



EUROPEAN  
COMMISSION

Brussels, 11.8.2021  
C(2021) 5909 final

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

**of 11.8.2021**

**supplementing Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

The European Maritime, Fisheries and Aquaculture Fund (EMFAF) provides compensation for 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 preferential treatment under the EMFAF for the outermost regions, in view of their specificities as highlighted in Article 349 of the Treaty on the Functioning of the European Union (TFEU). It is the continuation of a scheme that existed during the 2014-2020 period under the European Maritime and Fisheries Fund (EMFF).

As in 2014-2020, the Commission is empowered to adopt a delegated act laying down criteria for calculating the additional costs resulting from the specific handicaps of the outermost regions. Common criteria are important for ensuring a consistent method of calculation for all the outermost regions and to avoid overcompensation. They provide a common framework within which each Member State concerned can establish specific methodologies.

This delegated act carries over the principles of the delegated act used for the same purpose in the 2014-2020 period<sup>1</sup>.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The Commission consulted the EMFF Expert Group on a draft delegated act on 24 February 2021.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The delegated act lays down common criteria for calculating the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.

It sets out the following main principles:

- the calculation is based only on costs resulting from the specific handicaps of the outermost regions;
- additional costs are calculated on the basis of items of expenditure for each product or category of products identified by the Member State as eligible for compensation;
- additional costs are determined 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 mainland operators in the Member State concerned;
- Member States set the compensation amounts at a level that allows appropriate offsetting of additional costs arising from the specific handicaps of the outermost regions and avoids overcompensation.

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<sup>1</sup> Commission Delegated Regulation (EU) No 1046/2014 of 28 July 2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to 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 (OJ L 291, 7.10.2014, p. 1).

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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 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004<sup>1</sup>, and in particular Article 36(6) thereof,

Whereas:

- (1) Under Article 24 of Regulation (EU) 2021/1139, 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 35 of Regulation (EU) 2021/1139, 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 that Article.
- (3) Pursuant to Article 36(6) of Regulation (EU) 2021/1139, 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 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 no comparison criteria or measuring units in the continental part of the Member State territory concerned exist. In such cases, the reference for calculating the additional cost should be set in

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<sup>1</sup> 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.

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 offsetting 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 37 of Regulation (EU) 2021/1139, 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 1224/2009<sup>2</sup> and Commission Implementing Regulation (EU) No 404/2011<sup>3</sup>, 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 63(2) of Regulation (EU) 2021/1060 of the European Parliament and of the Council 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<sup>4</sup>, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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, 30.06.2021, p. 159.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

This Regulation lays down the criteria for calculating the additional costs incurred during the eligibility period defined in Article 63(2) of Regulation (EU) 2021/1060 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, first paragraph, of the Treaty on the Functioning of the European Union, due to the specific handicaps of those outermost regions.

#### *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 37 of Regulation (EU) 2021/1139.

#### *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 Implementing 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, 11.8.2021

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*