) of the basic Regulation and through the eligible measures provided for in Article 44 (1) (a) to (g), (i) and (j) and Article 44 (2) and (3) of that Regulation;
- (b) implementing inter-regional and trans-national cooperation among the groups in fisheries areas as referred to in Article 44 (1) (h) of the basic Regulation, mainly through networking and disseminating best practices with a view to achieving the objective referred to in Article 43 (2) (d) of that Regulation.

The budget allocated to axis 4 may cover 3 types of actions:

- a) local development strategies envisaging all the measures eligible under Article 44 of the EFF except interregional and transnational cooperation among groups in fisheries areas,
- b) interregional and transnational cooperation and
- c) networking and disseminating best practices.

7.2. Size of the territories covered by one group

ARTICLE 43 OF THE EFF

Scope of assistance

1. The EFF may provide assistance, complementary to the other Community instruments, for the sustainable development and improvement of the quality of life in fisheries areas eligible as part of an overall strategy which seeks to support the implementation of the objectives of the common fisheries policy, in particular taking account of its socio-economic effects.
2. The measures for sustainable development of fisheries areas shall seek to:
 - (a) maintain the economic and social prosperity of these areas and add value to fisheries and aquaculture products;
 - (b) maintain and develop jobs in fisheries areas through support for diversification or the economic and social restructuring of areas facing socio-economic difficulties as a result of changes in the fisheries sector;
 - (c) promote the quality of the coastal environment;
 - (d) promote national and transnational cooperation between fisheries areas.
3. A fisheries area selected for assistance shall be limited in size and, as a general rule, shall be smaller than NUTS level 3 of the common classification of territorial units for statistics within the meaning of Regulation (EC) No 1059/2003 of 26 May 2003 of the European Parliament and of the Council of 23 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) [20]. The area should be sufficiently coherent from a geographical, economic and social point of view.
4. Assistance should target, as a priority, areas with:
 - (a) low population density, or
 - (b) fishing in decline, or
 - (c) small fisheries communities.
5. The Member State shall inform the Commission of the areas selected for funding under this priority axis and include this information in the forthcoming annual report on implementation referred to in Article 67.

ARTICLE 45 OF EFF

Participation in the sustainable development of fisheries areas

1. Measures to support sustainable development of fisheries areas shall be implemented on a given territory by local entities or groups (the group) representing public and private partners from the various local relevant socio economic sectors and, according to the principle of proportionality, with adequate administrative and financial capacity to administer the assistance and ensure that the operations are completed successfully. The group should, whenever possible, be based on existing experienced organisations.
2. The group shall propose and implement an integrated local development strategy based on a bottom-up approach in agreement with the managing authority.
3. The territory covered by one group should be coherent and have sufficient critical mass in terms of human, financial and economic resources to support a viable local development strategy.
4. The operations under the local development strategy shall be chosen by the group and shall correspond to the measures provided for in Article 44. The majority of the operations shall be led by the private sector.
5. Member States or regions, depending on the specific nature of their institutional structure, may encourage networking aiming at disseminating information and, in particular, exchanging best practice.

ARTICLE 22 OF IR**Geographical application of Priority axis 4**

1. The operational programme shall specify the procedures and the criteria for selecting the fisheries areas. Member States shall decide how they will apply Articles 43 (3) and (4) of the basic Regulation.
2. The fisheries areas selected do not necessarily have to coincide with a national administrative area or with zones established for the purposes of eligibility under the objectives of the Structural Funds.

According to the EFF and the IR, the territory covered by one group should be coherent and have sufficient critical mass in terms of geographic, economic and social terms in order to support a viable local development strategy. It should also be, as a general rule, smaller than NUTS III and not necessarily coincide with a national administrative area or with zones established for the purposes of eligibility under the objectives established of the Structural Funds or territories covered by Leader Local Action Groups (LAGs).

