

Brussels, **XXX**
[...] (2021) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

on supplementing Regulation (EU) 2021/1139 of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund as regards the periods of time and the dates for the inadmissibility of applications for support

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Rules on granting financial assistance to beneficiaries under the common fisheries policy (CFP) are set out in the CFP Regulation 1380/2013, which provides in its Article 42 that 'Union financial assistance to operators shall be conditional upon compliance with the CFP rules by operators'.

Article 11(4) of Regulation (EU) 2021/1139 on the European Maritime and Fisheries Fund (EMFAF) empowers the Commission to adopt a delegated act defining: (a) the threshold above which applications by operators who have committed serious infringements, environmental offences or fraud are no longer admissible; (b) the length of the period of inadmissibility; (c) the arrangements for recovering the aid granted; (d) the starting or ending dates of the inadmissibility period; and (e) the conditions for reducing the inadmissibility period.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Member States were consulted on the content of the draft delegated act on 9 April 2019 and on 21 April 2021 through a European Maritime and Fisheries Fund (EMFF) Expert Group. They were invited to present their observations and share their experience with admissibility rules under the EMFF.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions on the admissibility of applications under the EMFAF are similar to those of Commission Delegated Regulation (EU) No 2015/288 on the admissibility of applications under the EMFF, but are adapted to the current reality and aimed at simplifying implementation and ensuring a level playing field.

Experience gained in applying the point system under the EMFF has shown that making the admissibility of operators' applications dependant on a certain number of points is the most suitable way to ensure proportionality and a level playing field, while also fully aligning with the Regulation (EU) No 1224/2009 establishing a Union control system for ensuring compliance with the rules of the CFP. An assessment of the admissibility of operators' applications under the EMFAF will therefore depend on the total number of serious infringements committed and the total number of points assigned.

In line with the EMFAF, the threshold for triggering the inadmissibility is two or more serious infringements. However, this threshold will be reduced to one serious infringement in the case of (a) serious infringements with seven points; or (b) serious infringements with no points, which are particularly damaging due to their nature and seriousness.

All rules and principles related to inadmissibility due to illegal, unreported and unregulated (IUU) fishing, environmental offences or fraud remain exactly the same as under the EMFF. Rules applying to operators that own more than one fishing vessel, and rules on transfer of ownership are also unchanged.

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THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004¹, and in particular Article 11(4) thereof,

Whereas:

- (1) Pursuant to Article 11(1) of Regulation (EU) 2021/1139, an application for support from the European Maritime, Fisheries and Aquaculture Fund (EMFAF) submitted by an operator will be inadmissible for an identified period of time if the competent authority has determined that that operator: (i) has committed serious infringements, under Article 42 of Council Regulation (EC) No 1005/2008² or under Article 90 of Council Regulation (EC) No 1224/2009³ or under other legislation adopted by the European Parliament and the Council within the Common Fisheries Policy ('CFP') ; (ii) has been involved in the operation, management or ownership of a fishing vessel included in the Union list of vessels engaged in IUU fishing ('Union IUU vessel list'), as set out in Article 40(3) of Regulation (EC) No 1005/2008, or of a vessel flying the flag of countries identified as non-cooperating third countries as set out in Article 33 of that Regulation; (iii) has committed any of the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council⁴, where the application concerns support for aquaculture activities.
- (2) Pursuant to Article 11(3) of Regulation (EU) 2021/1139, an application for support submitted by an operator will be inadmissible for an identified period of time if it has been determined through a final decision by the competent authority concerned that

¹ Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, (OJ L 247, 13.7.2021, p.1).

² Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Union system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

³ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

⁴ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p.28).

the operator has committed fraud, as defined in Article 3 of Directive 2017/1371/EU⁵, in the context of the European Maritime and Fisheries Fund (EMFF) or the EMFAF.

