

Mismanagement of European Maritime and Fisheries Fund Sees Taxpayers' Money Vanish into the Wrong Pockets



Executive Summary

The European Maritime and Fisheries Fund (EMFF)ⁱ is the fund for the EU's maritime and fisheries policy during the period 2014-2020ⁱⁱ. The EU provides over €6 billion to this fund, which, when combined with Member State contributions, totals over €8 billion. In principle, the fund is designed to promote the objectives of the Common Fisheries Policy (CFP), which is to ensure that EU fisheries are restored to good health and are managed sustainably - thus improving the economic, environmental and social performance of the fisheries sector. The EMFF was created to:

- Help fishers in their transition to sustainable fishing;
- Support coastal communities in diversifying their economies;
- Finance projects that create new jobs and improve quality of life along European coasts;
- Support sustainable aquaculture developments;
- Make it easier for applicants to access financing.

However, a 2018 report by the Danish Court of Auditors has found that large sums of EMFF money have been mismanaged in Denmark.ⁱⁱⁱ While the report focuses on the situation in Denmark, it also prompts questions over how the EMFF has been managed in other EU countries.

EMFF decision-makers in Denmark and other EU Member States should take stock of the lessons learnt from this case study on the use and abuse of EMFF funds. Poor management and fraud must be detected and stopped. Taxpayers' money cannot be misappropriated at the expense of environmentally sustainable fishing operations, or of the part of the fleet that needs support to improve their sustainability and viability.

Environmental NGOs recommend that:

1

All EU Member States commission a national Court of Auditors' report on EMFF management, and review whether the rules of conditionality and admissibility contained in the EMFF have been respected by their national authorities where EMFF money has been distributed;

2

All EU Member States put in place a system that will ensure the rules of conditionality and admissibility contained in the EMFF are examined and applied before granting money and during the project implementation, in future EMFF funding programs; and

3

Denmark (and other EU Member States where relevant) reclaims the misappropriated funds and takes appropriate legal action in case of fraudulent behaviour.

Key Findings of the Danish Court of Auditors' report

In October 2018, the Danish Court of Auditors (Rigsrevisionen) published a report concerning the Danish Ministry of Foreign Affairs' management of money from the EMFF, during the period 2014-2017. The support under the EMFF-programme in this period was DKK 875.4 million (approx. €117.18 million), of which the EU financed approximately 75%.

The Auditors strongly criticised the Danish authorities' management of EMFF funds, with errors and irregularities in the management of the funds reported to have been "so extensive that it is an expression of a worrying and unusual administrative culture".

Amongst other issues, the report found that:

- The basic admissibility requirements to access funds were not interpreted or implemented correctly. Funds had been paid out contrary to the EMFF Regulation.
- The requirements on how to allocate money had been interpreted wrongly, and in a series of cases too much money had been given, because an incorrect percentage for support rates were applied.
- The supposedly EU-wide penalty points system had been implemented contrary to the rules contained in the EU Fisheries Control Regulation.
- Penalty points that should have been given to fishers who violated the rules of the CFP were not, and therefore public funding had been provided to fishers who infringed the law.
- Potentially eligible applicants were discriminated against, due to mismanagement of the penalty point system.
- There was evidence of conflicts of interest, use of 'front men' and fraud involving millions of euros of European taxpayers' money.
- Errors and irregularities were so frequent in the sample assessed that the Court of Auditors found that the ministry should look for evidence of fraud in all cases.



Taking into consideration the number of irregularities and errors detected in Rigsrevisionen's sample, Rigsrevisionen finds that the ministry should look for evidence of fraud in all cases."



...the ministry expects to report a minimum 10% of the cases in the sample to the police."

About this Briefing

This briefing contains key facts from the Danish Court of Auditors' report. For context it should be read alongside the official translation of the report introduction and conclusions. An unofficial translation of the bulk of the report was published in January 2019 by a coalition of environmental NGOs, and is also available for reference (see endnotes).

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Background: Admissibility of applications for EMFF support^{iv}

The EMFF prescribes that any application for support from the EMFF shall be inadmissible if the operator concerned has committed a serious infringement under the Common Fisheries Policy (CFP) Basic Regulation,^v the Illegal Unregulated Unreported (IUU) Fishing Regulation,^{vi} the Fisheries Control Regulation,^{vii} other EU environmental directives^{viii} or if the operator has committed fraud as defined under EU legislation.^{ix}

The period of time for which the operator will be considered inadmissible shall be proportionate to the nature, gravity, duration and repetition of the serious infringement, offence or fraud, and shall be of at least one year.

