

COMMISSION DELEGATED REGULATION (EU) 2022/2181**of 29 June 2022**

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

THE EUROPEAN COMMISSION,

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

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) 2017/1004⁽¹⁾, and in particular Article 11(4) thereof,

Whereas:

- (1) 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 the occurrence of the situations referred to in Article 11(1) and (3) of Regulation (EU) 2021/1139.
- (2) To ensure the conditional nature of EMFAF support, it is appropriate to lay down the necessary provisions ensuring that operators applying for EMFAF support comply with the admissibility conditions for EMFAF support in relation to all fishing vessels under their effective control.
- (3) Article 11(4) of Regulation (EU) 2021/1139 empowers the Commission to adopt delegated acts identifying the threshold for triggering, and the period of time of the inadmissibility, which should be proportionate to the nature, gravity, duration and repetition of the serious infringements, offences or fraud committed, and should be of at least 1 year's duration. The Commission should monitor the rules for the inadmissibility of applications for support established in this act to ensure that all situations referred to in Article 11(1) and (3) of Regulation (EU) 2021/1139 are covered.
- (4) 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 increasing or reducing that period. 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.
- (5) An automatic trigger of inadmissibility for EMFAF funds is also necessary in the case of certain serious infringements that are particularly damaging due to their nature and seriousness.

⁽¹⁾ OJ L 247, 13.7.2021, p. 1.

(6) It is also appropriate to lay down rules for triggering inadmissibility and calculating the duration of the inadmissibility period in cases where a single operator owns or controls more than one fishing vessel. These rules should ensure that EMFAF support for other vessels of the operator does not indirectly benefit fishing vessels that were used to commit serious infringements

(7) In accordance with Article 92(4) of Council Regulation (EC) No 1224/2009 (⁷), if no other serious infringement is committed within 3 years of the date of the last serious infringement, all points 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, only 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) In accordance with Article 47 of Council Regulation (EC) No 1005/2008 (⁸), legal persons shall be held liable for serious infringements where such infringements have been committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person.

(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 (EC) No 1224/2009 on fisheries control, which is necessary to achieve the objectives of the CFP. Should an operator's fishing licence be permanently withdrawn due to the frequency and gravity of the infringements committed, access to EMFAF support should be refused 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 Council (⁹) in order to safeguard the financial interests of the Union and of its taxpayers. Such inadmissibility should apply even if according to the calculation method laid down in this Regulation the inadmissibility period ends before the end of the eligibility period.

(10) 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.

(11) To enable the prompt application of the measures provided for in this Regulation, and given the importance of ensuring 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 eligibility of expenditure for an EMFAF contribution, namely 1 January 2021. Such retroactive application does not affect the principle of legal certainty and protection of legitimate expectations,

(⁷) 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).

(⁸) 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).

(⁹) 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).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation applies to applications for support from the European Maritime, Fisheries and Aquaculture Fund (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.

Article 2

Definition

For the purposes of this Regulation, the definitions referred to in Article 4 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council (⁽⁵⁾) apply. In addition, the following definition apply:

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

CHAPTER II

THRESHOLD FOR AND DURATION OF INADMISSIBILITY

Article 3

Inadmissibility of applications submitted by operators who have committed or are held liable for serious infringements under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009

1. An application for support submitted by an operator shall be inadmissible for a period of time established pursuant to Annex I where the competent authority has determined in a decision that the operator submitting the application has committed or is held liable for serious infringements under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009.

2. For the purpose of triggering inadmissibility and calculating the duration of the inadmissibility period, only serious infringements committed as from 1 January 2013 and for which a decision was taken within the meaning of paragraph 1, shall be taken into account.

3. Notwithstanding paragraph 2, for the purposes of paragraph 1 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.

4. The starting date of the inadmissibility period shall be the date of the decision taken by the competent authority within the meaning of paragraph 1.

⁽⁵⁾ 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).