It is clear that the size of the territory may vary and the territory covered by one group must be adapted to the realities of each country and the local development strategy. On the one hand, the larger the territory, the greater the critical mass is likely to be but the more difficult the bottom up approach is to implement. On the other hand, the smaller the territory the easier it is to connect with local people, increase local participation and build organizational capacity and local identity however it is more difficult to achieve the critical mass required. These are the important aims of axis 4 and therefore the areas should neither be too small nor too large. Cases where the territory by one group covers the whole country do not serve the aims of axis 4. The areas should not be too big as this will lead to a dilution of resources which would prevent axis 4 from having a leverage effect.

Even if Member States intend to use axis 4 primarily as a tool for building the organisational capacity and governance in fisheries areas, which implies a broad territorial coverage, the areas should not be too big as this will lead to a dilution of resources which prevents axis 4 from having a leverage effect.

It must be underlined that, in accordance with Article 22 (1) of the IR, Member States must specify in the operational programme the selection criteria for the potentially eligible fisheries areas under Axis 4. The finally selected fisheries areas however may cover the entire potentially eligible areas or only part of them according to the strategies of the groups selected.

7.3. The structure of groups**ARTICLE 45 (1) OF THE EFF****Participation in the sustainable development of fisheries areas**

1. Measures to support sustainable development of fisheries areas shall be implemented on a given territory by local entities or groups (the group) representing public and private partners from the various local relevant socio economic sectors and, according to the principle of proportionality, with adequate administrative and financial capacity to administer the assistance and ensure that the operations are completed successfully. The group should, whenever possible, be based on existing experienced organisations.

ARTICLE 23 OF IR**Procedures and criteria for selecting the groups**

1. A group, as referred to in Article 45 (1) of the basic Regulation, shall be composed in such a way that it is able to draw up and implement a development strategy in the area concerned.

The relevance and effectiveness of the partnership shall be assessed on the basis its composition, as well as its transparency and clarity in the allocation of tasks and responsibilities.

The capacity of the partners to carry out the tasks assigned to them and the effectiveness and decision- making shall be guaranteed.

The partnership shall comprise, including at the decision- making level, representatives of the fisheries sector and of other relevant local socio- economic sectors.

2. The administrative capacity of the 'group' shall be considered adequate where the group:
 - (a) either selects from the partnership, one partner as the administrative leader who will guarantee the satisfactory operation of the partnership; or
 - (b) comes together in a legally constituted common structure, the formal constitution of which guarantees the satisfactory operation of the partnership.
3. If the group is entrusted with the administration of public funds, its financial capacity shall be assessed:
 - (a) with regard to paragraph 2 (a), in terms of the ability of the administrative leader to administer the funds;
 - (b) with regard to paragraph 2 (b), in terms of the ability of the common structure to administer the funds.
4. The groups for the implementation of local development strategies shall be selected no later than four years from the date of the approval of the operational programme. Longer time limits may be granted where the managing authority organises more than one selection procedure for the groups.
5. The operational programme shall specify:
 - (a) the procedures and the criteria for selecting the groups, as well as the number of groups that the Member State intends to select. The selection criteria referred to in Article 45 of the basic Regulation and in this Article shall constitute a minimum and may be supplemented by specific national criteria. The procedures shall be transparent, provide adequate publicity and ensure competition where applicable, between the groups putting forward local development strategies;
 - (b) the management arrangements and the procedures for the mobilisation and circulation of financial flows as far as the beneficiary; it shall describe in particular how the groups are integrated into the management, monitoring and control systems.

Existing partnerships and organisations should be used to implement axis 4. If an axis 4 group is based on an existing Leader Local Action Group (LAG), the same administrative support structure can be used to implement both EU funds. This would imply that the common operating costs will be shared (proportionally) between the EFF group and the LAG.