These conditions must apply throughout the implementation of the project financed and for a period of five years after the final payment to that beneficiary was made. If this condition is not respected, money or part of the money given to the beneficiary might be claimed back. Member States shall verify that operators respect these admissibility criteria based on the information available to them in their national register of fisheries infringements and any other available data.

To check the admissibility of an operator, national authorities need to examine several conditions not only before granting support but also during the implementation of a project, as well as after granting EMFF support. Among those, the following ones are particularly important:

- Are the vessel and the beneficial owner admissible for funding?
- Is the investment eligible for funding and with which percentage support rate?
- Have the requirements on the registration of the vessel been met?
- Have the proper procurement requirements been met, including whether there is arm's length and independence between the parties involved?
- Are requirements on invoicing and documentation of payment being met?
- Are the requirements relating to the physical location of the investment and its maintenance continuing to be met?

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Main findings of the Danish report

Significant irregularities and errors were found with regard to how the Danish ministry handled ALL of the following important criteria for granting EMFF funds.

Serious infringements of the Common Fisheries Policy and penalty point system^x

1

The EU operates a penalty point system for serious infringements of the rules of the CFP. A fisher committing a serious infringement of the rules of the CFP will, in addition to the sanction imposed by its national authorities (e.g. a fine), also be assigned penalty points if the violation is particularly bad. If the fisher is given penalty points, then he is inadmissible and cannot receive funding from the EMFF. The EU fisheries control legislation defines 12 types of offences that could be qualified as serious infringements. According to the EU Control and IUU Regulations, Member States must decide how bad the serious infringements are, taking into account criteria such as the damage caused, the extent of the infringement, its value and whether it has been repeated.

Danish authorities made a catalogue of errors in their interpretation and implementation of the EU regulations and therefore funding was wrongly granted to fishers who had committed serious infringements.

 *In Rigsrevisionen's assessment, the ministry should have imposed penalty points in an additionally 29 cases. Rigsrevisionen assesses that, in failing to do so, 24% of the examined funding has been provided to fishers who would have been excluded from receiving funding had the penalty point system been managed correctly."*

2

Incorrect assessment of the admissibility for funding^{xi}

be eligible for EMFF support, operators and vessels must not have committed a serious infringement of the rules of the CFP. EU Member States must implement the EU provisions on serious infringements, both into their laws and into their practice, so that it is possible to determine whether applications for funding from the EMFF are admissible. From the EMFF it is understood that:

- If the operator is inadmissible, all applications relating to this operator are inadmissible;
- If the vessel is inadmissible, the vessel in question cannot receive support, but the vessel's operator may still be admissible for support to other vessels.

The Danish ministry never distinguished between the two types of inadmissibility and in practice only examined whether the vessel and not the operator was inadmissible.

3

Incorrect interpretation of the penalty point system in case of infringements of national CFP implementing legislation^{xii}

The Danish Ministry worked on the assumption that penalty points can only be assigned for infringements of EU regulations, but not for infringements of national regulations. However, according to the Danish Court of Auditors' report, the European Commission clarified to the Danish authorities that it does not agree with such a distinction and that the penalty point system should apply to infringements of EU legislation as well as to infringements of national legislation. The Danish Ministry's interpretation was not in accordance with the EU official interpretation.



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4

Non-compliance with the requirement of recording serious infringements^{xiii}

To enforce EU provisions on serious infringements, it is required to have a national register of infringements allowing Member States to exchange information with each other and ensure that fishers are sanctioned regardless of where the infringements take place. The national register of infringements should therefore include those committed by a Member State's vessels when fishing outside their national jurisdiction and reported back by foreign authorities.

The study shows that the Danish Ministry had established a register of infringements, but had failed to comply with the requirement to record the infringements of Danish vessels identified by foreign authorities.

One consequence of the missing infringements records is that the ministry lacks a comprehensive overview of the full extent of a vessel's infringements, and thereby lacks a way of taking repeated infringements into consideration. In summary, this problem means a vessel could be granted EMFF support in Denmark, when it is in fact inadmissible.

5

Incorrect use of penalty points for persistent infringements of logbook requirements^{xiv}

According to the Control Regulation, fishers are not allowed to have a margin of tolerance of more than 10% between the quantity of catches recorded in their logbooks during the fishing trip and the quantity actually retained on board. If the quantities differ by more than 10%, an infringement has occurred (called "logbook margin of tolerance" or "incorrect entries in logbook"). The Danish Ministry's instructions did not comply with the EU legal requirements. In particular for the logbook margin of tolerance, according to the instructions, penalty points should not be assigned for this infringement, despite the fact that the EU legislation considers this a serious infringement that must be sanctioned with penalty points.

