

**Extract from Rigsrevisionen's report submitted to the Public Accounts
Committee**
**Report concerning the Danish Ministry of Foreign Affairs' management of
support from the European Maritime and Fisheries Fund (EMFF) in the period
2014-2017.**

Published October 2018

This is an unofficial English translation of the bulk of the report. The translation has been checked for accuracy but we cannot fully guarantee that it is completely accurate

An “official” English translation of the first chapter of the report has been incorporated and is separately available here:

<http://uk.rigsrevisionen.dk/publications/2018/12018/>

The full original version of the report is available here in Danish:

<http://www.rigsrevisionen.dk/media/2104921/sr0118.pdf>

Given the importance of the report, its potential relevance for all EU member states and for the misuse of EU EMFF money, we would be like to see an official English translation of the report produced by the EU Commission or other any other relevant EU institution. In the meantime we have translated the main details of the report.

We have not translated section 1.2 which contains background information. However the main details from this section are covered in sections 2 and 3 of the report, which have been translated. We have not translated section 1.3 which contains methodology: this is covered in the translation of Appendix 1. We have not translated Appendix 2, which contains the Glossary of Terms because these terms are mostly explained in text boxes throughout the report and those have been translated.

October 2018

**Rigsrevisionen's report submitted to the
Public Accounts Committee with the
remarks of the State Auditors**

Grants in the fisheries sector

**1/2018 Report on subsidies in the fisheries
sector**

Copenhagen 2018

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Remarks from the Public Accounts Committee

Report on subsidies in the fisheries sector

This report is on the management of the 4 support schemes in the fishery area under the European Maritime and Fisheries Fund (EMFF) during the period 2014-2017. The support under the EMFF-programme in this period was DKK 875.4 million, of which the EU financed approximately 75%. The support was given to, e.g. fishery vessels and aqua culture with the aim to promote a competitive, environmentally friendly, economically sustainable and socially responsible fishery and aqua culture in Denmark.

The responsibility to manage the support under the EMFF-programme was transferred to the Ministry of Foreign Affairs from the Ministry of Environment and Food during a regime change in 2017.

The Public Accounts Committee strongly criticises the management of support in the fishery area under the EMFF-programme. It has meant that support has been paid out contrary to regulations and that applicants have been discriminated. The Public Accounts Committee points out that there is a risk that the European Commission will reclaim funding already provided.

The Public Accounts Committee believes that the extent of shortages, errors and irregularities in the management of support has been so extensive that it is an expression of a worrying and unusual administrative culture.

The Public Accounts Committee is seriously concerned that the report – just like the report on concentration of quotas in Danish fisheries – not only documents a very critical management of the fisheries, but also documents circumstances that indicates illegalities, which have not been prevented or detected.

The Public Accounts Committee finds that the Ministry of Foreign Affairs has a large and important task in correcting the administrative basis and culture to ensure a correct and proper management of support under the EMFF-programme going forward. The Public Accounts Committee finds it relevant that the Ministry of Foreign Affairs has initiated a thorough review and clear-up of the support area and in parts of the fishery control, just as the ministry is considering resuming old support cases.

The Public Accounts Committee wishes to highlight these points of critique in the report:

- The management has not been organised in a way that ensures that support cases meet the basic requirements for receiving support
- The EU penalty points system has been managed contrary to regulation. Approximately 24% of the reviewed grants should not have been awarded.
- The requirements to receive support have been interpreted wrongly with the risk that some fishers have abstained from applying even if they were eligible for support. Furthermore, in a series of cases, support has been too high because wrong support rates were applied.
- The Public Accounts Committee's review of offers, invoices and documents of payment gives reason to suspect conflicts of interest, the use of front men and fraud. The Ministry of Foreign Affairs thus expects to report at least 10% of the cases in the sample check to the police and the ministry will report cases of suspected fraud to the European Anti-Fraud Office (OLAF).

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During the investigation period, there have been the following ministers:

Ministry of Food, Agriculture and Fisheries:

Mette Gjerskov: October 2011 - August 2013

Karen Hækkerup: August 2013 - December 2013

Dan Jørgensen: December 2013 - June 2015

Ministry of Environment and Food:

Eva Kjer Hansen: June 2015 - February 2016

Esben Lunde Larsen: February 2016 - August 2017

Foreign Ministry:

Karen Ellemann: August 2017 - May 2018

Eva Kjer Hansen: May 2018 -

The report has been submitted to the Ministry of Foreign Affairs, whose remarks are reflected in the report.

