

## LEGAL AND ECONOMIC ANALYSIS OF STATE OPERATIONAL PROGRAMME FOR POLISH FISHERY SECTOR IN YEARS 2014-2020

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### **Abstract**

*The main aim of the article was to analyse legal and economic basis of state aid schemes for Polish fishery sector in years 2014 - 2020. The paper focuses mainly on the characteristics of one operational programme "Fishery and Sea" (PO RYBY 2014-2020). Evaluating importance of current operational program in domestic fishery sector it is crucial to analyse structure of funds dedicated to the program and main areas of fishery activities on domestic market. Funds employed in the program have complex structure and should be spent on different tasks that are defined in specific acts. Presented analysis is focused on one domestic legal act, where we can find both fundamental frameworks and basic legal measures aimed at fulfilling defined goals of the 2014-2020 Common Fisheries Policy (the CFP). We may observe that proposed legal measures basically intend to stimulate competitiveness and modernity of domestic fishery sector. It is worth highlighting that the programme "Fishery and Sea" is powered with substantial funds and may have crucial impact on domestic and European fishery markets. It should be also noted that any public aid scheme has to both be accepted by the UE authorities and reflect basic directives and principles of the Community law. Basically, any programme within the CFP should be beneficiary for both domestic and European fishery markets.*

**Key words:** Common Fisheries Policy, economy, EU, fishery, legal analysis, law, operational program, Poland, state aid scheme

### **INTRODUCTION**

The Common Fisheries Policy for years 2015-2020 has clearly defined goals. The priorities of the current CFP can be accomplished on national grounds with use of substantial funds coming from the European Maritime and Fishery Fund (EMFF). As the Regulation (UE) No 508/2014 indicates, funds coming from the fund can be spent only in order to fulfill basic aims of the CFP [9]. We may observe that any domestic program operating within the CFP and obtaining any funds from the Maritime and Fishery Fund should be designed to support and strengthen such aspects as: conservation of marine biological resources, management of fisheries and fleet exploiting these resources, fresh water biological resources and aquaculture, the processing and marketing of fishery and aquaculture products [9]. As it appears, the CFP for 2015-2020 has varied goals related to both economic aspects of European fishery

market and ecological aspects of marine resources.

As with the Common Agricultural Policy (CAP), in order to assure proper functioning of the CFP, it is necessary to create and shape basic legal frameworks on national ground of any EU member states. The requirement originates from simple dependency that the CFP is basically based on the Community law's regulations, which in order to fully operate on national levels requires implementing in form of domestic legal acts. We should also remember that implementing of UE regulations may turn out to be extremely difficult and elaborate task for national governments. Such statement derives from simple fact that implementing of any UE regulations is associated with an absolute necessity to reconcile fundamental directives and values of the European Union with reality of national economy and law.

The CFP for 2015-2020 in Poland is based on the Fishery and Sea Operational Programme

(PO RYBY 2014-2020). Within the programme, polish authorities intend to spent total sum of over Euro 710 Million within one elaborate state financial aid scheme. Domestic programme operating within the CFP is broadly based on single legal act – the Act on supporting sustainable development of the fishery sector with participation of the European Maritime and Fishery Fund of 10<sup>th</sup> July 2015 [11]. The act creates complex legal solutions and measures required to complete basic goals of the CFP. The aim of the article is to present basic legal solutions and measures presented in the act and to analyse economic and financial aspects of both polish fishery sector and the operational program.

## MATERIALS AND METHODS

The research presented in the article was based on the analysis of polish legal regulations implementing different directives and directions defined in the Common Fisheries Policy for years 2015 – 2020. The author, building his analysis on research of national legal basis of state aid scheme in fishery sector, intends to present how on the polish example it is possible to propose effective legal measures supporting such desired features as: modernization and competitiveness of domestic fishery sector or preservation and protection of maritime biological resources and environment. In terms of economic aspects, the article is based on three different sources related to financial frameworks of analyzed operational program and fishery sector in Poland. Analysis of breakdown of funds employed in the program is based on estimation data coming from official project report of Fishery Department of Ministry of Agriculture [6]. Furthermore, aspects regarding changes size of polish fishery sector in terms of production and fleet seize was based on statistical data coming from Polish Central Statistical Office [2]. Finally, assessment of polish fishery sector's position in comparison to total EU-28 was based on statistical data coming from official report of European Commission regarding basic information related to CFP[1].

## RESULTS AND DISCUSSIONS

### Legal characteristic of the Polish Operational Program “Fishery and Sea”

#### *1. Brief characteristic of the Common Fisheries Policy for years 2015-2010*

The Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December on the Common Fisheries Policy should be considered as the direct legal basis regulating fundamental directions, goals and directives of the CFP in years 2015-2020 [7]. The abovementioned act of the community law defines new principles of the CFP and focuses on the most important aspects of fishery market and maritime environment. It has be clearly indicated that given act addresses not only issues related to economic aspects of the fishery, but also refers to problematic cases of maritime environment's biological resources.

The major goal of current CFP is to improve management and operation of the fisheries and fleets in terms of preserving and protecting maritime biological resources (art.1(1) of the Regulation)[7]. In other words, functioning of fishery market and its participants should not lead to aggravation of maritime environment and its resources. Any financial or economic benefit should not overshadow environmental priorities. As it appears from the regulation, biological and environmental aspects dominates measures proposed in the CFP. Such policy should be considered as thoughtful, as it may assure that fishery and aquaculture activities will be resource and environmentally sustainable in long-term perspective.

The regulation clearly defines major priorities of the CFP for years 2015-2012, which we can split to economic and environmental sets. Economic aspects of current CFP concerns such issues like:

- a) beneficiary and efficient management of fishing and aquaculture activities in terms of economic, social and employment aspects (art. 2(1) of the Regulation),
- b)improvement of probability and competitiveness of the fishery industry (art.2(5) of the Regulation),
- c) strengthening transparency of the market

and its security in terms of employment, standards of living and accessibility of products (art. 2(5)(e)(f)(g) of the Regulation) [7].

In terms of environmental and biological aspects, the CFP focuses mainly on:

- a) assuring environmental sustainability in long-term of the fishery and aquaculture activities (art.2(1) of the Regulation),
- b) maintain levels of the living marine biological resources' exploitation on levels assuring maintenance and restoration of the harvested species' populations (art. 2(2) of the Regulation),
- c) minimalizing negative impact of fishery and aquaculture activities on maritime ecosystems (art. 2(3) of the Regulation),
- d) reducing and efficient employment of discards and unwanted catches (art. 2(5)(a)(b) of the Regulation)[7].

Taking into consideration abovementioned directions, we may observe that current CFP intends to improve not economic or social aspect of the fishery, but also tries to impose sustainable policy assuring improvement and restoration of maritime environment. It is important that goals of the CFP doesn't focus only on short-term issues but also relate to long-term condition of internal fishery and aquaculture sectors.

Financial frameworks of the CFP are defined in the Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund [9]. As it is indicated in the regulation, financing of the CFP's fundamental goals is based on funds obtained from the European Maritime and Fisheries Fund [9]. The Fund should be employed in order to assure substantial financial resources for financing domestic operation programs and state aid schemes aimed at supporting environmentally sustainable development, competitiveness economic profitability and responsibility of fishery and aquaculture activities (art. 5 of the Regulation) [9]. It should be clearly highlighted here that any funds originated from the fund can be spent only on directly and clearly stated goals and priorities that are indicated in the art. 6 of the Regulation 508/2014 [9] and in the

Regulation 1380/2013[7].

Finally, any state operational programme operating within the CFP has to be compatible with guidelines defined and described by the EU authorities [3]. As it is clearly indicated in the official document, any state aid scheme has to:

- a) be consistent with goals and directions of the CFP and the Competition Policy, assuring that the scheme will be beneficiary for whole internal fishery market and that aid will not destabilize internal competition (p. 3(1) of the Guidelines),
- b) assure necessary level of consistency between general principles of the Community law regulating financial aid and the principles of the European Fishery Fund (p. 3(2) of the Guidelines).
- c) present incentive effect, assuring stimulation or activeness of the beneficiary (p.3(3) of the Guidelines),
- d) be transparent in terms of intensity of aid or amount of employed funds (p. 3(5) of the Guidelines) and
- e) be scheduled for maximum duration of 10 years (p. 3(6) of the Guidelines)[3].

Taking into consideration the abovementioned provisions and guidelines, the Community law presents relatively complex, thorough and comprehensive legal frameworks of the current CFP. It should be also highlighted that any national public aid scheme, in order to obtain any funds from the European Fishery Fund, has to meet all defined requirements.

## ***2. The Fishery and Sea Operational Programme as an expression of the Common Fisheries Policy in Poland***

Common Fisheries Policy in Poland for years 2014-2020 is based on the single operational programme called "Fishery and Sea"(PO RYBY 2014-2020)[4]. Beyond the Community law regulations and guidelines, legal frameworks of the current CFP in Poland are expressed within the Act on supporting sustainable development of the fishery sector with participation of the European Maritime and Fishery Fund of 10<sup>th</sup> July 2015 and in its implementing rules [11]. The act covers almost all issues related to defining frameworks of any state aid scheme

able to operate within the CFP and defines such aspects as: the CFP's priorities fulfilled within the scheme, tasks, jurisdiction, prerogatives and obligations of institutions and organisational units operating within the scheme, scope of aid's beneficiaries or conditions, procedure and form of obtaining funds (art. 1 of the Act)[11].

The Act indicates that the Fishery and Sea Operational Programme covers listed below priorities of the CFP for years 2015-2020:

- a) promotion of environmentally sustainable, efficient in terms of resources, innovative competitive and based on knowledge fishery (art. 3(1)(1) of the Act),
- b) supporting environmentally sustainable efficient in terms of resources, innovative competitive and based on knowledge aquaculture (art. 3(1)(2) of the Act),
- c) supporting implementation of the CFP (art. 3(1)(3) of the Act),
- d) increasing employment and territorial cohesion levels (art. 3(1)(4) of the Act),
- e) supporting marketing and processing in fishery and aquaculture (art. 3(1)(5) of the Act),
- f) fostering implementation of the Integrated Maritime Policy (art. 3(1)(6)<sup>4</sup>[11].

Among from fulfilling defined priorities of the CFP, the scheme covers also legal aspect of technical aid. Taken into consideration the above-mentioned tasks, we may observe that analysed operational programme was created in order to fulfil all priorities defined in the Community legal frameworks (especially – in art. 6 of the Regulation 508/2014[9]).

Both, the Community regulations and the domestic act mention about different types of authorities operating within the CFP and state aid schemes. Focusing on the domestic regulations, we can find series of provision defining such aspects as prerogatives, tasks and obligations of authorities which functioning seems to be indispensable for proper use of funds from the European Maritime and Fisheries Fund.

Within the act, we can distinct four types of authorities:

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<sup>4</sup>The legislator has simply rewritten priorities described in the art. 6 of the Regulation (EU) No 508/2014[9].

- a) managing authority,
- b) intermediate authority,
- c) certifying authority and
- d) audit authority [11].

According to art. 5(1) of the Act, the Minister Competent for the Fishery is designated as the managing authority [11]. Its tasks are related to management of the operational programme and cover such issues like evaluation and monitoring of program's execution, presenting descriptions of management and control systems in front of the European Commission or appointing supportive, advisory and opinion bodies in order to improve management processes (art.5 of the Act) [11].

The intermediate authority is appointed by the Fishery Minister and is responsible for part of management tasks of the operational programme powered by the European Fund (art. 6(1) of the Act)<sup>5</sup>[11]. Only four types of bodies can function as the intermediate authorities. According to the art 6(1) of the Act, two of them - the Agency for Restructuring and Modernisation of Agriculture and local governments operate under the Act, when the rest – the unit of public finance sector and foundations fully funded by the State Treasury - may operate within the scheme only under direct authorisation of the Minister in form of separate regulation [11].