*Article 4***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 established pursuant to Annex II if the competent authority has determined in a decision 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 27 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 Regulation (EC) No 1005/2008.

2. The starting date of the inadmissibility period shall be the date of the decision taken by the competent authority within the meaning of paragraph 1.

*Article 5***Inadmissibility of applications submitted by operators in the aquaculture sector who have committed or are held liable for environmental offences**

1. If a competent authority has determined in a decision that an operator has committed or is held liable for one of the offences set out in Article 3 and Article 4 of Directive 2008/99/EC⁽⁶⁾ of the European Parliament and of the Council, applications for support from the EMFAF made by that operator pursuant to Article 27 of Regulation (EU) 2021/1139 shall be inadmissible pursuant to Annex III.

2. 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.

3. For the purposes of triggering inadmissibility and calculating the duration of the inadmissibility period, only offences committed as from 1 January 2013 and for which a decision was adopted within the meaning of paragraph 1 shall be taken into account.

*Article 6***Inadmissibility of applications submitted by operators who have committed or are held liable for fraud in the context of the EMFF or the EMFAF**

1. If a competent authority determines that an operator committed or is held liable for fraud in the context of the European Maritime and Fisheries Fund (EMFF) or EMFAF, all applications for EMFAF support submitted by that operator shall be inadmissible pursuant to Annex IV.

2. The inadmissibility period shall start from the date of the final decision determining the commission of a fraud as defined in Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council⁽⁷⁾.

⁽⁶⁾ 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).

⁽⁷⁾ 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 (OJ L 198, 28.7.2017, p. 29).

CHAPTER III

COMMON PROVISIONS

*Article 7***Determination of the threshold triggering inadmissibility and of the duration of inadmissibility**

1. If an operator has committed or is held liable for any of the actions referred to in Articles 3, 4, 5 and 6, the Member State concerned shall determine if the threshold triggering inadmissibility is reached. This determination shall be carried out by the Member State pursuant to column (a) of Annexes I, II, III or IV to this Regulation.

2. If the Member State concerned has determined pursuant to paragraph 1 that the threshold triggering inadmissibility is reached, it shall then determine the corresponding duration of inadmissibility pursuant to:

- (a) column (b) of Annexes I, II, III or IV to this Regulation; and
- (b) where applicable, columns (c) and (d) of Annexes I or III to this Regulation.

*Article 8***Determination of threshold triggering inadmissibility where the operator owns or controls more than one fishing vessel**

1. If an operator owns or controls 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 or Article 4.

2. In addition, applications for support submitted by that operator shall also be inadmissible:

- (a) if applications in relation to more than half of the fishing vessels owned or controlled by that operator are inadmissible for support pursuant to Article 3 or Article 4, 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 infringement points assigned per fishing vessel owned or controlled by that operator equals or exceeds 7 points.

*Article 9***Transfer of ownership**

1. If an operator is subject to an inadmissibility period pursuant to Articles 3, 4 and 6, the inadmissibility period resulting from serious infringements committed prior to the change of ownership shall not be transferred to the new operator in the case of sale or transfer of ownership of the fishing vessel.

2. By way of derogation from paragraph 1, where, in accordance with the point system established by Article 92 of Regulation (EC) No 1224/2009, infringement points are assigned for serious infringements 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 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 the new 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

Applications for support submitted by an operator whose fishing licence has been permanently withdrawn for any of the fishing vessels owned or controlled by that operator shall be inadmissible from the date of 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 and Article 129(2) of Commission Implementing Regulation (EU) No 404/2011 (¹); 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

Arrangements for recovering aid

1. If any of the situations referred to in Article 11(1) of Regulation (EU) 2021/1139 occur between the date the operator submitted the application and 5 years after the final payment, the support paid from EMFAF relating 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 situations referred to in Article 11(1) of Regulation (EU) 2021/1139.

