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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

(OJ L 51, 24.2.2015, p. 1)

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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

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 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 [1], and in particular Article 10(4) thereof,

Whereas:

(1) The achievement of the objectives of the Common Fisheries Policy (CFP) should not be undermined by operators violating CFP rules. Pursuant to Article 42(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council [2], financial assistance from the European Maritime and Fisheries Fund ('EMFF') is made conditional upon compliance by operators with CFP rules.

(2) According to Article 42(2) of Regulation (EU) No 1380/2013, serious infringements by operators of the CFP rules are to result in temporary or permanent bans on access to Union financial assistance. Such measures are to be dissuasive, effective, and proportionate.

(3) In order 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.

(4) Operators applying for EMFF support should be clearly identifiable in order to verify the admissibility of their applications. In order to attain the objectives of the conditionality of EMFF support, it is appropriate to lay down the necessary provisions ensuring that such operators comply with the conditions of admissibility for EMFF support in relation to all fishing vessels under their effective control.

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[1] OJ L 149, 20.5.2014, p. 1.

[2] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

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(5) In accordance with Article 10(4) of Regulation (EU) No 508/2014, the duration of the inadmissibility period shall be proportionate to the nature, gravity, duration and repetition of the serious infringement, offence or fraud. It is therefore necessary to lay down rules for calculation of the duration of inadmissibility and to identify the relevant starting and ending dates of the inadmissibility period.

(6) In accordance with Article 42(3) of Regulation (EU) No 1380/2013 and Article 10(4)(a) of Regulation (EU) No 508/2014, where the competent authority has determined that an operator has committed a serious infringement, an application from that operator is to be inadmissible for EMFF support for a period of at least 12 months. As Regulation (EU) No 508/2014 applies as from 1 January 2014, in order to ensure proportionality and legal certainty only serious infringements determined by a decision taken as from 1 January 2013 should be taken into account for the calculation of the inadmissibility period.

(7) Nevertheless, an immediate and automatic trigger of inadmissibility for EMFF support would be disproportionate in infringement cases which, while maintaining their serious character as determined by the competent authorities, do not necessarily directly cause a serious prejudice to the fishing resources and the marine environment referred to in Article 90(4) of Council Regulation (EC) No 1224/2009 ([1]). Such cases would include, for instance, minor instances of misreporting of catches which should not result as such in the immediate inadmissibility of applications for EMFF support.

(8) Serious infringements related to the taking on board, transshipping or landing of undersized fish should be appraised in relation to the gradual entry into force of the elimination of discards as envisaged by the CFP. It appears unnecessary and inappropriate to immediately render inadmissible applications for EMFF support by operators having committed such infringements.

(9) In those exceptional cases referred to in recitals (7) and (8), in order to ensure that the inadmissibility of applications by operators for EMFF support complies with the principle of proportionality, it is appropriate to base the calculation of the period of inadmissibility on the already established system of points assigned for certain serious infringements as laid down in Article 92 of Regulation (EC) No 1224/2009, and Article 126 and Annex XXX of Commission Implementing Regulation (EU)

([1]) 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, 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).

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No 404/2011 ([1]). In those exceptional cases listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011, the starting date of the application and calculation of inadmissibility period should be defined with regard to Article 126(4) of Implementing Regulation (EU) No 404/2011.

(10) In accordance with Article 92(4) of Regulation (EC) No 1224/2009, if the holder of a fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on its fishing licence should be deleted. As a consequence, points on a fishing licence remain valid at least three years. As the provisions of the EMFF apply as from 1 January 2014, in order to ensure proportionality and legal certainty, points for serious infringements listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 should be taken into account for the calculation of the inadmissibility period, only if assigned as from 1 January 2013.

(11) Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and fundamentally undermines the achievement of the CFP objectives. It is therefore appropriate to lay down rules on inadmissibility of applications for EMFF support from operators of fishing vessels flagged to countries included in the Union list of vessels engaged in IUU fishing or of vessels flagged to countries identified as non-cooperating third countries.

(12) Article 10(3) of Regulation (EU) No 508/2014 provides that applications submitted by operators who have committed a fraud in the context of the European Fisheries Fund ('EFF') or the EMFF will be inadmissible for a certain period of time. As fraud constitutes one of the biggest threats to the financial interests of the Union and of its taxpayers, and in order to provide for a harmonised and equal treatment of operators in all Member States, rules appropriate to the gravity of such threat should be defined as regards the period during which applications submitted by operators who committed such fraud will be inadmissible.