The certifying authority is another type of bodies operating within the program and its function is carried out by polish Minister of Public Finance (art. 7 of the Act) [11]. As the Act does not define prerogatives of the certifying authority, it is necessary to refer to provisions of the Regulation (EU) No 1303/2013 [8]. As the art. 126 of the Regulation indicates, the certifying authority is responsible for accountancy related to expenditures, payments and other operations within the CFP's scheme [8].

The last type of the authorities operating in

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<sup>5</sup>Intermediate authorities and generally responsible for data storage and electronic register system connected to the program. They gather data necessary for evaluation and monitoring of the program and submit regular reports regarding fulfilling the CFP's priorities (art. 25(1) of the Act) [11].

the program is audit authority responsible for control and verification of proper functioning of management and control systems operating within the program (art. 127 of the Regulation)[8]. In the case of the Fishery and Sea Operational Programme, the Inspector General of Fiscal Control is designated as the audit authority (art. 8 of the Act)[11].

Financial aid from the operational aid is granted on the basis of the financing contract preceded by submission of the proper motion (art.11 of the Act)[11]. The Act also does not limit legal form of potential beneficiary who can function as natural person, legal person or other entities without legal personality (art. 11 of the Act)[11]. Under article 12 of the Act, candidates with legal access prohibition to any state grants, bankrupt or who appears in registry of excluded from European financial schemes or of infringing rules of CFP shall be expelled from the scheme [11]. However, it should be also highlighted that the legislator has not defined yet all requirements that each beneficiary will have to meet in order to obtain financial aid for any fisheries-related operation. Without such regulation it is impossible to fully evaluate accessibility of analysed operational programme.

As it was highlighted before, financial aid is dependent on proper application. Any candidate for the scheme has to file legal application to competent intermediate authority within defined period indicated in the notice about financial applications (art. 12 (1)(2) of the Act)[11]. Brief and precise presentation of personal data, description of proposed operations, its goals, place of undertaking, range and costings should be included in the application (art.13(3) of the Act)[11]. Total duration of application's examination should not exceed 3 month since the day of submission (art. 13(5) of the Act)[11]. Taking above into consideration, we can observe that legal requirements related to subjective scope and content of application are relatively simple and present standard solution for similar programs.

Researching form of state aid scheme in polish fishery it is also necessary to note that the legislator has also defined basic directives of conduct and administrative proceedings

which are addressed mainly to authorities operating within the program and partially to other parties and participants of the proceedings. Under art. 15 of the Act, any entitled authority shall stand in defense of rule of law, is obliged to fully examine evidence, present necessary instructions parties and assure their active participation in any stage of proceedings [11]. As it appears, proceedings related to the analyzed state aid scheme enjoy relatively formal frameworks which may assure that each subsidies will be granted duly.

The Act of 2015 has also defined form and content of the financing contract which should be considered as direct legal basis of granting state aid. As the art. 17 of the Act indicates, the contract should be done in writing and should present data regarding identification of contract's parties, conditions, period, place and goal of operation, amount of granted aid, conditions and periods of aid's payments, termination and funds' return conditions [11]. Not applying to legal requirements may result in sanction of annulment (art.17(4) of the Act)[11]. Direct list of contract's components should assure proper control of the program.

Finally, in order to fully evaluate the act it is also necessary to focus on defined circumstances when granted aid should be repaid by beneficiaries. Legal obligation to repay the aid plus interest<sup>6</sup> arises in each case when the funds were received unduly or were misused (art. 32(1) of the Act) [11]. The act has also constituted exhaustive list of cases when the aid is unduly received. Under art. 32(2) of the Act, beneficiary unduly received aid when:

- a) the operation or related obligations are not partially or fully fulfilled,
- b) the aid was granted without legal basis or in value exceeding aid granted in the financing contract,
- c) beneficiary doesn't fulfill obligations related to aid,
- d) beneficiary, within 5 years since receiving final payment, has been registered as violator of CFP's regulations or

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<sup>6</sup>Interest rate estimated like in case of tax arrears (art. 32(1) of the Act) [11].

f) aid was granted in violation to national or Community law [11].