When a group uses the structure of an existing LAG a clear separation of instruments will be required:

- distinct partnerships - the composition of the partnership of the EFF group and that of the LAG will be different (even if some local actors are likely to be represented in both partnerships). E.g. the partnership of the EFF group will need to include relevant actors from the fisheries sector,
- distinct project selection committees - the composition of the decision-making bodies of the partnerships will also need to be different.
- separate book keeping and distinct financial and control circuits,
- clear delimitation between strategies defining precisely the area that each one will cover. Each area should comply with the provisions of the relevant regulations (EFF or EAFRD)

7.4. The Local Development Strategy

ARTICLE 43 OF THE EFF

Scope of assistance

1. The EFF may provide assistance, complementary to the other Community instruments, for the sustainable development and improvement of the quality of life in fisheries areas eligible as part of an overall strategy which seeks to support the implementation of the objectives of the common fisheries policy, in particular taking account of its socio-economic effects.

ARTICLE 45 (2) OF THE EFF

Participation in the sustainable development of fisheries areas

2. The group shall propose and implement an integrated local development strategy based on a bottom-up approach in agreement with the managing authority.

ARTICLE 21 OF IR

Objectives and measures

The support granted under Article 43 of the basic Regulation shall be for:

- (a) implementing local development strategies as referred to in Article 45 (2) of the basic Regulation and Article 24 of this Regulation with a view to achieving the objectives referred to in Article 43 (2) (a), (b) and (c) of the basic Regulation and through the eligible measures provided for in Articles 44 (1) (a) to (g), (i) and (j) and Article 44 (2) and (3) of that Regulation.

ARTICLE 24 OF IR**Local development strategy**

The local development strategy proposed by the group in accordance with Article 45 (2) of the basic Regulation shall:

- (a) be integrated and be based on interaction between actors, sectors and operations and go beyond a mere collection of operations or a juxtaposition of sectoral measures;
- (b) be consistent with the needs of the fisheries area particularly in socio-economic terms;
- (c) prove its sustainability;
- (d) be complementary to other interventions made in the area concerned.

ARTICLE 25 OF IR**Implementing local development Strategy**

1. Notwithstanding Article 45 (2) of the basic Regulation, the group shall choose the operations to be financed under the local development strategy.
2. If the group is entrusted with the administration of public funds, it shall create a separate account for the implementation of the local development strategy.

The local development strategy proposed and implemented by the group has to fulfill the conditions set under Article 45 (2) of the EFF and 21 (a), 24 and 25 of IR.

This local development strategy must provide for assistance complementary to other Community or national instruments. However, since this local development strategy is proposed by the group to the relevant body of the Member State concerned for approval, it should be a separate, *self standing document providing information on the complementarity of measures financed by it with the measures financed by other Community and national instruments.*

7.5. Eligible measures**7.5.1. Implementing inter-regional and transnational cooperation among groups in the fisheries areas**

[Articles 41 (1) (h), 45 (5) and 46 (5) of the EFF and 21 of the IR]

ARTICLE 44 OF THE EFF**Eligible measures**

1. Support for sustainable development of fisheries areas may be granted for:
 - (h) promoting inter-regional and trans-national cooperation among groups in fisheries areas, mainly through networking and disseminating best practice.

ARTICLE 45 (5) OF THE EFF**Participation in the sustainable development of fisheries areas**

5. Member States or regions, depending on the specific nature of their institutional structure, may encourage networking aiming at disseminating information and, in particular, exchanging best practice.

ARTICLE 46 (5) OF THE EFF**Technical assistance**

2. At the initiative of the Member State, the EFF may finance under the operational programme actions relating to the preparation, management, monitoring, evaluation, publicity, control and audit of the operational programme, as well as networking, up to a limit of 5% of its total amount. By exception, and in duly justified circumstances, this threshold may be exceeded.

ARTICLE 21 OF IR**Objectives and measures**

The support granted under Article 43 of the basic Regulation shall be for:

- (a) implementing local development strategies as referred to in Article 45 (2) of the basic Regulation and Article 24 of this Regulation with a view to achieving the objectives referred to in Article 43 (2) (a), (b) and (c) of the basic Regulation and through the eligible measures provided for in Articles 44 (1) (a) to (g), (i) and (j) and Article 44 (2) and (3) of that Regulation.
- (b) implementing inter regional and transnational cooperation among the groups in fisheries areas as referred to in Article 44 (1) (h) of the basic Regulation mainly through networking and disseminating best practice with a view to achieving the objective referred to in Article 43 (2) (d) of that Regulation.