(13) In order to ensure proportionate and effective application of rules on inadmissibility of applications by operators for EMFF support, it is appropriate to lay down rules for calculation of the inadmissibility periods in cases where a single operator owns more than one fishing vessel. These rules should ensure that EMFF support does not benefit fishing vessels that were used to commit serious infringements resulting in the inadmissibility of applications by those operators. It is also appropriate to lay down rules for revision of the inadmissibility period where further serious infringements are committed by an operator during the inadmissibility period.

([1]) 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, 30.4.2011, p. 1).

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(14) 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 (EC) No 1224/2009 which is necessary to achieve the objectives of the CFP.

(15) Should an operator's fishing license be permanently withdrawn due to the high frequency and gravity of the infringements committed, the introduction of a ban on access to EMFF support until the end of the eligibility period laid down in Article 65(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council [1] 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.

(16) In accordance with Article 10(5) of Regulation (EU) No 508/2014, Member States are to require operators submitting an application under the EMFF to provide to the managing authority a signed statement confirming that they comply with criteria laid down in Article 10(1) of Regulation (EU) No 508/2014 and have not committed a fraud under the EFF or the EMFF as referred to in Article 10(3) of that Regulation. Member States are also to verify the veracity of that statement. Member States should ensure that the application of national rules concerning the suspensory effects of review proceedings do not render the rules on determination of inadmissibility period ineffective.

(17) Concerning cases of serious infringements and offences referred to in Article 10(1)(c) and (d) of Regulation (EU) No 508/2014, those cases will need to be further assessed and analysed to ensure that the duration of the inadmissibility period is proportionate to the nature, gravity, duration and repetition of those serious infringements and offences. Following that analysis, this Regulation should be amended.

(18) 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 of the EMFF, namely 1 January 2014,

[1] Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

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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 any of the 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).

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Article 2

Definitions

For the purposes of this Regulation:

1. 'infringement points' means points assigned to the operator for a fishing vessel in the context of the point system for serious infringements set out in Article 92 of Regulation (EC) No 1224/2009.

2. 'operator' means an operator as defined in Article 4(30) of Regulation (EU) No 1380/2013 who submits an application for EMFF support.

CHAPTER II

DURATION AND STARTING DATE OF INADMISSIBILITY PERIOD

Article 3

Inadmissibility of applications by operators who have committed serious infringements under Article 42(1) of Council Regulation (EC) No 1005/2008 [1] **or Article 90(1) of Regulation (EC) No 1224/2009**

1. Where a competent authority has determined that an operator has committed a serious infringement under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009, applications for EMFF support by that operator shall be inadmissible for a period of 12 months.

2. By way of derogation from paragraph 1, where a Member State pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 assigns infringement points for serious infringements listed in points 1, 2, and 5 of Annex XXX to Regulation (EU) No 404/2011, the following rules shall apply:

[1] Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community 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).

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(a) if the infringement points accumulated by an operator in respect of a fishing vessel remain below 9, applications for EMFF support by that operator shall be admissible;

(b) if the number of infringement points accumulated by an operator in respect of a fishing vessel is 9 points, the inadmissibility period shall be 12 months;

(c) each infringement point assigned in addition to the points accumulated by an operator in respect of a fishing vessel in point (b) shall result in an additional period of inadmissibility of 1 month.

3. The starting date of the inadmissibility period shall be the date of the first official decision by a competent authority determining that a serious infringement within the meaning of Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009 was committed.

For the purposes of calculating the inadmissibility period, only serious infringements committed as from 1 January 2013 and for which a decision within the meaning of the above subparagraph was taken as from that date shall be taken into account.

4. However, for the specific purposes of paragraph 2, the starting date of the inadmissibility period shall be the date of the first official decision by a competent authority assigning infringement points to an operator pursuant to Article 126(4) of Implementing Regulation (EU) No 404/2011 and resulting in that operator being assigned a total of 9 or more infringement points in respect of a fishing vessel.

For the purposes of calculating the inadmissibility period, only points for infringements committed as from 1 January 2013 and assigned by an official decision taken as from that date shall be taken into account.

Article 4

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

1. The period of inadmissibility for an operator whose fishing vessel is included in the Union list of fishing vessels engaged in illegal, unreported and unregulated (IUU) fishing as referred to in Article 27 of Regulation (EC) No 1005/2008 shall be the whole period during which the fishing vessel is included in that list and, in any event, not less than 24 months from the date of its listing.

2. Operators whose fishing vessel is flagged to a country identified as a non-cooperating third country as provided for in Article 33 of Regulation (EC) No 1005/2008 shall be inadmissible during the whole period while that country is listed and, in any event, for a minimum period of 12 months.