Extract from Rigsrevisionen's report submitted to the Public Accounts Committee

Support to the fisheries sector from the EMFF

1. Introduction and conclusion

1.1. Purpose and conclusion

1. This report concerns the Danish Ministry of Foreign Affairs' management of support from the European Maritime and Fisheries Fund (the EMFF) in the period 2014- 2017. The policy area of fisheries was transferred from the Danish Ministry of Environment and Food to the Ministry of Foreign Affairs by royal decree on 7 August 2017. Although the study concerns mostly the period during which the Ministry of Environment and Food was responsible for the area, it is currently within the remit of the Ministry of Foreign Affairs.

2. In the period examined, support from the EMFF made up DKK 875.4 million, of which approximately 75% was financed by the EU. Funding is allocated through 14 different programmes for, among other things, investment in fishing vessels and aquaculture, and implementation of new EU regulations concerning fisheries control. Total funding for the 10 programmes that concern fisheries and aquaculture makes up DKK 536.5 million. The objective of the support is to promote competitive, environmentally sustainable, economically viable and socially responsible fisheries and aquaculture and to promote the implementation of the EU's common fisheries policy.

3. This study covers approximately 34% of the total budget of the EMFF and approximately 56% of the budget concerning fisheries and aquaculture. Rigsrevisionen initiated the study that springs from an audit of support from the EMFF in the Danish Agricultural Agency that Rigsrevisionen conducted in the autumn 2017. This audit indicated that there were problems with the management of support from the EMFF and therefore potentially also problems with the eligibility of beneficiaries. As a result, the Ministry of Foreign Affairs may have to recover payments from recipients that have not fulfilled the requirements, and financial corrections – claims for reimbursement from the EU budget – may be imposed on Denmark by the European Commission.

4. The purpose of the study is to assess whether the Ministry of Foreign Affairs is managing support from the EMFF to the fisheries sector correctly. The admissibility of applications is a basic condition that must be fulfilled by applicants who want to be considered for support. In this context, admissibility means that the application must comply with relevant EU regulations in order to qualify for support from the EMFF. Once the basic conditions have been fulfilled, the applicants must fulfil additional requirements to be able to receive support from the EMFF.

Side Boxes

EMFF: The EMFF is the fund for the EU's maritime and fisheries policies for 2014-2020. The fund is used to co-finance projects along with national funding.

Financial corrections imposed by the European Commission : The European Commission determines the size of financial corrections or exclusions of expenditure based on an evaluation of three factors: the nature and gravity of the infringement and the financial loss suffered by the EU budget.

Basic application admissibility : The basic admissibility conditions for the EMFF appear from EU regulation 508/2014, article 10. Admissibility requirements vary depending on the scheme under the EMFF.

Admissibility: To receive funding from the EMFF, applications must comply with a number of regulations concerning, for instance, that operators have not committed serious infringements of the fisheries rules.

The report answers the following questions:

- . Is the Ministry of Foreign Affairs managing funding from the EMFF in a manner that allows the ministry to determine whether the basic admissibility conditions for receiving support have been fulfilled?
- . Has the Ministry of Foreign Affairs ensured that the applications fulfil a number of other important criteria for receiving EMFF support?

Conclusion Rigsrevisionen criticises strongly the Ministry of Foreign Affairs' overall management of support to the fisheries sector from the EMFF. As a result of the ministry's inadequate management, support from the EMFF have been provided to applicants in conflict with the regulations, and applicants have not been treated equally. The ministry's inadequate management entails a risk that the European Commission will reclaim funding already provided. The Ministry of Foreign Affairs' management does not allow the ministry to determine whether applications for support from the EMFF fulfil the basic admissibility requirements. First, the Ministry of Foreign Affairs has assessed the basic admissibility requirements on an incorrect basis, because the ministry has failed to manage the EU penalty point system for fishing vessels in compliance with the regulatory framework. The ministry has not to the extent required imposed penalty points for serious infringements of the fisheries rules. The ministry has imposed penalty points in 34 cases in the period 2013- 2017. In Rigsrevisionen's assessment, the ministry should have imposed penalty points in 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. The inadequate and incorrect management of the penalty point system has also had the consequence that fishers have not been treated equally when penalty points have been applied. Thus, some applicants have been better positioned than others to receive support. The Ministry of Foreign Affairs has informed Rigsrevisionen that it will carry out a legal analysis of the cases where penalty points should have been applied, according to Rigsrevisionen's assessment. Second, the Ministry of Foreign Affairs has not adequately checked whether the applicants were admissible for funding, and the ministry is therefore unable to provide evidence of their admissibility. Third, the Ministry of Foreign Affairs has interpreted the admissibility requirement incorrectly in relation to limitations. This may have deterred fishers from applying for funding, despite the fact that they, in the assessment of Rigsrevisionen, fulfilled the basic admissibility requirements.