The Ministry has since accepted that in fact serious or repeated infringements of the logbook margin of tolerance can and should be assigned penalty points.

However the report notes that in some cases Danish authorities had actually correctly assigned points for breach of the logbook margin of tolerance, whilst in other serious cases they had not. This leads not only to a violation of EU legal requirements but also to discrimination among fishers.

Wrong use of support rates^{xv}

6

The Danish Ministry did not use the correct support rates when granting funds. For the largest funding scheme, the Ministry has implemented the regulatory framework incorrectly. In 60 out of the 80 cases audited for the report, it has approved funding with a support rate that was too high. This means that the ministry has incorrectly granted approval for funding of up to DKK 21 million (approx. €2.81 million), corresponding to approximately 40% of the funds approved and checked during the audit.

Inappropriate support for equipment not improving selectivity^{xvi}

7

The Danish Ministry granted funds for fishing equipment that was not demonstrably better than the standard equipment.

Inadequate review of procurement tenders and prevention of price fixing or fraud^{xvii}

8

The report shows that the Danish Ministry, in 19 out of the 80 cases audited (24%), failed to notice that the requirements of independence between the companies offering goods or services, and the company purchasing these goods or services, were not met (i.e. proper public procurement process). The reviewers discovered this by looking at the Central Business Register (CVR) and the Danish Maritime Authorities' Register of Shipping – both of which are publicly available registers. The report even found that, in some cases, the invoicing information indicated the use of front men and fraud.



Rigsrevisionen's study shows a number of incidents where applicants and contractors contrary to the regulations have been mutually dependent on each other, or applicants have, for instance, asked for offers and traded with their own companies, or invoicing has clearly indicated the use of front men and fraud".