As it appears from the above, national legislator intends to propose transparent regulation that clearly define also negative aspects of operational program in domestic fishery sector. We should remember that constituting legal exhaustive list of negative or positive premises, the risk of any arbitrariness or discretion of state authorities in directly limited.

**Economic aspects of the Fishery and Sea Operational Program**

**1. Structure of funds employed in the operational program**

As it was mentioned before, total funds employed in the Fishery and Sea Operational Program come from two sources – the European Maritime and Fisheries Fund and from state’s budget. The data from Table 1. clearly shows that funds from the European fund constitute major financial contribution for the scheme (over Euro 532 Million) while state’s budget’s share is apparently smaller (over Euro 179 Million)[6].

Polish authorities has proposed transparent from of breakdown of funds from the scheme between specific priorities of the CFP [6]. As it was described before, the Fishery and Sea Operational Program could be created only on order to fulfil specific common tasks.

In terms of financial aid, the task aimed at supporting environmentally sustainable efficient in terms of resources, innovative competitive and based on knowledge aquaculture should be considered as most important within analysed scheme as total funds employed in fulfilling given priority equal to Euro 269 Million.

Second most important task of the operational program is to promote environmentally sustainable, efficient in terms of resources, innovative competitive and based on knowledge fishery where state’s authority plan to spent total sum of over Euro 190 Million.

Third most financially biggest priority of state’s scheme is to increase employment levels and territorial cohesion levels with total dedicated funds of over Euro 94 Million.

Table 1. Breakdown of funds between specific priorities of the CFP

Priorities	Total support (Euro Mil.)	
	Funds from EMFF	State funds
Promotion of sustainable fishery	130.2	60.6
Support of sustainable aquaculture	201.7	67.3
Support of CFP implementation	23.6	6.2
Employment and territorial integrity	79.7	14.7
Support of marketing and processing	61.6	14.1
Support of Integrated Maritime Policy (IMP)	2.5	0.8
Technical aid	31.8	10.6
Total	532.2	179.3

Source: data from project of Fishery Department of the Ministry of Agriculture [6].

Less financially consuming priorities are supporting or marketing and processing in fishery and aquaculture (Euro 75.7 Million), supporting of CFP implementation ( Euro 29.8 Million) and supporting of IMP (Euro 3.3 Million). The rest of funds is targeted at technical aid’s expenditures (Euro 42.4 Million).

As it appears from the data, financial structure of the operational program is complex and specific sums dedicated to each of CFP’s priorities indicate importance of given priority for polish realities of fishery and aquaculture market.

**2. Changes in size of polish fishery sector in years 2005-2014**

In years 2005 – 2009, polish fishery sector in terms of production and fishing fleet experienced series of minor fluctuations. In years 2005 – 2008 value of production (fish and shellfish catches in thousands tonnes) had been shaped by stable but low trends (from 126 thou tonnes in 2006 to 136 in 2005). In 2009 we may observe vital increase in production (212 thou tonnes), however it should be concurrently noted that given record was unique for analysed period. After 2009 production rate was higher and experienced minor fluctuations (from 171

thou tonnes in 2010 to 195 in 2013).

We may observe similar fluctuations in terms of fishing fleet seize. However, in order to precisely evaluate changes in fishing fleet it is necessary to take into consideration both determinants – number and gross tonnage. As it appears from the Table 2, despite reduction in number of ships (from 975 to 878 in 2014), the value of gross tonnage remained quite stable (from 30 thousands in 2005 to 34 in 2014). We may also observe that there were two periods of changes in fishing fleet numbers. In terms of number of ships, years 2006-2011 should be described as the period of constant reduction, while since 2012 number of ships started to experience reverse and positive trend.

