

**ELIGIBLE COSTS FOR CONTROL, INSPECTION AND ENFORCEMENT  
UNDER SHARED MANAGEMENT IN THE EMFF (R(EU) No 508/2014)  
REVISED 7.5.2015**

**RELEVANT PROVISIONS IN THE EMFF**

**Article 6.3 – Union priorities**

*The EMFF shall contribute to the Europe 2020 strategy and to the implementation of the CFP. It shall pursue the following Union priorities (...): (3) Fostering the implementation of the CFP by pursuing the following specific objectives: [...] (b) the provision of support to monitoring, control and enforcement, thereby enhancing institutional capacity and the efficiency of public administration, without increasing the administrative burden.*

**Article 17.3 - Preparation of operational programmes**

*3. For the section of the operational programme referred to in point (o) of Article 18(1), the Commission shall, by 31 May 2014, adopt implementing acts laying down the actual priorities of the Union for enforcement and control policy.[...].*

**Article 74 Geographical scope**

*By way of derogation from Article 2, this Chapter shall also apply to operations carried out outside the territory of the Union.*

**Article 76 - Control and enforcement**

*1. The EMFF may support the implementation of a Union control, inspection and enforcement system as provided for in Article 36 of Regulation (EU) No 1380/2013 and further specified in Regulation (EC) No 1224/2009.*

*2. In particular, the following types of operations shall be eligible:*

- (a) the purchase, installation and development of technology, including computer hardware and software, vessel detection systems (VDS), closed-circuit television (CCTV) systems and IT networks enabling the gathering, administration, validation, analysis, risk management, presentation (by means of the websites related to control) and exchange of, and the development of sampling methods for, data related to fisheries, as well as interconnection to cross-sectoral data exchange systems;*
- (b) the development, purchase and installation of the components, including computer hardware and software, that are necessary to ensure data transmission from actors involved in fishing and the marketing of fishery products to the relevant Member State and Union authorities, including the necessary components for electronic recording and reporting systems (ERS), vessel monitoring systems (VMS) and automatic identification systems (AIS) used for control purposes;*
- (c) the development, purchase and installation of the components, including computer hardware and software, which are necessary to ensure the traceability of fishery and aquaculture products, as referred to in Article 58 of Regulation (EC) No 1224/2009;*
- (d) the implementation of programmes for exchanging data between Member States and for analysing them;*
- (e) the modernisation and purchase of patrol vessels, aircrafts and helicopters, provided that they are used for fisheries control for at least 60 % of the total period of use per year;*
- (f) the purchase of other control means, including devices to enable the measurement of engine power and weighing equipment;*
- (g) the development of innovative control and monitoring systems and the implementation of pilot projects related to fisheries control, including fish DNA analysis or the development of websites related to control;*
- (h) training and exchange programmes, including between Member States, of personnel responsible for the monitoring, control and surveillance of fisheries activities;*
- (i) cost/benefit analyses and assessments of audits performed and expenditure incurred by competent authorities in carrying out monitoring, control and surveillance;*
- (j) initiatives, including seminars and media tools, aimed at enhancing awareness, among both fishermen and other players such as inspectors, public prosecutors and judges, as well as among the general public, of the need to fight illegal, unreported and unregulated fishing and of the implementation of the CFP rules;*
- (k) operational costs incurred in carrying out more stringent control for stocks subject to specific control and inspection programmes established in accordance with Article 95 of Regulation (EC) No 1224/2009 and subject to control coordination in accordance with Article 15 of Council Regulation (EC) No 768/2005;*
- (l) programmes linked to the implementation of an action plan established in accordance with Article 102(4) of Regulation (EC) No 1224/2009, including any operational costs incurred.*

3. The measures listed in points (h) to (l) of paragraph 2 shall only be eligible for support if they relate to control activities carried out by a public authority. [...]

**Article 94 - Determination of co-financing rates**

1. When adopting implementing acts pursuant to Article 19 approving an operational programme, the Commission shall set the maximum EMFF contribution to that programme.

2. The EMFF contribution shall be calculated on the basis of the amount of eligible public expenditure.

The operational programme shall establish the EMFF contribution rate applicable to the Union priorities set out in Article 6. The maximum EMFF contribution rate shall be 75 % and the minimum EMFF contribution rate shall be 20 % of eligible public expenditure.

3. By way of derogation from paragraph 2, the EMFF contribution shall be: [...]

(d) 70 % of the eligible public expenditure for the support referred to in point (e) of Article 76(2);

(e) 90 % of the eligible public expenditure for the support referred to in points (a) to (d) and (f) to (l) of Article 76(2); [...]