- (3) Operators applying for EMFAF support should be clearly identifiable so that the admissibility of their applications can be verified. To ensure the conditional nature of EMFAF support, it is appropriate to lay down the necessary provisions ensuring that such operators comply with the admissibility conditions for EMFAF support in relation to all fishing vessels under their effective control.
- (4) Article 11(4) of Regulation (EU) 2021/1139 empowers the Commission to adopt delegated acts identifying the threshold for triggering the inadmissibility, which should be proportionate to the nature, gravity, duration and repetition of the serious infringements, offences or fraud committed. In principle, the inadmissibility should be triggered as of two serious infringements. However, certain serious infringements are particularly damaging due to their nature and seriousness, and therefore require proportional treatment in the form of automatically triggering the inadmissibility for EMFAF funds.
- (5) Article 11(4) of Regulation (EU) 2021/1139 also empowers the Commission to adopt delegated acts identifying the duration of the inadmissibility period, which should be proportionate to the nature, gravity, duration and repetition of the serious infringements, offence or fraud, and should last at least 1 year. It is therefore necessary to lay down rules for calculating the duration, and identifying the relevant starting and ending dates, of the inadmissibility period and the conditions for reducing that period.
- (6) For all serious infringements which are assigned points in accordance with Article 92 of Regulation (EC) No 1224/2009 and Article 126 and Annex XXX to Commission Implementing Regulation (EU) No 404/2011⁶, to ensure that the inadmissibility of operators' applications for EMFAF support is proportional and maintains a level playing field, it is appropriate to base the calculation of the period of inadmissibility on the already established system of points assigned. The inadmissibility period and its starting date should therefore be calculated in accordance with Article 126(4) of Implementing Regulation (EU) No 404/2011.
- (7) In accordance with Article 92(4) of Regulation (EC) No 1224/2009, if the holder of a fishing licence does not commit, within 3 years from the date of the last serious infringement, another serious infringement, all points on its fishing licence should be deleted. Consequently, infringement points remain present on an operator's licence for at least 3 years. In order to ensure continuity with the system in place as well as proportionality and legal certainty, all serious infringements committed as from 1 January 2013 in accordance with Article 92 of Regulation (EC) No 1224/2009 and for which assigned points have not been deleted from an operator's licence should be taken into account when calculating the inadmissibility period.
- (8) To apply the rules on inadmissibility of applications by operators for EMFAF support proportionately and effectively, it is appropriate to lay down rules for triggering the inadmissibility and calculating the duration of the inadmissibility period in cases where a single operator owns more than one fishing vessel. These rules should ensure that EMFAF support for other vessels of the operator does not indirectly benefit

⁵ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OL L 198, 28.7.2017, p. 29).

⁶ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Union control system for ensuring compliance with the rules of the Common Fisheries Policy, (OJ L 112, 30.4.2011, p. 1).

fishing vessels that were used to commit serious infringements. It is also appropriate to lay down rules on revising the inadmissibility period where further serious infringements are committed by an operator during the inadmissibility period.

- (9) Rules should be laid down to ensure fair treatment of operators who become new owners of fishing vessels following a sale or other type of transfer of ownership while at the same time not undermining the Union system for control, inspection and enforcement laid down in Regulation (EU) No 1224/2009 on fisheries control, which is necessary to achieve the objectives of the CFP.
- (10) Should an operator's fishing licence be permanently withdrawn due to the high frequency and gravity of the infringements committed, banning access to EMFAF support until the end of the period of eligibility of expenditure for an EMFAF contribution laid down in Article 63(2) of Regulation (EU) 2021/1060 of the European Parliament and of the Council⁷ is justified by the need to safeguard the financial interests of the Union and of its taxpayers. The ban would be justified even if according to the calculation method laid down in this Regulation the inadmissibility period ends before the end of the eligibility period.
- (11) Article 11(4) of Regulation (EU) 2021/1139 empowers the Commission to adopt delegated acts on the arrangements for recovering the aid granted if serious infringements or environmental offences occurred during the period referred to in Article 11(2) of that Regulation. It is therefore necessary to lay down arrangements for recovering the aid granted.
- (12) To enable the prompt application of the measures provided for in this Regulation and given the importance of ensuring a harmonised and equal treatment of operators in all Member States from the start of the programming period, this Regulation should enter into force on the day following that of its publication and should apply from the first day of the period of the eligibility of expenditure for an EMFAF contribution, namely 1 January 2021,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation applies to applications for support from the EMFAF and specifies the period of time during which such applications submitted by operators who have carried out any of the actions referred to in Article 11(1) or Article 11(3) of Regulation (EU) 2021/1139 shall be inadmissible.

⁷ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

Article 2

Definition

For the purposes of this Regulation, ‘infringement points’ means the points assigned to an operator for a Union fishing vessel in the context of the point system for serious infringements set out in Article 92 of Regulation (EC) No 1224/2009.

CHAPTER II

DURATION AND STARTING DATE OF THE INADMISSIBILITY PERIOD

Article 3

Inadmissibility of an application submitted by an operator who have committed serious infringements under Article 42(1) of Council Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009

- (1) An application for support shall be inadmissible for a period of time defined pursuant to Article 4 where the competent authority has determined that the operator submitting the application has committed at least two serious infringements under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009.
- (2) By way of derogation from paragraph 1, the following rules shall apply:
 - (a) where a competent authority has determined that the operator has committed at least one serious infringement for which seven points are assigned, listed in points 7, 9, 10, 11 and 12 of Annex XXX to Regulation (EU) No 404/2011, the application of that operator shall be inadmissible;
 - (b) where a competent authority has determined that the operator has committed at least one serious infringement as defined in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 and in Article 90(1)(b) of Regulation (EC) No 1224/2009 for which no point is assigned, the application of that operator shall be inadmissible.
- (3) For the purpose of triggering the inadmissibility and calculating the duration of the inadmissibility period, all serious infringements committed as from 1 January 2013 and for which a decision within the meaning of paragraph 1 or 2 was taken as from that date, shall be taken into account.
- (4) Notwithstanding paragraph 3, for the purposes of paragraph 1 and 2(a), only serious infringements whose points have not been deleted pursuant to Article 92(4) of Regulation (EC) No 1224/2009 shall be taken into account.

