Commission Delegated Regulation (EU) 2015/2252 of 30 September 2015 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund

COMMISSION DELEGATED REGULATION (EU) 2015/2252

of 30 September 2015

amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund

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) In order to achieve the objectives of the Common Fisheries Policy (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 European Maritime and Fisheries Fund (EMFF).

(2) Under Article 10(1) and (3) of Regulation (EU) No 508/2014, certain applications submitted by operators for support from the EMFF are to be inadmissible for a specific period of time. Such applications are, inter alia, inadmissible where the application has been made for support under Chapter II of Title V of that Regulation as regards the sustainable development of aquaculture and it has been determined by the competent authorities that the operator concerned has committed any of the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council[(2)]. 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) Commission Delegated Regulation (EU) 2015/288[(3)] 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 (3) of Regulation (EU) No 508/2014.
In accordance with Article 10(1)(d) of Regulation (EU) No 508/2014, it is also necessary to establish rules for calculating the duration of the inadmissibility period and the relevant starting or ending dates for applications for support under Chapter II of

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2015/2252. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Title V of that Regulation. The inadmissibility of those applications should help ensure increased compliance with existing laws for the protection of the environment.

(4) Directive 2008/99/EC establishes measures relating to criminal law in order to protect the environment more effectively. Article 3 of that Directive lists those conducts which are to 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 a criminal offence.

(5) 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 therefore 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.

(6) In order to ensure proportionality, offences that are carried out over a period of more than 1 year should result in longer inadmissibility periods.

(7) In accordance with Article 10(1)(d) of Regulation (EU) No 508/2014, where the competent authority has determined that an operator committed any of the offences set out in Articles 3 and 4 of Directive 2008/99/EC, an application from the operator for support from the EMFF under Chapter II of Title V of this Regulation is to be inadmissible for a period of at least 1 year. As Regulation (EU) No 508/2014 applies as from 1 January 2014, only offences committed as from 1 January 2013 should be taken into account for the calculation of the inadmissibility period.

(8) In order to ensure effective protection of the 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. 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.

(9) Delegated Regulation (EU) 2015/288 should therefore be amended accordingly.

(10) 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) 2015/288 is amended as follows:

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(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 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).;

(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 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[(4)], 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.

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.