**Article 95 - Intensity of public aid**

1. Member States shall apply a maximum intensity of public aid of 50 % of the total eligible expenditure of the operation.

2. By way of derogation from paragraph 1, Member States may apply an intensity of public aid of 100 % of the eligible expenditure of the operation where:

(a) the beneficiary is a public law body or an undertaking entrusted with the operation of services of general economic interest as referred to in Article 106(2) TFEU, where the aid is granted for the operation of such services; [...]

3. By way of derogation from paragraph 1, Member States may apply an intensity of public aid between 50 % and 100 % of the total eligible expenditure where:

(a) the operation is implemented under Chapter I, II or IV of Title V and fulfils all of the following criteria:

(i) it is of collective interest;

(ii) it has a collective beneficiary;

(iii) it has innovative features, where appropriate, at local level;

(b) the operation is implemented under Chapter III of Title V, fulfils one of the criteria referred to in points (a)(i), (ii) or (iii) of this paragraph and provides public access to its results.

4. By way of derogation from paragraph 1, additional percentage points of public aid intensity shall apply for specific types of operations as set out in Annex I.

5. The Commission shall adopt implementing acts establishing how the different percentage points of public aid intensity shall apply in case several conditions of Annex I are fulfilled. [...].

**ANNEX I - SPECIFIC AID INTENSITY**

Type of operations	% points
Operations under Article 76 on control and enforcement may benefit from an increase by	30
Operations under Article 76 on control and enforcement related to small-scale coastal fisheries may benefit from an increase by	40

**DISCLAIMER:** This working document has been prepared by the Commission services. On the basis of the applicable EU law, it provides technical guidance to the attention of public authorities, practitioners, beneficiaries or potential beneficiaries, and other bodies involved in the monitoring, control or implementation of the European Maritime and Fisheries Fund on how to interpret and apply the EU rules in this area. The aim of this document is to provide Commission services' explanations and interpretations of the said rules in order to facilitate the implementation of operational programmes and to encourage good practice(s). However this note is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission.

## 1. LEGAL BASIS IN THE EMFF REGULATION

This note provides clarification on the definition of operational costs and on the eligibility of EMFF support for operational costs as regards enforcement and control operations, and the modernisation or purchase of equipment for enforcement and control operations, taking into account the following provisions of Regulation (EU) 508/2014 of the European Parliament and the Council (EMFF)<sup>1</sup>:

- Article 6(3)(b) EMFF which identifies for Union priority 3, the specific objectives of monitoring control and enforcement in the context of the sustainable development of fisheries and aquaculture and related activities;
- Article 17(3) EMFF which sets out the conditions for the adoption of the actual priorities of the Union for enforcement and control policy;
- Article 74 EMFF outlining the geographical scope for accompanying measures for the CFP under shared management, including control and enforcement;
- Article 76 EMFF which includes a list of types of operations eligible to EMFF support under these priorities;
- Article 94(3)(d) and (e) EMFF which set the co-financing rates for control and enforcement operations supported under Article 76(2) EMFF;
- Article 95 EMFF which sets out the general rules of application of the intensity of public aid;
- EMFF Annex I to the EMFF which sets out the operations for which additional points of public aid intensity shall apply.

## 2. EMFF SUPPORT TO OPERATIONAL COSTS FOR CONTROL, INSPECTION AND ENFORCEMENT

There is neither formal definition of operational costs in the EMFF nor in the Common Provisions Regulation (CPR)<sup>2</sup>. In addition, the Commission has not been empowered by the legislator to adopt a delegated or implementing act which could have spelled out a definition of operational costs for the implementation of the EMFF. An indication of what operational costs are can nevertheless be given e.g. by drawing from the Guidelines on regional State aid for 2014-2020 which refers to an undertaking's current expenditure in such costs categories as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, financing costs, etc.<sup>3</sup>.

The eligibility of control and enforcement operations is set out in Article 76, that forms part of Chapter VI of the EMFF Regulation (Accompanying measures for the CFP under shared management). Under this chapter, the eligibility of operational costs (including personnel costs) is explicitly mentioned for two types of operations, namely Article 76(2)(k) and (l)..

Operational costs for control eligible under Art. 76 EMFF may also be eligible to EMFF support when they are "*carried out outside the territory of the Union*", in accordance with Art. 74 EMFF.

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<sup>1</sup> Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund[...], OJ L 149, 20.5.2014, p.1.

<sup>2</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions [...], OJ L347, 20.12.2013, p. 320.

<sup>3</sup> See e.g., point 20(q) in the Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p.1).

