



Brussels, **XXX**
[...] (2015) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

amending Delegated Regulation (EU) No 2015/288 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE AMENDMENT OF THE DELEGATED ACT

The Commission Delegated Regulation (EU) No 2015/288 must be modified to add new elements with regard to cases referred to in Article 10(1)(d). Operators seeking to apply for support under Chapter II of Title V from the European Maritime and Fisheries Fund (EMFF) shall also be inadmissible if offenses set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council have been committed.

This amendment defines the inadmissibility of applications for these offenses as well as determining the relevant starting or ending dates of the inadmissibility period.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations have been carried out in accordance with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

All parts of the act have been discussed at expert group meetings involving experts from all Member States. The European Parliament and the Council were duly notified of the dates of the meetings, agendas and relevant documents to enable requests to attend the meetings. The proposed content of the delegated act was discussed in the expert group meetings on the 3rd of February and the 8th of June 2015.

The meetings allowed for a full presentation of the Commission's draft provisions and a thorough exchange of views on all aspects of the draft. The procedure consisted of clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly. This allowed rules to be clarified and specified in response to experts' comments. In all cases, the experts were also able to submit written comments following the meetings. The questions and comments informed the drafting of the rules concerned.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 10(4) of Regulation (EU) No 508/2014 empowers the Commission to adopt delegated acts identifying the period of inadmissibility of applications for cases listed in paragraphs (1) and (3) of that Article, as well as the relevant starting or ending dates of the inadmissibility period. This delegated act identifies the period of time and the related starting or ending dates for cases referred to in Article 10(1)(d).

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund¹, and in particular Article 10(4) thereof,

Whereas:

- (1) In order to achieve the objectives of the CFP and to safeguard the financial interest of the Union and its taxpayers, operators that, within a particular time before submitting an application for financial assistance, committed serious infringements, offence or fraud as set out in Article 10 of Regulation (EU) No 508/2014 should not benefit from financial assistance from the EMFF.
- (2) Under Article 10(1) and (3) of Regulation No 508/2014, certain applications for support from the European Maritime and Fisheries Fund (EMFF) submitted by operators are to be inadmissible for a specific period of time. Under Article 10(4)(a) and (b) of Regulation (EU) No 508/2014, the period during which applications are inadmissible and the starting or ending dates of that period are to be identified by the Commission in a delegated act.
- (3) Delegated Regulation (EU) No 2015/288 identifies the inadmissibility period as well as the relevant starting or ending dates of that period for applications by operators who have carried out one or more of the actions referred to in Article 10(1)(a) and (b) and in Article 10(3) of Regulation (EU) No 508/2014.
- (4) In accordance with Article 10(1)(d) of Regulation (EU) No 508/2014, it is also necessary to establish the inadmissibility period and the relevant starting or ending dates for applications by operators who apply for support under Chapter II of Title V of that Regulation and have committed any of the offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council². The inadmissibility of those applications should help ensuring that environmental law of the Union is respected. Under Article 10(4)(a) of Regulation (EU) No 508/2014, the

¹ Regulation (EU) No 508/2014 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.)

² 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).

period is to be proportionate to the nature, gravity, duration and repetition of the offence and is to be of at least one year's duration.

- (5) Directive 2008/99/EC establishes measures relating to criminal law in order to protect the environment more effectively. Article 3 of that Directive lists conducts which must be punishable as criminal offences, when they are unlawful within the meaning of that Directive and committed intentionally or with at least serious negligence. Under Article 4 of that Directive, Member States are to ensure that inciting, aiding, and abetting the intentional conduct of the offences referred to in Article 3 are punishable as criminal offence.
- (6) In order to ensure proportionality, cases in which an operator committed an offence with serious negligence and in which an operator committed an offence intentionally should result in inadmissibility periods of different lengths. For the same reason, it is also appropriate to establish rules that take aggravating and mitigating factors into account when calculating the inadmissibility period.
- (7) In order to ensure proportionality, offences that are carried out over a period of more than one year shall result in longer inadmissibility periods than offences that are only carried out once or for a period of less than one year, except in cases where the duration of an offence is already taken into account as aggravating factor and therefore results in a longer inadmissibility period.
- (8) As Regulation (EU) No 508/2014 applies as from 1 January 2014 and the inadmissibility period for offences referred to in Article 10(1)(d) is to be at least of one year's duration, in order to ensure proportionality and legal certainty only offences committed as from 1 January 2013 should be taken into account for the calculation of the inadmissibility period.
- (9) In order to ensure effective protection of environment, where an application of an operator is inadmissible due to the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC, all applications of that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 should be inadmissible, regardless whether the offence is related to an individual fishing vessel or not.
- (10) In order to ensure proportionality it is appropriate to lay down rules for the revision of the inadmissibility period where additional offences are committed by an operator during that period. For the same reason, it is also appropriate that a repetition of an offence results in longer inadmissibility periods.
- (11) Delegated Regulation (EU) No 2015/288 should therefore be amended accordingly.
- (12) In order to allow for 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 apply from the first day of the eligibility period for support from the EMFF, namely 1 January 2014,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 2015/288 is amended as follows:

- (1) Article 1 is replaced by the following:

"Article 1

Subject matter and scope

This Regulation applies to applications for support from the European Maritime and Fisheries Fund ('EMFF') and identifies the period during which such applications submitted by operators who have carried out actions referred to in Article 10(1)(a), (b) and (d) of Regulation (EU) No 508/2014, or in Article 10(3) of that Regulation, shall be inadmissible ('the inadmissibility period')."

- (2) The following Article 4a is inserted:

"Article 4a

Inadmissibility of applications by operators who have committed environmental offences

1. Where 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 made by that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible:
 - (a) for a period of 12 months, if the offence was committed with serious negligence; or
 - (b) for a period of 24 months, if the offence was committed intentionally.
2. Where 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 made by that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible for a period of 24 months.
3. The inadmissibility period shall be increased by 6 months where in the decision referred to in paragraphs 1 or 2 the competent authority:
 - (a) has explicitly referred to the presence of aggravating circumstances,
 - (b) has determined that an offence committed by the operator was carried out over a period of more than one year, unless the decision of the competent authority explicitly refers to the duration of the offence as aggravating circumstance.
4. Provided that it lasts at least 12 months, the inadmissibility period shall be reduced by 6 months if the competent authority has in its decision referred to in paragraphs 1 or 2 explicitly referred to the presence of mitigating circumstances.
5. The starting date of the inadmissibility period shall be the date of the first official decision by a competent authority determining that one or more of the offences set out in Articles 3 and 4 of Directive 2008/99/EC were committed.
6. For the purposes of calculating the inadmissibility period, only offences committed as from 1 January 2013 shall be taken into account.

7. Where an application of an operator is inadmissible under paragraphs 1 and 2, all applications of that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible."
- (3) Article 9 is amended as follows:
- (a) the following points (d) and (e) are added:
- "(d) shall be extended, for each additional offence set out in Article 3 of Directive 2008/99/EC committed by the operator during the inadmissibility period, by :
- (i) 12 month, if the additional offence has been committed with serious negligence;
- (ii) 24 months if the additional offence has been committed intentionally;
- (e) shall be extended by 24 months months for each additional offence set out in Article 4 of Directive 2008/99/EC committed by the operator during the inadmissibility period".
- (b) The following paragraph is added:
- "If an additional offence referred to in points (d) or (e) of the first paragraph is of the same type as the one which has caused the inadmissibility period or which has already led to its revision, the extension of the inadmissibility period due to that offence as provided for in points (d) and (e) shall be increased by additional 6 months."

Article 2
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 2014.

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

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER