

**GUIDANCE 2014/5**

**CALCULATION OF ADDITIONAL COSTS AND INCOME FOREGONE**

**VERSION 3 – 2 March 2015**

**RELEVANT PROVISIONS IN THE EMFF REGULATION**

<b>Regulation</b>	<b>Articles</b>
<b>EMFF</b>	<p><i>Article 96</i></p> <p><b>Calculation of additional costs or income foregone</b></p> <p>Where aid is granted on the basis of additional costs or income foregone, Member States shall ensure that the relevant calculations are adequate, accurate and established in advance on the basis of a fair, equitable and verifiable calculation.</p>

**DISCLAIMER:**

*"This is a working document 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 guidance note is without prejudice to the interpretation of the Court of Justice and the General Court or decisions of the Commission."*

## 1. LEGAL BASIS

The provisions in Article 96 of the EMFF<sup>1</sup> should be applied in case of each measure:

- where the measure makes explicit reference to the form of the grant as "compensation of additional costs or income foregone"; and
- where the measure has been selected by the Member State for financing within the Operational Programme.

The following articles within the EMFF Regulation might be concerned by these provisions:

<b>Article 53</b>	<p style="text-align: center;"><b><i>Conversion to eco-management and audit schemes and organic aquaculture</i></b></p> <p>1. In order to promote the development of organic or energy-efficient aquaculture, the EMFF may support:</p> <p>(a) the conversion of conventional aquaculture production methods into organic aquaculture within the meaning of Council Regulation (EC) No 834/2007 ( 1 ) and in accordance with Commission Regulation (EC) No 710/2009 ( 2 );</p> <p>(b) the participation in the Union eco-management and audit schemes (EMAS) established by Regulation (EC) No 761/2001 of the European Parliament and of the Council ( 3 ).</p> <p>2. Support shall only be granted to beneficiaries who commit themselves to participate in the EMAS for a minimum of three years or to comply with the requirements of organic production for a minimum of five years.</p> <p>3. <b><i>Support shall take the form of compensation</i></b> for a maximum of three years during the period of the conversion of the enterprise to organic production, or during the preparation for participation in the EMAS. <b><i>Member States shall calculate that compensation on the basis of:</i></b></p> <p>(a) <b><i>the loss of revenue or additional costs</i></b> incurred during the period of transition from conventional into organic production for operations eligible under point (a) of paragraph 1; or</p> <p>(b) <b><i>the additional costs</i></b> resulting from the application and preparation of the participation in EMAS for operations eligible under point (b) of paragraph 1.</p>
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<sup>1</sup> Regulation (EU) No 508/2013 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1.)

<b>Article 54</b>	<p style="text-align: center;"><b><i>Aquaculture providing environmental services</i></b></p> <p>1. In order to foster the development of aquaculture providing environmental services, the EMFF may support:</p> <p>(a) aquaculture methods compatible with specific environmental needs and subject to specific management requirements resulting from the designation of NATURA 2000 areas in accordance with Directives 92/43/EEC and 2009/147/EC;</p> <p>(b) participation, in terms of costs directly related thereto, in ex-situ conservation and reproduction of aquatic animals, within the framework of conservation and biodiversity restoration programmes developed by public authorities, or under their supervision;</p> <p>(c) aquaculture operations which include conservation and improvement of the environment and of biodiversity, and management of the landscape and traditional features of aquaculture zones.</p> <p>2. Support under point (a) of paragraph 1 shall take the form of annual compensation for the additional costs incurred and/or income foregone as a result of management requirements in the areas concerned, related to the implementation of Directives 92/43/EEC or 2009/147/EC.</p> <p>3. Support under point (c) of paragraph 1 shall be granted only to beneficiaries who commit themselves for a minimum period of five years to aqua-environmental requirements that go beyond the mere application of Union and national law. The environmental benefits of the operation shall be demonstrated by a prior assessment conducted by competent bodies designated by the Member State, unless the environmental benefits of that operation are already recognised.</p> <p><b><i>4. Support under point (c) of paragraph 1 shall take the form of annual compensation for the additional costs incurred and/or income foregone.</i></b></p> <p>5. The results of operations receiving support under this Article shall be adequately publicised by the Member State in accordance with Article 119.</p>
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The compensation of additional costs in outermost regions for fishery and aquaculture products (articles 70-73) is not covered by Article 96. The criteria for the calculation of the additional costs resulting from the specific handicaps of these regions are subject to Commission empowerments under Article 72 of the EMFF Regulation.

## **2. OBJECTIVE AND SCOPE**

Article 96 of the EMFF Regulation provides that "*Where aid is granted on the basis of additional costs or income foregone, Member States shall ensure that the relevant calculations are adequate, accurate and established in advance on the basis of a fair, equitable and verifiable calculation.*"

According to Article 18.2 of the EMFF Regulation, Member States shall detail the method of calculation of additional costs and income foregone already within the Operational Programme.

The objective of the current paper is to provide Member States with guidance so that they should be able to ensure relevant, adequate and accurate calculation of additional costs and

income foregone. Furthermore, the guidance takes into account the current practice and interpretations provided for the application thereof as well as lessons learnt from the 2007-2013 programming period.

### **3. COMPENSATION WITHIN THE EFF (2007-2013)**

Article 30 of the EFF Regulation<sup>2</sup> allows for the granting of compensation for the use of aquaculture production methods that help to protect and improve the environment and to conserve nature, including:

- 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;
- participation in the Community eco-management and audit scheme (EMAS);
- organic aquaculture;
- sustainable aquaculture compatible with specific environmental constraints resulting from the designation of NATURA 2000 areas.

Member States may calculate the compensation on the basis of loss of revenue incurred or additional costs which may result from the application of aqua-environmental methods.

The Implementing Regulation of the EFF<sup>3</sup> further details the conditions that should apply to the above measures, in particular in relation to the period of aqua-environmental commitment, the cost of participation in Community eco-management and audit scheme, the definitions of "organic aquaculture" and "normal good aquaculture practice".

The EFF Vademecum<sup>4</sup> provides further clarification concerning the calculation of this compensation:

- 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 and 92/43/EEC, 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.

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<sup>2</sup> Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1.)

<sup>3</sup> Commission Regulation (EC) No 498/2007 of 26 March 2007 laying detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund

<sup>4</sup> EFFC/10/2007 that has been discussed at the EFF Committee of 23 April 2007

#### **4. MAIN DIFFERENCES BETWEEN THE EFF AND EMFF**

There are two major changes in the EMFF compared to the current practice under the EFF concerning the compensation for the use of aquaculture production methods helping to protect and improve the environment and to conserve nature:

– scope of compensation:

Within the framework of EFF (art 30.2.(a)-(d)) compensation could be granted for forms of aquaculture comprising protection and enhancing of environment, natural resources, genetic diversity, and management of the landscape and traditional features of aquaculture zones; participation in EU eco-management and audit schemes; for organic aquaculture and sustainable aquaculture compatible with specific environmental constraints resulting from the designation of NATURA 2000 areas in accordance with Council directive on the conservation of natural habitats and of wild fauna and flora.

The EMFF allows for compensation

- *in Article 53:* for participation in the Union eco-management and audit schemes (EMAS), and for conversion of conventional aquaculture production methods into organic aquaculture. This latter is clearly limited to aquaculture farmers newly converting into organic aquaculture and committing themselves for 5 years.
  - *in Article 54:* for same operations that were eligible under Article 30(2)(a) and (d).
- periodicity of the compensation: while the EFF obliged Member States to provide a one-off allocation, under EMFF
- *in Article 53:* compensation can be provided for a maximum of 3 years, without any indication of eventual instalments;
  - *in Article 54:* compensation can be provided on an annual basis, but there is no limitation as to the duration of the compensation other than the eligibility period as defined in Article 65 of the CPR.

Both of the changes affect the methodology and procedures of Member States for setting up compensation scheme.

Nevertheless, it should be noted that even though Article 54(4) of the EMFF includes provisions with regard to the form of the support and the periodicity of payments, these does not influence the right of the Managing Authority to define the application procedure for the potential beneficiaries (whether application needs to be submitted on an annual basis or once for the whole period of compensation).

#### **5. GENERAL PRINCIPLES TO CALCULATION OF COMPENSATION OF INCOME FOREGONE AND ADDITIONAL COSTS**

The EMFF Operational Programme should include the method of calculation of additional costs and income foregone as outlined in Article 96 that is directly linked to Articles 53 and 54 of the EMFF regulation listing the measures where compensation on the basis of additional costs and/or income foregone is eligible. Additionally, in line with Article 125(3)(c) of the CPR, the Managing Authority is responsible for providing the beneficiary with documentation setting out the conditions for support including a financial plan.

Therefore, the amount of compensation should be established and documented before making the financial commitment by the Managing Authority.

***Adequacy and accuracy of the calculation as well as fair, equitable and verifiable calculation*** – as required by Article 96 of the EMFF - can be ensured in case Member States require in their methodology that the calculations and the corresponding grant for compensation shall

- a) contain only elements that are verifiable;
- b) be based on figures and methods established or approved by appropriate expertise;
- c) indicate clearly the source of the figures;
- d) indicate what legal requirement is considered as standard practice, what environmental benefits are expected/desired and how they can be demonstrated in case of the individual operations.

As far as is feasible, all data used should refer to the same year(s). The use of an average for the most recent years (eg. three latest years) is recommended to avoid basing the calculations on a year with an extreme data (in terms of costs and income).

The ***general principle*** of calculation is a comparison between a standard practice and a voluntary aqua-environmental practice. The difference (additional costs incurred and income foregone) is to be totally or partially compensated.

As a consequence of the general principle, any productive investments associated with the activities covered under Articles 53 and 54 (eg. costs of investments needed for the voluntary aqua-environmental practice) are not to be compensated but should be covered under Article 48 of the EMFF Regulation.

***Article 53 and 54 differentiate*** between the individual operations on the basis of elements to be taken into account for the calculation of the compensation.

