**Follow up to the European Parliament non-legislative resolution on the Commission delegated regulation of 5 November 2021 supplementing Regulation (EU) 2021/1139
of the European Parliament and of the Council on the European Maritime,
Fisheries and Aquaculture Fund as regards the periods of time and
 the dates for the inadmissibility of applications for support**

**1. Resolution tabled pursuant to Rules 113(3) of the European Parliament's Rules of procedure**

**2. Reference number:** 2021/2961 (DEA) / B9-0090/2022 / P9\_TA PROV(2022)0026

**3. Date of adoption of the resolution:** 15 February 2022

**4. Competent Parliamentary Committee:** Committee on Fisheries (PECH)

**5. Brief analysis/assessment of the resolution and requests made in it:**

This resolution objects to the delegated act that supplements Regulation (EU) 2021/1139 on the European Maritime, Fisheries and Aquaculture Fund (‘EMFAF Regulation’) concerning the inadmissibility of applications for support from operators who committed certain infringements.

The resolution states that the delegated act “*worsens the conditions*” compared to the previous framework (2014-2020) and is “*not in line*” with the empowerment laid down in the EMFAF Regulation. It calls on the Commission to “*propose an alternative and more proportionate solution regarding the duration of the inadmissibility period*”.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The EMFAF Regulation empowers the Commission to adopt a delegated act defining: (a) the threshold above which applications by operators who have committed serious infringements, environmental offences or fraud are no longer admissible; (b) the duration of the period of inadmissibility that shall be of at least one year, including its starting and ending dates and the conditions for reducing it; and (c) the arrangements for recovering the aid granted in the framework of financial corrections by Member States.

The resolution adopted by the Parliament states that the delegated act is “*not in line*” with the empowerment. The Commission does not agree with this statement and considers that the delegated acts fully respects the clear requirements of the empowerment:

* The Commission is empowered to adopt a delegated act that identifies the threshold for triggering the inadmissibility, which should be “*proportionate to the nature, gravity, duration and repetition of the serious infringements, offences or fraud committed*”. In line with this empowerment, the standard threshold for triggering the inadmissibility is two serious infringements. However by way of derogation this threshold is reduced to one serious infringement in the case of the most serious infringements, which are particularly damaging due to their nature and seriousness. This ensures proportionality in accordance with the empowerment.
* The duration of the inadmissibility period cannot be less than 12 months, as required by the EMFAF Regulation, and is proportional to the gravity of the infringements by applying 2 months of inadmissibility for each infringement point assigned pursuant to Annex XXX to Commission Implementing Regulation (EU) No 404/2011 (i.e. the Implementing Regulation of the Control Regulation).

The resolution suggests an alternative proposal: “*a more proportionate solution could be to provide for the first two infringements only one month of inadmissibility instead of two for each point in the case of certain infringements, thus better capturing the rationale of the basic regulation in terms of proportionality*”. This alternative is not legally compatible with the empowerment, as it would lead in certain cases to shorter period of inadmissibility than the required minimum of 12 months.

The resolution also states that the delegated act “*worsens the conditions*” compared to the previous framework established in Commission Delegated Regulation (EU) No 2015/288 on the admissibility of applications under the EMFF (2014-2020). In this respect, the Commission highlights the following points:

* Under the previous framework, one single serious infringement was sufficient to trigger an inadmissibility period of 12 months, irrespective of the number of points. An exception to this rule was in place **only for 3 types of serious infringements** (number 1 with 3 points, number 2 with 4 points and number 5 with 5 points[[1]](#footnote-1)), for which a threshold of 9 points was necessary to trigger the inadmissibility. Under the new delegated act, two serious infringements instead of one are necessary to trigger inadmissibility, irrespective of the number of points.
* For all the other categories of serious infringements (i.e. those with 5[[2]](#footnote-2), 6, 7 or no points), the previous framework triggered inadmissibility as of the first serious infringement, while the new delegated act applies a threshold of two serious infringements horizontally. The exception to this rule relates to the most serious infringements (i.e. those with 7 points or no points), for which the trigger is one case.
* The reference to 2 months of inadmissibility per point was introduced in the new delegated act to comply with the minimum duration of 12 months of inadmissibility. As the minimum number of points is 3, and as with the delegated act, 2 serious infringements are necessary to trigger the inadmissibility, 6 points is the minimum number of points that may trigger the inadmissibility. Assigning 2 months by point sticks with the minimum duration of 12 months. Assigning only one month by point implies that Managing Authorities, in case of 6 points, would have to artificially add 6 months to the inadmissibility period in order to comply with the minimum of 12 months.

The Commission therefore does not agree that overall the delegated act “*worsens the situation*” as suggested in the resolution. Overall the system is more proportionate and simpler.

The Commission takes note of the findings of the resolution and has already started preparations for a new delegated act.

1. Serious Infringements 1 and 2, although serious, do not necessarily directly cause a serious prejudice to fisheries resources and the marine environment while Serious Infringement number 5 was related to the landing obligation that was only gradually entering into force at the beginning of the EMFF programming period in 2014 [↑](#footnote-ref-1)
2. With the exception of Serious Infringement number 5 [↑](#footnote-ref-2)