Article 44 (1) (h) of the EFF is aimed at supporting two types of actions:

Action 1: cooperation between groups

- in the same Member State (interregional cooperation),
- in two or more Member States (transnational cooperation) and

Action 2: networking between groups.

Cooperation and networking actions is a priority in the Community and Member States are strongly encouraged to implement these actions pursuant to Article 45 (5) of the EFF. In accordance with Article 21 of the IR, these actions however cannot form part of the local development strategy of the groups (see point 7.1.)

Cooperation should involve groups selected under Axis 4 and shall be implemented under the responsibility of a coordinator group. It should include the implementation of a joint project and not consist simply of an exchange of experiences. Only expenditure for the joint action, for running the common structure and for preparatory technical support are eligible for support under Article 44 (1) (h) of the EFF. The budget of these actions may be administered either centrally or by the groups.

Networking between groups selected under Axis 4 may receive support with a view not only to exchange experience and transfer of experiences but also to stimulate joint projects between groups and provide information and draw lessons concerning the development of fisheries areas. Support for networking may cover the costs for the equipment and staff of the structures needed to run the network as well as the costs for the organization of exchanges of experience and know how. The budget of these actions may be administered either centrally or by the groups.

The Community network that will be established using the technical assistance of the Commission will facilitate communication between groups throughout Europe.

Member States are encouraged to establish one national network which will group all the groups selected under priority axis 4 and finance this by the funds allocated for priority axis 5. The Commission recommends that the following activities are performed by the national network:

- preparing training programmes for the groups in the process of formation,
- collecting, analyzing and disseminating information at national level on good practice which is transferable,
- organizing the network and
- facilitating exchanges of experiences.

7.5.2. Support for the acquisition of skills and the facilitation of the preparation and implementation of local development strategy. Article 44 (1) (i) of the EFF

ARTICLE 44 (1) (i) OF THE EFF

Eligible measures

1. Support for sustainable development of fisheries areas may be granted for:

- (i) **acquiring skills and facilitating the preparation and implementation of the local development strategy.**

The support referred to in article 44 (1) (i) of the EFF may cover inter alia:

- (a) technical support for building new local partnerships or restructuring the existing ones,
- (b) technical support for drawing up, monitoring and evaluating local development strategies,
- (c) studies of the area concerned,
- (d) measures to inform the stakeholders and the general public about the area and the local development strategy,
- (e) the training of staff involved in the preparation and implementation of a local development strategy, including training actions like group management,
- (f) promotional events and training of project promoters.

7.5.3. Running costs for groups. Article 44 (5) of the EFF

ARTICLE 44 (5) OF THE EFF

Eligible measures

5. Running costs for groups may not exceed, as a general rule, 10 % of the total budget allocated to a fisheries area. By way of derogation, Member States may decide to exceed this threshold on a case by case basis, in particular when the groups cannot be established on the basis of existing experienced organisations.

ARTICLE 44 (1) (I) OF THE EFF

In accordance with Article 44 (5) of EFF, the support for the running costs of a group is, as a general rule, subject to a ceiling of 10 % of the total budget allocated to a fisheries area. The total budget allocated to a fisheries area is the public (EFF and national) money allocated to a group for the implementation of a local development strategy.

8. PRIORITY AXIS 5: TECHNICAL ASSISTANCE (ARTICLE 46 OF THE EFF)

8.1. Community network for the networking of groups [Article 46 (1) (f) of the EFF] and national networking of groups [Article 46 (2) of the EFF]

ARTICLE 46 (1) AND (2) OF THE EFF

Technical assistance

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of 0,8 % of its annual allocation, the EFF may finance the preparatory, monitoring, administrative and technical support, evaluation and audit measures necessary for implementing this Regulation.

These measures are executed in accordance with Article 53 (2) of Regulation (EC, Euratom) No 1605/2002 and any other relevant provisions of that Regulation and of its implementing rules applicable to this form of execution of the general budget of the European Union.

