

EXPLANATORY FICHE NO 2

Deleted act laying down the the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions

VERSION 1 – 24.02.2021

RELEVANT PROVISIONS IN THE DRAFT LEGISLATION

Regulation	Provisions
EMFAF	Articles 21, 29a and 29b
CPR	Appendix 3 of Annex V

This document is based on the text of the draft EMFAF consolidated agreement and of the provisional agreement on the Common Provision Rules. It is a provisional text, without prejudice to on-going discussions. This fiche is intended to guide Member States, explaining and elaborating the text of the proposal.

OBJECTIVE OF THIS FICHE

As in the 2014-2020 EMFF, the 2021-2027 EMFAF can support a compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions. This is one of the main elements of the preferential treatment of the EMFAF for the outermost region, taking into account their specificities highlighted in Article 349 TFEU.

Contrary to the EMFF, this compensation will not be subject to a specific compensation plan but will be integrated in the action plans for the outermost regions, as part of the programmes.

As in the 2014-2020 period, the Commission is empowered to adopt delegated acts laying down the criteria for the calculation of the additional costs resulting from the specific handicaps of the regions concerned. The purpose of this fiche is to have a first discussion on the draft delegated regulation for the period 2021-2027.

LEGAL BASIS IN THE EMFAF PROVISIONAL AGREEMENT

Article 21

Promoting a level-playing field for fishery and aquaculture products from the outermost regions

The EMFAF may support a compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.

The support referred to in the first paragraph of this Article shall contribute to the specific objective referred to in point (e) of Article 14(1).

Support under this Article may be granted only under the conditions provided for in Article 29b.

Article 29a

Action plan for the outermost regions

In accordance with Article 9(3), Member States concerned shall prepare, as part of their programme, an action plan for each of their outermost regions, which shall set out:

- (a) a strategy for the sustainable exploitation of fisheries and the development of sustainable blue economy sectors;*
- (b) a description of the main actions envisaged and the corresponding financial means, including:*
 - i. the structural support to the fishery and aquaculture sector under Title II;*
 - ii. the compensation for additional costs referred to in Articles 21 and 29b, including the methodology for its calculation;*

- iii. *any other investment in the sustainable blue economy necessary to achieve a sustainable coastal development.*

Article 29b

Compensation for additional costs for fishery and aquaculture products

1. *To implement the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, as referred to in Article 21, each Member State concerned shall determine, in line with the criteria laid down in accordance with paragraph 6 of this Article, for each outermost region, the list of fishery and aquaculture products and the quantity of those products eligible for compensation.*
2. *When establishing the list and the quantities referred to in paragraph 1, Member States shall take into account all relevant factors, in particular the need to ensure that the compensation is compatible with the rules of the CFP.*
3. *The compensation shall not be granted for fishery and aquaculture products:*
 - (a) *caught by third country vessels, with the exception of fishing vessels which fly the flag of Venezuela and operate in Union waters, in accordance with Council Decision (EU) 2015/1565;*
 - (b) *caught by Union fishing vessels that are not registered in a port of one of the outermost regions;*
 - (c) *imported from third countries.*
4. *Point (b) of paragraph 3 shall not apply if the existing capacity of the processing industry in the outermost region concerned exceeds the quantity of raw material supplied.*
5. *The compensation paid to the beneficiaries carrying out activities referred to in paragraph 1 in the outermost regions or owning a vessel registered in a port of these regions and operating there shall, in order to avoid overcompensation, take into account:*
 - (a) *for each fishery or aquaculture product or category of products, the additional costs resulting from the specific handicaps of the regions concerned; and*
 - (b) *any other type of public intervention affecting the level of additional costs.*
6. *The Commission is empowered to adopt delegated acts, in accordance with Article 52, supplementing this Regulation by laying down the criteria for the calculation of the additional costs resulting from the specific handicaps of the regions concerned.*

APPROACH TO THE DELEGATED ACT FOR THE 2021-2027 PROGRAMMING PERIOD

It is proposed to carry-over the principles of the [2014-2020 deleted Regulation](#), along the logic described hereunder:

- For each outermost region, the Member State must describe the main features of the compensation and the corresponding financial allocation in appendix 3 of Annex V of the provisional agreement on the Common Provisions Regulation (i.e. the template of the action plan for the outermost regions).
- Pursuant to Article 29a of the provisional agreement on the EMFAF, the Member State must also describe (in appendix 3 of Annex V) the methodology for the calculation of the compensation. Pursuant to Article 30 of the provisional agreement, any compensation must take the form of simplified cost options, in accordance with points (b), (c), (d) and (e) of Article 48(1) of the provisional agreement on the Common Provisions Regulation.
- The delegated act referred to in Article 29b(6) of the provisional agreement on the EMFAF aims to lay down common criteria for the calculation of the additional costs resulting from the specific handicaps of the outermost regions. Common criteria are important to ensure a homogeneous method of calculation of the additional costs in all the outermost regions and to avoid overcompensation. These common criteria provide a common framework for the establishment of the specific methodologies in each action plan.
- Concretely, the Member State does not have to reconstruct the level of details of the previous compensation plan in the action plan. It should describe the main features of the compensation and the methodology for its calculation in the action plan, and establish the operational details and eligibility rules in the selection criteria. This will allow sufficient flexibility to adapt the scheme in the course of implementation.