Article 4

Duration of the inadmissibility period triggered by serious infringements

- (1) For serious infringements for which points are assigned, each infringement point assigned shall result in an inadmissibility period of 2 months. Each serious

infringement for which no point is assigned shall result in an inadmissibility period of 12 months.

- (2) For the purposes of Article 3(1), the starting date of the inadmissibility period shall be the date of the decision by a competent authority determining that the operator committed two serious infringements under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009 insofar as they comply with the condition laid in Article 3(4).
- (3) For the purposes of Article 3(2)(a) and 3(2)(b), the starting date of the inadmissibility period shall be the date of the decision by a competent authority determining that an operator committed a serious infringement for which seven points are assigned, listed in points 7, 9, 10, 11 and 12 of Annex XXX to Regulation (EU) No 404/2011, or a serious infringement for which no point is assigned.

Article 5

Inadmissibility of applications submitted by operators whose vessel is included in the Union IUU vessel list or whose vessel is flagged to a non-cooperating third country

- (1) An application for support submitted by an operator shall be inadmissible for a period of time defined pursuant to paragraphs 2 and 3 if the competent authority has determined that:
 - (a) that operator has been involved in the operation, management or ownership of a fishing vessel included in the Union IUU vessel list as set out in Article 40(3) of Regulation (EC) No 1005/2008; or
 - (b) that operator has been involved in the operation, management or ownership of a vessel flagged to a country included in the list of non-cooperating third countries provided for in Article 33 of that Regulation.
- (2) For operators referred to in paragraph (1)(a), the duration of the inadmissibility period shall be the whole period during which the fishing vessel is included in the Union IUU vessel list and, in any event, not less than 24 months.
- (3) For operators referred to in paragraph (1)(b), the duration of the inadmissibility period shall be the whole period during which that country is included in the list of non-cooperating third countries and, in any event, not less than 12 months.
- (4) The starting date of the inadmissibility period shall be the date of the decision taken by the competent authority referred to in paragraph 1.

Article 6

Inadmissibility of applications submitted by operators who have committed environmental offences

- (1) If a competent authority has determined in a decision that an operator has committed one of the offences set out in Article 3 of Directive 2008/99/EC, applications for support from the EMFAF made by that operator pursuant to Article 27 of Regulation (EU) 2021/1139 shall be inadmissible:
 - (a) for a period of 12 months, if the competent authority has determined that the offence was committed with serious negligence; or

- (b) for a period of 24 months, if the competent authority has determined that the offence was committed intentionally.
- (2) If a competent authority has determined in a decision that an operator has committed one of the offences set out in Article 4 of Directive 2008/99/EC, applications for support from the EMFAF submitted by that operator pursuant to Article 27 of Regulation (EU) 2021/1139 shall be inadmissible for a period of 24 months.
- (3) The inadmissibility period shall be increased by 6 months if, in the decision referred to in paragraph 1 or 2, the competent authority has:
 - (a) explicitly referred to the presence of aggravating circumstances; or
 - (b) determined that an offence committed by the operator was carried out over a period of more than one year.
- (4) Provided that it lasts at least 12 months in total, the inadmissibility period shall be reduced by 6 months if the competent authority has explicitly referred to the presence of mitigating circumstances in the decision referred to in paragraph 1 or 2.
- (5) The starting date of the inadmissibility period shall be the date of the decision by a competent authority determining that an offence set out in Article 3 or Article 4 of Directive 2008/99/EC was committed.
- (6) For the purposes of triggering the inadmissibility and calculating the duration of the inadmissibility period, only offences committed as from 1 January 2013 and for which a decision within the meaning of paragraph 1 or 2 was taken as from that date shall be taken into account.

Article 7

Inadmissibility of applications by operators that have committed fraud in the context of the EMFF or the EMFAF

- (1) If a competent authority determines that an operator committed a fraud in the context of the EMFF or EMFAF, all applications for EMFAF support submitted by that operator shall be inadmissible from the date of the final decision determining the commission of a fraud as defined in Article 3 of Directive (EU) 2017/1371.
- (2) The inadmissibility period shall last until the end of the period of eligibility of expenditure for an EMFAF contribution referred to in Article 63(2) of Regulation (EU) 2021/1060.