Those measures shall include:

- (f) the establishment of trans-national and Community networks of actors in the sustainable development of fisheries areas with a view to encouraging the exchange of experience and best practice, stimulating and implementing trans-regional and trans-national cooperation and the dissemination of information.
2. At the initiative of the Member State, the the EFF may finance under the operational programme actions relating to the preparation, management, monitoring, evaluation, publicity, control and audit of the operational programme, as well as networking, up to a limit of 5 % of its total amount. By exception, and in duly justified circumstances, this threshold may be exceeded.

A "Community Network of groups" managed by the Commission will be responsible for organising the network of the groups at Community level in accordance with article 46 (1) (f) of the EFF.

The aims/ tasks of the "Community network of the groups" will be in particular:

- collect, edit, analyse and diffuse information including via web site.
- reporting on axis 4. Prepare reports on the implementation, progress and effects of axis 4 at Community level.
- organisation of trans national meetings, thematic seminars and conferences at Community level for groups involved in the sustainable development of fisheries areas to exchange experience and know-how.
- mentoring, training and technical assistance of the groups. Set up a system of technical assistance in particular for local groups which are in the process of formation (*en constitution*) and which do not benefit from any prior experience in terms of local development and the management of European projects.
- facilitate networking and cooperation and exchange of best practices.
- day to day running of the observatory. Treatment of requests for information, set up a well-located Brussels office.

All groups should be members of the "Community Network of the groups" and participate directly or indirectly through the national network in order to make their experience, know how and details of their projects available to the network.

As already mentioned in Chapter 7.5.1., the Member State are encouraged to establish one national network which will group all the groups selected under priority axis 4. Support for the establishment of such network is provided under Article 46 (2) of the EFF.

If the Member States establishes such a network its active participation in the “Community network of the groups” shall be requested. The national network will be responsible for making available to the “Community network for the groups” all information on actions already undertaken by the groups in the Member State concerned or under way and the results achieved.

In the absence of a national network in a Member State, the latter should guarantee that there is one contact point for the “Community network of the groups” and thus the work of the “Community network of the groups” is facilitated in view of its potential positive effects.

The Commission strongly recommends Member States to choose the first option and put in place national networks.

8.2. Preparation of the future programming period

If there is structural aid for fisheries beyond 2013, Member States may finance the preparation of the programming of this period beyond 2013 from their technical assistance provided for under Article 46 (2) of the EFF.

8.3. Scope of support for the improvement of the administrative capacity [Article 46 (3) of the EFF]

As provided for under Article 46 (3) of the EFF, Member States, all of whose regions are eligible under the Convergence objective, may finance actions relating to the improvement of administrative capacities.

Consequently, Member States, all of whose regions are eligible under the Convergence objective, may use the technical assistance for:

- the management of the operational programme at all stages and
- support activities for other areas of the Common Fisheries Policy (CFP) provided that no other Community financing is foreseen.

The administrative capacity is the ability of Member States to implement their obligations arising from the management, monitoring and control of their operational programs during all stages (preparation, financing, implementation monitoring and evaluation) and from the implementation of the CFP.

It includes the institutional set up as well as the procedures necessary to maximise the efficiency of the management, monitoring and control of the operational programmes and of the implementation of the support activities for other areas of the CFP. The existence of an adequate administrative capacity is usually measured in function of:

- The organisational characteristics, including the relationship between central, regional and local levels and the diffusion of information and communication technologies (ICT).
- The Quality of civil service, (number of staff and adequate training).
- Intergovernmental relations (how the fisheries administration relates to other parts of the administration) and interactions between fisheries authorities and other bodies and stakeholders.

When Member States put in place the structure necessary in order to select the possible actions to be funded under Art 46 (3) of the EFF, an assessment should be made to identify the main weaknesses of the administration e, the main areas requiring further support and the bottlenecks in the relationship between main players at central, regional and local level. The operational programme should contain this assessment in order to justify axis 5. Depending on the key issues identified in this assessment the relevant actions could be funded.