Observed trends make it difficult to sketch any forecast regarding future seize of polish fishery sector. The production rates should remain stable as environmental sustainability of fishery and aquaculture are main priorities of the CFP. We should remember that higher production transfers to stronger environmental exploitation and maritime resources' deterioration. In terms of fishing fleet seize, we may assume that relatively stable value of GT despite of fleet reduction in number results mainly from the fact that nowadays polish fishery fleet is more specialized and employs bigger and progressive units.

Table 2. Changes in value of production and fishing fleet in Poland in years 2005-2014

Years	Fish and shellfish catches in thousand tonnes	Fishing fleet	
		Number of ships	Gross tonnage (GT) in thousands
2005	136	975	30
2006	126	881	32
2007	133	867	31
2008	126	832	41
2009	212	806	38
2010	171	793	37
2011	180	790	33
2012	180	798	33
2013	195	838	34
2014	171	878	34

Source: Główny Urząd Statystyczny – GUS (Central Statistical Office), Maritime Economy 2014 [2].

### 3. Polish fishery in the EU economy

Table 3 presents data regarding position of polish fishery sector in comparison to total EU 28 in terms of fishing fleet, value of output, employment in processing sector, production and extra-EU trade, coming from the statistical report of the European Commission [1].

Table 3. Polish fishery sector in comparison to total EU-28 in terms of fishing fleet, value of output, employment in processing, production and extra-EU trade.

Specification		Poland	EU-28
Fishing fleet*	Number of vessels	832 (1%)	87,445
	Gross tonnage	33.73 (2%)	1,725,938
Value of output** (Euro Thousands)		1,806,317 (6%)	29,825,802
Employment in processing sector** (full-time equivalent)		15,051 (13%)	115,651
Production** (catches and aquaculture)		197,578 (3%)	6,143,294
Extra-EU trade***	Import of fishery and aquaculture products	Volume (tonnes)	162,202 (3%)
		Value (Euro thou. EUR)	374,328 (2%)
	Export of fishery and aquaculture products	Volume (tonnes)	29,639 (1.5%)
		Value (Euro thou. EUR)	88,475 (2%)
			4,170,313

\*Data for situation as at 28<sup>th</sup> February 2014

\*\* Data for 2011

\*\*\* Data for 2012

Source: Facts and Figures on the Common Fisheries Policy, European Commission [1].

General shape of data allows to draw simple conclusion that polish fishery sector plays minor role in the EU fishery sector. Such conclusion is based on single fact that in each of analysed determinants (with exception of employment in processing sector of fishery) share of polish output and fishery sector ranged between 1-3% of total EU-28 market. Such trends proves that polish fishery sector has no major importance for common fishery

market and its fluctuations have minor influence on general situation of common market.

The only exceptions are related to two aspects: value of output and employment in processing sector where share of polish fishery sector represents respectively 6% (Euro 1,806,317 thousand) and 13% (15,051 employed in the processing sector) of the EU-28 total share.

In given aspects, any vital fluctuation observed on domestic market can cause respective change on common market.

However, in general view it should be clearly stated that polish fishery sector belongs to category of smaller domestic sectors. Poland should be considered as minor players on international market that satisfy its fishery needs mainly by extra-EU trade and import from internal market.

## CONCLUSIONS

To sum up, presented above legal frameworks implementing the CFP in Poland should not be considered as extraordinary or innovative solution. Examined act of 2015, expressing direct fundamentals of the Fishery and Sea Operational Program, presents standard legal solutions and measures originating from experience acquired during accomplishment of previous the CFP and the CAP goals. Experience coming from management of previous state aid scheme should be considered as significant advantage that may cause higher efficiency and precision of current operational program. It should be clearly noted that any state aid scheme powered by European funds has to be fully focused on accomplishing clearly defined goals and priorities. Not individual participants of operational programs but European fishery and maritime sectors should be direct and main beneficiaries of the current CFP, and such order should be priority of any state aid scheme in the fishery.

Regarding minor role of polish fishery sector on position of common market, it should be clearly highlighted that main task of analysed operational program is to improve maritime

biological and environmental aspects. Economic and financial priorities should be considered only as less important background.

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