Article 12

Transitional provisions

This Regulation shall not affect the continuation or modification of inadmissibility periods of applications for EMFF support granted under Commission Delegated Regulation (EU) 2015/288 (²).

Article 13

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.

(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).

(²) 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).

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

Done at Brussels, 29 June 2022.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX I

Threshold triggering inadmissibility and time period of inadmissibility for operators who have committed serious infringements under Article 42 of Regulation (EC) No 1005/2008 or Article 90 of Regulation (EC) No 1224/2009

Categories of serious infringements	(a) Threshold triggering inadmissibility	(b) Period of time of inadmissibility	(c) Conditions for an increased period of inadmissibility	(d) Conditions for a reduced period of inadmissibility
Serious infringements of categories 1 and 2 as referred to in Annex XXX to Implementing Regulation (EU) No 404/2011 (*)	A total of 9 infringement points, irrespective of the number of serious infringements	12 months	1 additional month of inadmissibility per additional infringement point above the threshold	If two infringements points are deleted pursuant to Article 133(3) of Implementing Regulation (EU) No 404/2011, the period of inadmissibility is reduced by four months
All serious infringements as defined in Article 42 of Regulation (EC) No 1005/2008 and in Article 90 of Regulation (EC) No 1224/2009, with the exception of serious infringements of categories 1 and 2 as referred to in Annex XXX to Implementing Regulation (EU) No 404/2011	1 serious infringement	12 months per serious infringement	2 additional months of inadmissibility per serious infringement of category 7, 9, 10, 11 or 12 as referred to in Annex XXX to Implementing Regulation (EU) No 404/2011. If during the inadmissibility period the operator commits or is held liable for a serious infringement of category 1 or 2 as referred to in Annex XXX to Implementing Regulation (EU) No 404/2011, the period of inadmissibility is extended by one month for each infringement point assigned for those serious infringements	

(*) This row applies if only serious infringements of category 1 or 2 were committed. If other serious infringements were committed before, simultaneously or after serious infringements of category 1 or 2, and during the same inadmissibility period, serious infringements of category 1 or 2 shall be taken into account only for the purpose of columns (c) and (d) of the second row.

ANNEX II

Threshold triggering inadmissibility and time period of inadmissibility for operators whose vessel is included in the Union IUU vessel list or whose vessel flies the flag of a non-cooperating third country

Type of infringement	(a) Threshold triggering inadmissibility	(b) Period of time of inadmissibility
The 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 27 of Regulation (EC) No 1005/2008	1 infringement	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
The 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 Regulation (EC) No 1005/2008	1 infringement	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

ANNEX III

Threshold triggering inadmissibility and time period of inadmissibility for operators who have committed the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC

Environmental offence	(a) Threshold triggering inadmissibility	(b) Period of time of inadmissibility	(c) Conditions for an increased period of inadmissibility	(d) Conditions for a reduced period of inadmissibility
Offences set out in Article 3 of Directive 2008/99/EC, for which the competent authority has determined that the offence was committed with serious negligence	1 offence	12 months per offence	6 additional months if the competent authority has explicitly referred to the presence of aggravating circumstances or has determined that an offence committed by the operator was carried out over a period of more than one year	Provided that the inadmissibility period lasts at least 12 months in total, reduction by 6 months if the competent authority has explicitly referred to the presence of mitigating circumstances
Offences set out in Article 3 of Directive 2008/99/EC, for which the competent authority has determined that the offence was committed intentionally	1 offence	24 months per offence		
Offences set out in Article 4 of Directive 2008/99/EC	1 offence	24 months per offence		

ANNEX IV

Threshold triggering inadmissibility and time period of inadmissibility for operators who have committed fraud in the context of the EMFF or the EMFAF

(a) Threshold triggering inadmissibility	(b) Period of time of inadmissibility
Any fraud committed by the operator in the context of the EMFF or EMFAF	From the date of the final decision determining the commission of a fraud as defined in Article 3 of Directive (EU) 2017/1371 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