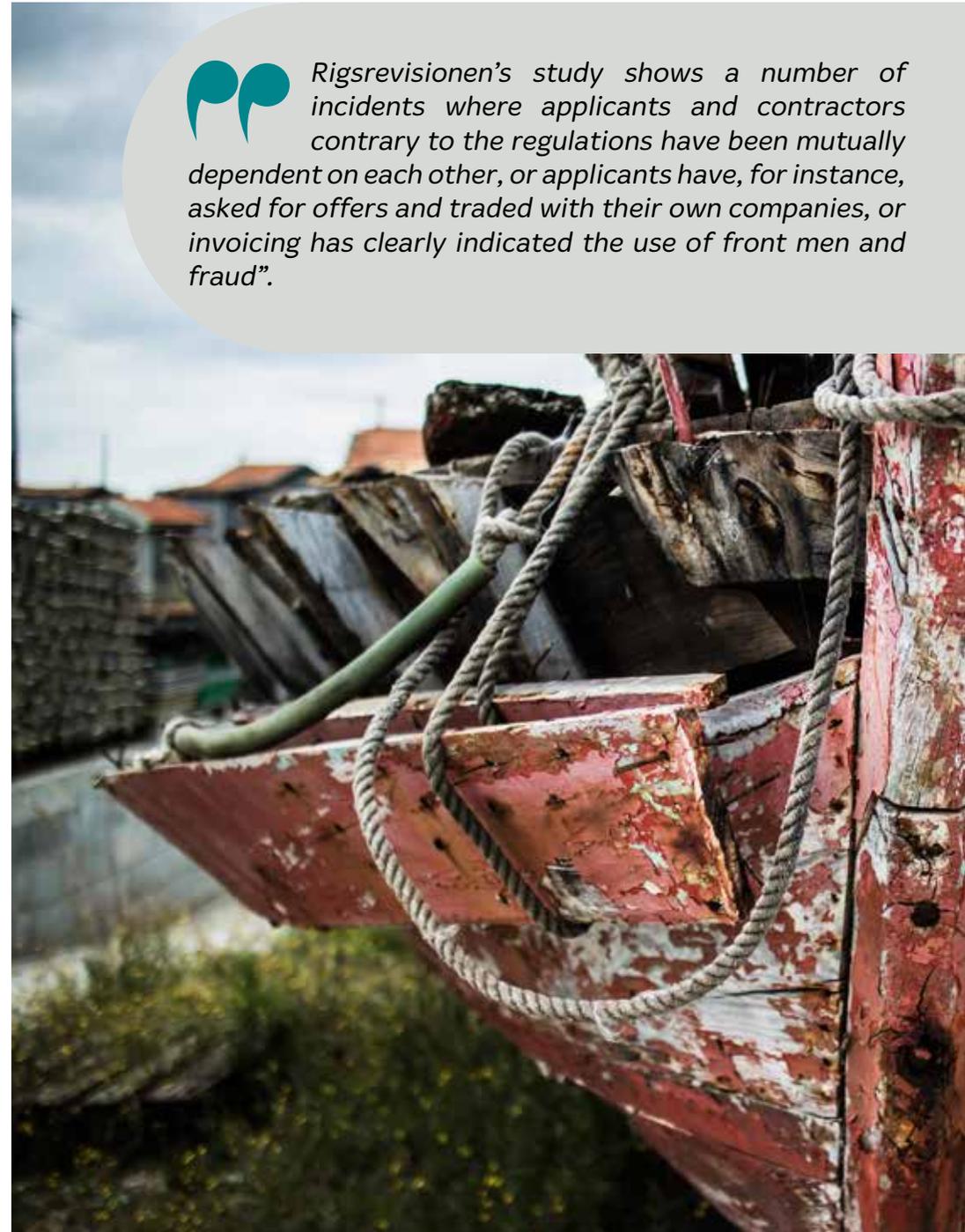




Photo by Iker Urteaga on Unsplash

9

Incorrect interpretation of requirements linked to vessel registration^{xviii}

Money can be granted to owners of EU fishing vessels, which are registered as active vessels and that have been carrying out fishing activities at sea in the EU at least 60 days during the two calendar years preceding the date of submitting the application.

The Danish Ministry interpreted the EMFF in such a way that this requirement of being an EU-registered vessel would only apply at the time when the funding is approved but not when the money is actually being paid out. This interpretation defeats the purpose of the requirement itself which is to make sure that only EU vessels that are legitimately active receive EU funds.

10

Insufficient control of the investments^{xix}

It is stated in the EMFF regulation^{xx} that the owner of a fishing vessel, who has received funds, is not allowed to transfer this vessel to a country outside the EU for at least five years following the date of the actual payment of support to the beneficiary. It is also stated in the same article that funds granted must be repaid if the asset (vessel or enterprise) ceases to exist or moves outside Denmark within five years after being paid out.

The report notes that the Danish Ministry has failed to adequately control this requirement, and cites examples of cases where the subsidised vessel has been sold out of the EU only four months after the investments were paid for, and other examples where the vessels with commitment for funding or already funded were sold out of Denmark.

Links to the report, other relevant documents and related regulations

The Danish Court of Auditors' (Rigsrevisionen) report was published in Danish in October 2018. A four-page extract containing the introduction and conclusions was published in English in November 2018. An unofficial translation of the bulk of the report was published in January 2019 by a coalition of sustainable fisheries NGOs.

- The “official” English translation of the report introduction and conclusions is available here: <http://uk.rigsrevisionen.dk/publications/2018/12018/>
- The “unofficial” English translation of the bulk of the report is available here: <https://www.fishsec.org/2019/01/24/translation-danish-public-accounts-committee-report-on-support-to-the-fisheries-sector-from-the-emff/>
- The full Danish original version of the report is available here: <http://www.rigsrevisionen.dk/media/2104921/sr0118.pdf>
- Maritime and Fisheries Fund (EMFF) 2014 – 2020: Commission Information: https://ec.europa.eu/fisheries/cfp/emff_en
- EU Commission Fact sheet on the new EMFF 2021 - 2027: https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-maritime-fisheries-fund_en.pdf

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References

- i 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, OJ L149, 20.5.2014, p.1. (hereinafter referred to as EMFF Regulation).
- ii https://ec.europa.eu/fisheries/cfp/emff_en
- iii Folketinget Rigsrevisionen, 2018, Tilskud på fiskeriområdet. (hereinafter referred to as the report) <http://www.rigsrevisionen.dk/media/2104921/sr0118.pdf>
- iv Article 10 of the EMFF Regulation.
- v 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 L354, 28.12.2013, p.22. (hereinafter referred to as CFP Regulation).
- vi Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing OJ L 286, 29.10.2008, p. 1. (hereinafter referred to as IUU Regulation)
- vii 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 (hereinafter referred to as Fisheries Control Regulation)
- viii Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L164, 25.06.2008, p.19; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L206, 22.07.1992, p.7; Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L20, 26.01.2010, p.9.
- ix Convention on the protection of the European Communities' financial interests
- x Section 2.1 - Point 30 to Section 3.2 - Point 71
- xi Section 2.4 - Point 79
- xii Section 2.1 - Points 38 and 65
- xiii Section 2.2 - Point 44
- xiv Section 2.1 - Point 41
- xv Section 3.1 - Point 103 and 104
- xvi Section 3.1 - Points 101 and 102
- xvii Section 3.3 - Points 110 - 120
- xviii Section 3.2 - Points 105 - 109
- xix Section 3.5 - Section 121 and Box 15