Moreover, the Ministry of Foreign Affairs has operationalised the requirements either incorrectly or only vaguely, and as a result, it has failed to ensure fulfilment of a number of other essential requirements to receive and keep funding. Under the largest scheme for support under the EMFF, for instance, the ministry has not applied the correct support rates in up to 75% of the cases examined, and therefore the amount of funding provided has been excessive in many cases.

To this should be added that the Ministry of Foreign Affairs' checking of compliance with the requirements has been flawed. In several cases, the ministry has failed to ensure that the requirements concerning offers from potential suppliers, invoicing and evidence of payments have been fulfilled. 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. The ministry has asked the Legal Adviser to the Government to investigate 18% of the cases included in Rigsrevisionen's sample, and the ministry expects to report minimum 10% of the cases in the sample to the police. The Legal Adviser to the Government is investigating an additional number of cases. The ministry intends to report the suspected fraud cases to The European Anti-Fraud Office (OLAF). 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.

Based on Rigsrevisionen's study, the Ministry of Foreign Affairs has decided to conduct a thorough review of the administrative basis for support under the EMFF and relevant aspects related to fisheries control in order to ensure compliance with EU law. The review will be carried out with external legal and technical assistance. The ministry will examine old cases with respect to the legal implications of errors and poor management. The analysis will cover all cases concerning support and penalty points where there is cause to consider reopening cases. The ministry has also in-

formed Rigsrevisionen that it will have focus on changing the administrative culture and ensuring that the ministry has the competencies necessary to deliver sound processing of applications.

Side Box

The European Anti-Fraud Office (OLAF): OLAF investigates fraud against the EU budget, corruption and serious misconduct within the European institutions, and develops anti-fraud policy. OLAF is an independent body under the European Commission.

2. The Ministry's management of the basic requirement needed to receive and keep funding

Partial Conclusion

Rigsrevisionen, or the Public Accounts Committee, finds that the Ministry of Foreign Affairs does not have a management, which enables the ministry to determine whether applications for support from the EMFF-programme fulfil the basic admissibility requirements, which is a prerequisite for receiving and keeping support. As a result, support has been granted that does not comply with the regulations of the schemes examined.

First, the Ministry of Foreign Affairs has assessed the basic admissibility requirements on an incorrect basis, because the ministry has failed to manage the EU penalty point system for fishing vessels in compliance with the regulatory framework. For two of the support schemes, the ministry has failed to implement key EU-regulation on the penalty point system for fishing vessels correctly, just as the ministry has failed to implement rules the Minister had held out prospects of to the Parliament when implementing the penalty point system in the Fisheries Act. The ministry has therefore not sanctioned serious infringements of the fishery rules in accordance with the legal framework. The ministry has imposed penalty points in 34 cases in the period 2013-2017. According to the Public Accounts Committee's assessment, the ministry should have imposed penalty points to fishery vessels in a further 29 cases. In failing to do so, the Committee assesses that undertakings to provide support has been given to numerous fishers who do not fulfil the basic requirements of receiving and keeping support. The Committee assesses that approximately DKK 12.5 million has been granted to operators and vessels, corresponding to 24% of the examined funds, who would otherwise not have been accepted for funding had the penalty point system been managed correctly. Furthermore, the ministry's inadequate management of the penalty point system has led to discrimination of fishers when awarding penalty points. The ministry's

evaluation of penalty points is also not documented, and the ministry has therefore not had the basis for treating violators of the Fisheries Act equally. This has put some applicants in a better position than others to receive support.