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3. The starting date of the inadmissibility period shall be the date of entry into force of the Commission Regulation (EU) No 468/2010 ([1]) establishing the Union IUU vessel list or of the Council Implementing Decision 2014/170/EU ([2]) establishing the list of non-cooperating third countries or the date of an amendment to such a Regulation or a Decision whereby a fishing vessel or a country would be added to such a list.

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Article 4a

Inadmissibility of applications by operators who have committed environmental offences

1. Where a competent authority has determined in a first official decision that an operator has committed one of the offences set out in Article 3 of Directive 2008/99/EC of the European Parliament and of the Council ([3]), applications for support from the EMFF 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 first official 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 EMFF 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 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 1 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 its decision referred to in paragraph 1 or 2.

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.

([1]) Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (OJ L 131, 29.5.2010, p. 22).

([2]) Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 91, 27.3.2014, p. 43).

([3]) 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).

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6. For the purposes of calculating the inadmissibility period, only decisions referring to offences committed as from 1 January 2013 and for which a decision within the meaning of the above subparagraph was taken as from that date 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.

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Article 5

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

1. Where it is determined by a competent authority that an operator committed a fraud in the context of the EFF or EMFF, all applications for EMFF support by that operator shall be inadmissible from the date of the first official decision establishing the fraud as defined in Article 1 of the Convention on the protection of the European Communities' financial interests ([1]).

2. The inadmissibility period shall last until the end of the eligibility period of the EMFF as set out to in Article 65(2) of Regulation (EU) No 1303/2013.

CHAPTER III

COMMON PROVISIONS

Article 6

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

1. Where an operator owns or controls more than one fishing vessel, the inadmissibility period of an application by that operator shall be determined separately in relation to each individual fishing vessel, in accordance with Article 3 or Article 4.

2. However, applications for EMFF support by that operator shall also be inadmissible:

(a) if applications in relation to more than half of fishing vessels owned or controlled by that operator are inadmissible for EMFF support pursuant to Article 3 and Article 4, or

(b) if, in the case of serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011, the average number of assigned infringement points per fishing vessel owned or controlled by the operator is 7 or more.

3. By way of derogation from paragraphs 1 and 2, where a serious infringement committed by an operator is not related to any fishing vessel owned or controlled by that operator, all applications for EMFF support by that operator shall be inadmissible.

([1]) Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

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Article 7

Transfer of ownership

1. In the case of a sale or other type of transfer of ownership of a fishing vessel, the inadmissibility period concerning the operator transferring the fishing vessel and resulting from serious infringements committed prior to the change of ownership shall not be transferred to the new operator. The inadmissibility of applications by the new operator can only result from new serious infringements committed by that new operator.

2. However, where infringement points are assigned for serious infringements within the meaning of Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 committed prior to the change of ownership of the fishing vessel, those points shall be taken into account for the purposes of calculating the inadmissibility period of the new operator pursuant to Article 3(2) and Article 6(2)(b) if that operator commits a new serious infringement under Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011.

Article 8

Permanent withdrawal of the fishing licence

By way of derogation from Article 6, where the fishing licence of an operator has been permanently withdrawn for any of the fishing vessels owned or controlled by that operator:

(a) in accordance with Article 129(2) of Implementing Regulation (EU) No 404/2011; or, where 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,

all applications by that operator shall be inadmissible for support from the EMFF from the date of the withdrawal until the end of the eligibility period as set out in Article 65(2) of Regulation (EU) No 1303/2013.

Article 9

Revision of inadmissibility period

Provided it lasts at least 12 months in total, the inadmissibility period:

(a) hall be reduced in the case of serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 by 2 months if 2 infringement points are deleted in accordance with Article 133(3) of Implementing Regulation (EU) No 404/2011 for such serious infringements;

(b) shall be extended by 12 months for each additional serious infringement committed by the operator during the inadmissibility period under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009;

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(c) by way of derogation from paragraph (b), shall be extended in accordance with the rules set out in Article 3(2)(c) for each additional serious infringement committed by the operator during the inadmissibility period under Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in items 1, 2 and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011;

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(d) shall be extended by the following periods for each additional offence set out in Article 3 of Directive 2008/99/EC committed by the operator during the inadmissibility period:

(i) 12 months, if the additional offence has been committed with serious negligence;

(ii) 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 committed by the operator during the inadmissibility period;

If an additional offence referred to in point (d) or (e) of the first paragraph is of the same type of environmental offences 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 an additional 6 months.

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CHAPTER IV

FINAL PROVISIONS

Article 10

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.