CHAPTER III

COMMON PROVISIONS

Article 8

Determination of the inadmissibility period where the operator owns more than one fishing vessel

- (1) If an operator operates or owns more than one fishing vessel, the inadmissibility period of an application for support submitted by that operator shall be determined separately for each individual fishing vessel, in accordance with Article 3, Article 4 and Article 5.

- (2) However, applications for support submitted by that operator shall also be inadmissible:
- (a) if applications in relation to more than half of the fishing vessels that operator owns or operates are inadmissible for support pursuant to Article 3 or Article 5, or
 - (b) where infringement points have been assigned for serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009, if the average number of assigned infringement points per fishing vessel that operator operates or owns, equals or exceeds seven points.

Article 9

Transfer of ownership

- (1) If, pursuant to Article 3, 5 and 7, an operator is subject to an inadmissibility period, that inadmissibility period shall not be transferred to the new operator in case of sale or transfer of ownership of the fishing vessel.
- (2) By derogation from paragraph 1, where, in accordance with Article 92 of Regulation (EC) No 1224/2009, serious infringements are committed under Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009 prior to the change of ownership of the fishing vessel, those infringements and associated infringement points shall be taken into account for the purposes of triggering the inadmissibility and calculating the duration of the inadmissibility period of the new operator pursuant to Article 3 and Article 8(2), only when that operator commits, after the change of ownership, a serious infringement under Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009.

Article 10

Permanent withdrawal of the fishing licence

All applications for support submitted by an operator whose fishing licence has been permanently withdrawn for any of the fishing vessels that operator operates or owns, shall be inadmissible from the date of the withdrawal of the fishing licence until the end of the period of eligibility of expenditure for an EMFAF contribution referred to in Article 63(2) of Regulation (EU) 2021/1060, if that fishing licence was withdrawn

- (a) in accordance with Article 92(3) of Regulation (EC) No 1224/2009; or, if applicable,
- (b) as a result of sanctions for serious infringements imposed by the Member States in accordance with Article 45 of Regulation (EC) No 1005/2008.

Article 11

Revision of the inadmissibility period

- (1) Provided it lasts at least 12 months in total, the inadmissibility period:
- (a) shall be reduced, in the case of serious infringements for which infringement points were assigned in accordance with Article 92 of Regulation (EC) No

1224/2009, by four months if two infringements points are deleted pursuant to Article 133(3) of Implementing Regulation (EU) No 404/2011;

- (b) shall be extended by two months for each additional point assigned for a serious infringement under Article 42(1)(a) of Regulation (EC) No 1005/2008 or Article 90(1)(a) and (c) of Regulation (EC) No 1224/2009 the operator committed during the inadmissibility period;
 - (c) shall be extended by 12 months for each serious infringement under Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 or Article 90(1)(b) of Regulation (EC) No 1224/2009 for which no point is assigned;
 - (d) shall be extended by the following periods for each additional offence set out in Article 3 of Directive 2008/99/EC the operator committed during the inadmissibility period, where the application is made for support under Article 27 of Regulation (EU) 2021/1139:
 - (1) 12 months, if the additional offence has been committed with serious negligence;
 - (2) 24 months if the additional offence has been committed intentionally; or
 - (e) shall be extended by 24 months for each additional offence, set out in Article 4 of Directive 2008/99/EC, the operator committed during the inadmissibility period, where the application is made for support under Article 27 of the Regulation (EU) 2021/1139.
- (2) If one of the additional offences referred to in paragraph 1(d) or (e) is of the same type of environmental offence as the one that has triggered the inadmissibility period or the revision thereof, the extension of the inadmissibility period due to that offence as provided for in paragraph 1(d) and (e) shall be increased by an additional 6 months.

Article 12

Arrangements for recovering aid

- (1) If any of the situations referred to in Article 11(1) of Regulation (EU) 2021/1139 occurs between the date the operator submitted the application and 5 years after the final payment, the support paid from EMFAF related to that application shall be subject to a financial correction by the Member State concerned in accordance with Article 44 of Regulation EU 2021/1139 and Article 103(1) of Regulation (EU) 2021/1060.
- (2) The amount to be recovered shall be proportionate to the nature, gravity, duration and repetition of the serious infringements or environmental offences committed.

Article 13

Transitional provisions

This Regulation shall not affect the continuation or modification of inadmissibility periods of

applications for EMFF support under Regulation (EU) No 2015/288⁸.

Article 14

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*

⁸ Commission Delegated Regulation (EU) 2015/288 of 17 December 2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications (JO L 51, 24.2.2015, p.1).