Second, the foundation used by the Ministry of Foreign Affairs to assess whether applicants fulfilled the basic conditions for receiving and keeping a grant, has been entirely inadequate in three of the examined schemes. The ministry did not examine admissibility of the largest scheme in accordance with the requirements specified in the regulation. For example, the ministry has not had a correct understanding that the admissibility requirements include both operators and vessels. Furthermore, there is a risk that this may have deterred fishers from applying for funding from the largest scheme even though they fulfilled the basic conditions for receiving the funding. This is because the ministry has managed the area after a list in which vessels were listed as ineligible for funding even though they were in fact eligible for funding. This may have resulted in the ministry not managing the funding administration in accordance with the EU-regulations and the administrative principles of equal treatment.

Further to that, for two of the support schemes the Ministry of Foreign Affairs has not complied with requirements specified in the regulations on registering serious infringements made by Danish vessels and identified by the authorities of other member states. As a result, the ministry lacks the full overview of a vessel's total number of infringements of fishing rules.

The Ministry of Foreign Affairs has informed that the ministry has taken steps to implement the penalty point system in accordance with the principles of the regulation. Furthermore, the ministry has informed that it will conduct a legal analysis as to which extent infringement cases must be resumed with a view to possible allocation of penalty points. In addition, the ministry has stated that the ministry will organise administration of the funding cases so that check of admissibility will be performed in accordance with the principles of the regulation.

29. This chapter is about whether the Ministry of Foreign Affairs only grant funding for applications that fulfil the basic conditions for receiving and keeping funding. To receive funding for projects through the EMFF-programme, the application must fulfil numerous requirements as set out in the regulatory provisions. We have examined how the ministry has managed the requirement on admissibility for the three funding schemes covered by this basic condition: Investments in fishery vessels, Investments in aquaculture and Production- and Marketing-plans.

First, we examined what basis the Ministry of Foreign Affairs has for assessing whether an application is admissible. We have done this by looking at how the

ministry in its declarations and instructions has put the EU's penalty point system for serious infringements into practice. Then we examined whether the ministry keep records over the serious infringements and if the transgressors are being made aware that serious infringements can lead to penalty points. Then we examined how the ministry in practice has enforced and assigned penalty points to the violators of the fisheries legislation.

Finally, we examined whether the ministry in the handling of the funding cases has ensured that applications fulfil the basic conditions for receiving and keeping support under the EMFF-programme.

2.1 The ministry of Foreign Affairs's implementation of the EU provisions on serious infringements of the fishery legislation

30. For the scheme Investments in fishery vessels and the scheme Production- and Marketing-plans it is applicable that for operators and vessels to receive funding, they must not have committed a serious infringement of the fishery legislation. Denmark must implement the EU's provisions on serious infringements of the fishery legislation so that it is possible to determine whether applications for funding from the EMFF-programme are admissible.

Serious infringements in the regulations

31. The EU's penalty point system for serious infringements of the common fishery policy is a penalty point system, which is very similar to the ten-point penalty system in the Danish Road Traffic Act. When a driver violates the Road Traffic Act and is fined for the offense, the driver may also get a point in the driver's license, should the offense be particularly gross. The point in the driver's license is a penalty, which is being added to the common penalty. Similarly, a fisher committing serious infringements of the Fishery Act, will in addition to the common penalty from the authorities (e.g. a fine) also be assigned a penalty point, if the violation is particularly gross. This means the authorities – when it has handled the infringement case and made decision on a possible penalty – will subsequently consider whether the infringement is of such seriousness that the fisher will also be given a penalty point. Has the fisher committed a serious infringement and been given penalty point, then the fisher is inadmissible and cannot receive funding from the EMFF-scheme.

32. The EU has in regulations identified 12 types of infringements of the fishery legislation, which are being classified as serious. These are shown in table 2. According to control regulation 1224/2009 and of IUU-regulation 1005/2008, then the authorities of the member states must decide how gross the serious infringements are,

taking criteria such as the damage caused, the extent of the infringement, its value and whether it has been repeated, into account.

Table 2

The EU system for penalty points for serious infringement of the fishery rules

No.	Type of infringement	Penalty Point
1	Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system	3
2	Use of prohibited or non-compliant gear according to EU legislation	4
3	Falsification or concealing of markings, identity or registration	5
4	Concealing, tampering or disposal of evidence relating to an investigation	5
5	Taking on board, transshipping or landing of undersized fish in contravention of the legislation in force	5
6	Carrying out of fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organization	5
7	Fishing without a valid license, authorisation or permit issued by the flag State or the relevant coastal State	7
8	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	6
9	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	7
10	Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules	7
11	Transshipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organization	7
12	Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law	7

Source: Regulation 404 / 2011, Annex XXX.