In annex to this note, you will find a draft delegated act
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QUESTION

Do you agree with the carry-over of the principles of the 2014-2020 deleted Regulation?

ANNEX

DRAFT COMMISSION DELEGATED REGULATION

supplementing Regulation (EU) No XX/XX of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund by laying down the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No XX/XX of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund¹, and in particular Article 29b(6) thereof,

Whereas:

- (1) Under Article 21 of Regulation (EU) No XX/XX (EMFAF), the European Maritime, Fisheries and Aquaculture Fund (EMFAF) may support the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions referred to in Article 349 of the Treaty,
- (2) According to Article 29b of Regulation (EU) No XX/XX (EMFAF), for each outermost region, the Member State concerned should describe the methodology for the calculation of the compensation of the additional costs in the action plan referred to in Article 29a of that Regulation.
- (3) Pursuant to Article 29b(6) of Regulation (EU) No XX/XX (EMFAF), the Commission is empowered to adopt delegated acts laying down the criteria for the calculation of the additional costs resulting from the specific handicaps of the regions concerned.
- (4) In order to provide for a harmonised and equal treatment of all regions concerned and in order to avoid overcompensation of additional costs, it is necessary to lay down the criteria for the calculation of the additional costs resulting from the specific handicaps of the Union's outermost regions. The common criteria to be used should ensure that a homogeneous method of calculation of the additional costs is applied to all regions concerned.
- (5) Reference costs for products or categories of products incurred by operators in the continental part of the Member State or of the Union territory on the basis of which additional costs are determined should be estimated with particular care to avoid overcompensation.
- (6) There are products or categories of products for which there are no comparison criteria or

¹ Whole title of the Regulation + Reference to the OJ to be included once known

measuring units in the continental part of the Member State territory concerned. In such cases, the reference for calculating the additional cost should be fixed in comparison with the costs for equivalent products or categories of products incurred by operators from the continental part of the territory of the Union.

- (7) In view of the different marketing conditions in the outermost regions, the fluctuations in captures and stocks and in market demands, it should be left to the Member States concerned to determine the fishery and aquaculture products or categories of products eligible for compensation, their respective maximum quantities and the levels of the compensation amounts within the overall allocation per Member State.
- (8) Member States should set the compensation amounts at a level which allows appropriate off-setting of additional costs arising from the specific handicaps of the outermost regions and avoids overcompensation. To that end, the compensation amount should also take into account other types of public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 29c of Regulation (EU) No XX/XX (EMFAF), having an impact on the level of additional costs.
- (9) In order to provide for a harmonised presentation of additional costs, it is necessary to express additional costs on the basis of tons of live weight, determined in accordance with Council Regulation (EC) No 1224/2009² and Commission Regulation (EU) No 404/2011³, which establishes product presentation codes for processed fish and European Union conversion factors for fresh and fresh salted fish to convert stored or processed fish weight into fish live weight for the purpose of monitoring catches.
- (10) In order to allow for the prompt application of the measures provided for in this Regulation, given that expenditure is already eligible for the EMFAF since 1 January 2021 in line with Article XX of Regulation (EU) No XX/XX (CPR) of the European Parliament and of the Council, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the criteria for the calculation of the additional costs incurred during the eligibility period defined in Article XX of Regulation (EU) No XX/XX (CPR) by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions referred to in Article 349 of the Treaty due to the specific handicaps of those outermost regions.

² Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the fisheries common 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

³ 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 Community control system for ensuring compliance with the rules of the Common Fisheries Policy, OJ L 112, 30.04.2011, p. 1

Article 2

1. Additional costs referred to in Article 1 shall be calculated separately for each of the following activities:
 - (a) fishing;
 - (b) farming;
 - (c) processing;
 - (d) marketing.
2. Within each activity referred to in paragraph 1, additional costs shall be calculated by items of expenditure for each product or category of products identified by the Member State as eligible for compensation.
3. Additional costs shall be determined for any given item of expenditure as the difference between the costs incurred by operators in the outermost regions concerned, reduced by any type of public intervention affecting the level of additional costs, and the comparable costs incurred by continental operators of the Member State concerned.
4. For items of expenditure specific to products or categories of products for which there are no comparison criteria or measuring units in the continental part of the Member State territory, the additional costs shall be determined in comparison with the comparable costs for equivalent products or categories of products incurred by operators from the continental part of the territory of the Union.
5. The calculation of additional costs shall take into account any public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 29c of Regulation (EU) No XX/XX (EMFAF).

Article 3

1. The calculation of additional costs shall be based only on costs resulting from the specific handicaps of the outermost regions.
2. The calculation of additional costs shall be based on an annual average of recorded prices.
3. Additional costs shall be expressed in euros per ton of live weight and where necessary, all cost components of the total additional cost shall be converted into euros per ton of live weight. To this end, the conversion factors established in Annexes XIII and XIV to Regulation (EU) 404/2011 shall be used.

Article 4

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

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

Done at Brussels, date

*For the Commission
The President*

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