- ***In Article 53***, in case of conversion to organic aquaculture additional costs or income foregone can be taken into account for the calculation of the compensation, while for participation in eco-management and audit schemes only additional costs are to be taken into account for the calculation of the compensation.

As far as the periodicity of the compensation regards, the Managing Authority has the discretion to define whether the compensation is determined and paid on an annual basis or for a period of compensation that cannot exceed 3 years. If the conversion period to organic aquaculture is shorter than the maximum allowed 3 years, the compensation can only be paid until the end of the conversion period.

In case of participation in EMAS, the Managing Authority may decide that the compensation will only be paid to the beneficiary once the invoices are presented.

The Managing Authority should leave room for revision of the calculation of the compensation on the basis of well defined, clear criteria.

- ***In Article 54***, in case of measures under articles 54.1(a) and (c) additional costs and income foregone shall be the basis of calculation, while for measures under 54.1(b) only costs incurred are to be taken into account on the basis of invoices presented.

Paragraphs 2 and 4 of article 54 explicitly provide for compensation on an ***annual basis*** for operations under articles 54.1(a) and (c). In practice, this compensation shall be determined in advance at the beginning of the operation on an annual basis for the whole period of implementation. The formulation of these paragraphs leaves smaller room for consideration by the Managing Authority as far as the payment is concerned:

the compensation shall be calculated on an annual basis, although the amount of the annual compensation might be paid in more than one instalment within the year if the Managing Authority decides so. In case of operations covering several years of implementation, the Managing Authority should leave room for revision of the annual compensation on the basis of well defined, clear criteria.

As regards the duration of the compensation, there is no limitation other than the eligibility period as defined in Article 65(2) of the CPR in case of operations under Article 54(1)(a), for operations under Article 54(1)(c) the compensation cannot go beyond the period the beneficiaries committed themselves to aqua-environmental requirements.

Where the value of key elements considered in the methodology of calculation change significantly in time, *revision of the calculation* thus revision of the amount of compensation for running contracts should be allowed. (A revision of the calculation itself does not imply a modification in the operational programme unless the methodology remains unchanged.) Where such revision is allowed, this should work downwards as well as upwards to minimise the possibility of over-compensation.

If the activity/operation is cancelled or evidence is found that the beneficiary is not complying with the relevant rules and conditions, the payment of annual compensation should be interrupted. In case of any financial correction imposed on the beneficiary, annual compensation is to be re-calculated on a pro-rata temporis basis.

## **6. PRACTICAL GUIDANCE TO CALCULATION OF COMPENSATION BASED ON INCOME FOREGONE AND ADDITIONAL COSTS**

### **6.1. Calculation of additional costs and income foregone**

The *calculation of additional costs* should be based on the difference of production costs in between aquaculture farms providing environmental services and aquaculture farms not providing environmental services for the same species. For the sake of consistency with other legislative elements of the CFP (eg. with the CMO regulation), the expression of the difference is preferred in EUR per ton of live weight. Should the Member State consider any other measurement unit more appropriate, this can be applied unless it is justified from the point of view of relevance and avoidance of overcompensation.

The *calculation of income foregone* should be related to the difference between the income (selling price x quantity sold) of a normal farm and that of the one providing environmental services for the same product.

Each of these differences should be projected onto a recognised and applicable measurement unit (e.g.: volume of production or sales or surface of production area). The initial calculation of additional costs or income foregone can be further adjusted by duly justified elements that are specific to the country, geographical area or the aquaculture form or national averages where more precise figures are not available.

In the case of existing aquaculture operators that convert to organic aquaculture, participate in EMAS, adopt aquaculture methods compatible with designated NATURA 2000 areas or which include conservation and improvement of the environment and of biodiversity, management of the landscape and traditional features of aquaculture zones,

the compensation can be based on the comparison of costs and/or income figures before and after the conversion/adoption of aquaculture methods by the operator.

Example:

*In the Czech Republic, the level of compensation for income foregone under the EFF is projected on surface of production area in hectare (ha). However, this amount is corrected by a co-efficient that is related to the altitude (m above sea level) of the water surface of production of the individual aquaculture farmer.*

## **6.2. Level of compensation**

Any costs advantage or additional income resulting from the conversion to eco-management and audit schemes and organic aquaculture or aquaculture providing environmental services including but not limited to any further public support received shall be taken into account to determine the compensation.

As regards the level of compensation, the Managing Authority should ensure that there is no overcompensation and may decide to compensate all or part of the additional costs and/or income foregone. The level of compensation can be linked to the evolution or level of any financial indicator of the beneficiary for the same period of time as the compensation is provided.

Example:

*In Hungary, as a general rule, the level of compensation paid on an annual basis under the EFF cannot exceed 15% of the annual turnover of the beneficiary. The level of compensation for the first two years of the 5-year commitment period is 90 EUR/ha. If the 15% of the annual turnover in nominal terms is more than the compensation calculated on the basis of 90 EUR/ha, the lower amount should be taken into account for compensation.*