Implementation in the Danish legislation

33. In 2012, Denmark implemented the penalty point system, where the Fisheries Act granted permission to the minister to lay down rules on assigning penalty points for the serious infringements mentioned in table 2.

According to the statutory remarks, the purpose of the law was to establish *an operational Danish administrative foundation for EU-legislation on assigning points*. In addition, the statutory remarks show that *it is being considered to lay down rules with the purpose of supplementing the regulatory framework, especially in relation to the more specific procedures for assigning points, the concrete assessments of the seriousness of the serious infringement and the right to complaint*.

Furthermore, the statutory remarks also show that there are two types of infringement and two aggravating circumstances that as a rule should result in assignment of penalty points, cf. box 1.

Box 1

Serious infringements and aggravating circumstances in the statutory remarks

Serious infringements:

- fishing in a closed area
- fishing for a stock which is subject to a moratorium or for which fishing is prohibited

Aggravating circumstances:

- infringements committed intentionally or through gross negligence
- infringements where control efforts have been undermined

In addition, the statutory remarks state that repeated infringements of cases that are not as a rule subject to assignment of penalty points, point in the direction of gross negligence or intent with the possibility to assign penalty points.

34. A concrete assessment must be made in all cases of infringement, which also means that there may be excusable conditions that gives reason to waive the criteria so that no penalty points are assigned.

35. In 2012, the ministry prepared the act on penalty point assignment etc. for the fishery license holders and operators of fishing vessels in connection with IUU-fishing. In this, the ministry did not stipulate further criteria for the assessment of the 12 types of infringements, as shown in the EU-regulation. Furthermore, the act fails to operationalise the four types of infringements and circumstances, which are highlighted in the statutory remarks, and should as a rule lead to penalty points.

36. The ministry supplemented the regulatory framework with a general provision that when assigning penalty points it was also possible to emphasise that the fisher had breached the vigilance a fisher must demonstrate when utilising the resources of the sea.

37. It is the opinion of the Public Accounts Committee that, in consideration of the legal rights of the fishermen and transparency of the penalty points system, it would have been appropriate if the ministry had prepared concrete criteria for the assessment of the seriousness of the infringements in the proposed legislation. It is the opinion of the Public Accounts Committee that when the ministry has failed to lay down further rules for those exact four types of infringements and circumstances, that should as a rule lead to penalty points, then the ministry is especially obliged by the statutory remarks to sanction these in accordance with the wording of the regulatory remarks.

Side Box

IUU-fishing; Illegal, Unreported and Unregulated fishing

38. The Ministry of Foreign Affairs has informed the Public Accounts Committee that penalty points can only be assigned for infringements of EU regulation but not infringements of national regulation. In connection with this assessment, the ministry has addressed the EU Commission to have the legal scope of the penalty point system clarified. The EU Commission has responded that it does not agree that such a distinction between EU and national regulations is essential for using the penalty point system. It is evident from the EU Commission's response that national regulation aiming to implement the common fishery policy, is included in the penalty point system. The interpretation of the ministry has therefore not been in accordance with the foundation of the regulations.

Implementation in administrative instructions

39. We have examined whether the Ministry of Foreign Affairs has laid down further criteria internally in administrative instructions for how to assess infringements. The study shows that the ministry has failed to establish clear criteria for assigning penalty points.

40. In 2012, the ministry prepared instructions that related to those overall criteria mentioned in the regulations, and which are repeated in the act.

- The nature of the damage
- The extent of the infringement
- Infringement value
- Infringement repetition

41. In the instructions, the ministry has failed to lay down sufficiently clear criteria for when the damage caused, the extent of the infringement, its value and any repetitions in principle should lead to assignment of penalty points

It is evident from the instruction template to be used when assigning penalty points, that the assignment should be justified with a description of the infringement in comparison with the criteria for assessing the seriousness.

In addition, the study shows that the ministry did not lay down clear criteria in the administrative instructions for how to assess the 12 different types of infringements, as set out in the EU regulations, or the four types of infringements and circumstances, which should as a rule lead to penalty points as emphasised in the regulations.

The study has also shown that one point of the ministry's instructions does not comply with the foundation of the regulations. It is evident from the instructions that penalty points can never be assigned for infringement of the rule on logbook tolerance, regardless of the extent of the infringement (infringement no. 1, table 2).