### **3. EMFF SUPPORT TO OPERATIONAL COSTS FOR CONTROL, INSPECTION AND ENFORCEMENT**

On this basis, operational costs including personnel costs, under control, inspection and enforcement measures listed in Article 76(2) (a-l) can only be considered eligible if they are incurred:

- When carrying out more stringent control for stocks subject to specific control and inspection programmes (SCIPs) established in accordance with Article 95 of Regulation (EC) No 1224/2009 and subject to control coordination in accordance with Article 15 of Council Regulation (EU) No 768/2005, as per Article 76(2) (k) of the EMFF;
- When linked to the implementation of an action plan, as per Article 76(2) (l);
- When part of action plans to reinforce MS administrative capacity to comply with the implementation of a Union control, inspection and enforcement system, as foreseen by EMFF Annex IV on ex-ante conditionalities.

For these operational costs, MS would then have to be able to demonstrate that:

- the relevant conditions, if any, are respected, in particular whether this operation falls under the Union priorities identified by the Commission in the implementing act adopted on the basis of Article 17(3) EMFF and the specific objectives set out in Art. 6.3(b) EMFF for "*the provision of support to monitoring, control and enforcement, thereby enhancing institutional capacity and the efficiency of public administration, without increasing the administrative burden*"
- these costs are directly linked to the undertaking of that operation,
- they are supported only for the duration of that operation,
- the operation is carried out by a public authority, as set out in Article 76(3) EMFF
- the provisions of Article 68 CPR on financing of indirect and staff costs are respected.

### **4. EMFF SUPPORT TO EQUIPMENT COSTS FOR CONTROL**

Article 76(2) EMFF identifies a number of types of operations eligible for EMFF support and for which equipment costs would also be eligible, provided that:

- the operation is in line with the control priorities included in the Commission Implementing Decision identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund (Art 17(3) EMFF) and the specific objectives set out in Art. 6(3)(b) EMFF for "*the provision of support to monitoring, control and enforcement, thereby enhancing institutional capacity and the efficiency of public administration, without increasing the administrative burden*" and thus covered by section 12 of the MS Operational Programme pursuant to EMFF Article 18(1)(o);
- the equipment is necessary to carry out control, inspection and enforcement activities in conformity with the so-called "Control regulation" (Regulation (EC) No 1224/2009<sup>4</sup>) and the competent national authority is able to demonstrate and verify that it is actually used for that purpose;

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<sup>4</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy [...] OJ L 343, 22.12.2009, p. 1.

- the operation relates to the modernisation or purchase of patrol vessels, aircrafts and helicopters "*used for fisheries control for at least 60% of the total period of use per year*" in accordance with Article 76(2)(e) EMFF;
- the operation relates to the purchase of other control means eligible for funding under Article 76(2)(f).

Furthermore, under Article 74 EMFF, equipment costs for control eligible under Art. 76 EMFF are also eligible for EMFF support when they are "*carried out outside the territory of the Union*".

## 5. AID INTENSITY AND CO-FINANCING RATE

It is for each Member State to decide on the **aid intensity** it wishes to apply to eligible expenditure of the operation, provided the maximum ceilings laid out in Article 95 EMFF are respected. Article 95(1) EMFF provides as a general rule that the maximum intensity of public aid will be of 50% of the total eligible expenditure of the operation. However,

- Article 95(2) provides that the public aid intensity may be of 100% when "*the beneficiary is a public law body or an undertaking entrusted with the operation of services of general economic interest*" and
- Article 95(4) provides that "*additional percentage points of public aid intensity shall apply for certain types of operation as set out in Annex I*":
  - 30% may apply for operations under Article 76 on control and enforcement and;
  - 40% may apply for operations under Article 76 on control and enforcement related to small-scale coastal fisheries.

Furthermore, as foreseen in Article 95(4) EMFF, Commission Implementing Regulation (EU) No 772/2014 of 14 July 2014 establishes the way in which the different percentage points of public aid intensity shall apply when several conditions of Annex I to the EMFF Regulation are met.

Regarding **co-financing rate**, control, inspection and enforcement operations supported under:

- Article 76(2)(e) EMFF shall benefit from a co-financing rate of 70%, in accordance with Article 94(3)(d) EMFF
- Article 76(2)(a) to (d) and (f) to (l), shall benefit from a co-financing rate of 90% in accordance with EMFF Article 94(3)(e) EMFF.

In accordance with Art 18(1)(k)(ii) EMFF, the financing plans included in MS operational programmes, will have to indicate separately the EMFF resources and the co-financing rates for these two sets of operations.

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