42. The Minister informed the Parliament in March 2012 that it would be possible to assign penalty points for infringement of logbook margins if the infringement of the regulations was sufficiently serious. The response from the minister is in line with the preparatory work to the implementation of the penalty point system regulation in the Fishery Act, where the ministry worked with a threshold for a margin of tolerance in the logbook of 20%, which should lead to penalty points after a concrete assessment. The ministry has informed that it was an error, that this was stated in the instructions and the Minister had therefore not misinformed Parliament.

Side Box

Logbook tolerance: According to the EU regulation, it is not allowed to have a margin of more than 10% between the quantity of catches recorded during the fishing trip and the quantity retained on board. If the incorrect entries are above 10%, an infringement of the logbook tolerance has occurred. The infringement of the logbook tolerance is also called incorrect entries in logbook.

43. The Ministry of Foreign Affairs agrees with the Public Accounts Committee that the instructions in some areas are incomplete compared with the infringements being considered aggravating, and in relation to the statutory remarks that repetition as a rule will point towards gross negligence/intention. Based on the Public Accounts Committee's remarks, the ministry will prepare a new instruction.

Results

The study shows that the Ministry of Foreign Affairs did not, as originally planned in the regulatory remarks, establish an operational foundation for assigning penalty points in the Act. The Act does not supplement the EU regulatory framework and does not elaborate how the 12 types of infringements, shown in the regulation framework, should be assessed with the aim to assign penalty points. In addition, the statutory remarks' indication of which infringements and circumstances should lead to the assignment of penalty points as a rule, are not included in the Act.

The study shows that the Ministry of Foreign Affairs' instructions does not contain sufficiently clear criteria for when damage caused, the extent of the infringement, its value and possible repetition should as a rule lead to the assignment of penalty points. It is the opinion of the Public Accounts Committee that when the ministry in the instructions fail to establish clear criteria for when penalty points should be assigned as a rule, it poses a risk for non-uniform case handling of the concrete infringement cases. The instruction does not qualify how the 12 types of infringements shown in the regulation framework, should be assessed in practice.

The Public Accounts Committee finds that the ministry's instructions is not in accordance with the foundation of regulations in one area, just as it is not in accordance with the information the Minister provided to Parliament in March 2012 that fishers could be assigned penalty points for infringing the logbook tolerance.

The Ministry of Foreign Affairs agrees with the Public Accounts Committee that the instruction is insufficient and will therefore prepare a new one.

The study shows that the Ministry of Foreign Affairs has had another interpretation of the legal scope of the EU penalty point system than the one stated in the implementation of the EU regulations in Danish legislation.

2.2 Recording of serious infringements and ensuring legal rights of fishermen

44. To enforce the EU provisions on serious infringements, it is a condition that a register be established to allow the Member States to exchange information with each other and ensure that fishermen be sanctioned regardless of where the infringement take place. In addition, it is a condition that the transgressor be made aware that the infringement can lead to the assignment of penalty points.

Compliance with the requirement of recording of serious infringements

45. It follows the EU regulation that Denmark must establish a register for infringements, carried out by Danish vessels abroad and which has been handed over to the Danish authorities by the relevant foreign authority.

46. The study shows that the Ministry of Foreign Affairs has established a register of infringements but has failed to comply with the requirement in the regulation to record the infringements of the Danish vessels, identified and sanctioned by foreign authorities.

47. The Ministry of Foreign Affairs has informed that going forward, it will incorporate infringements by Danish vessels, which has been noted and sanctioned by foreign authorities, in the register.

48. The consequences of the missing records of infringements, is that the Ministry of Foreign Affairs lacks a comprehensive overview of the full extent of a given vessel's infringements and thereby lacks the basis to take repeated infringements into consideration when assigning penalty points to the transgressor.

49. The Ministry of Foreign Affairs has informed that since the penalty point system came into force in December 2012, Denmark has received a total of 30 cases from foreign authorities, related to infringements made by Danish vessels/captains and that in only one case have foreign authorities asked Denmark to assess the infringement with the aim of assigning penalty points.

50. The Public Accounts Committee notes that in a further case the Ministry of Foreign Affairs has been requested to assign penalty points to a Danish registered vessel, cf. box 2.

Box 2

Serious infringement by Danish vessel in Irish waters

In November 2014, a Danish-registered fishing vessel committed a serious infringement of fishery rules in Irish waters, according to the Irish fishery authorities. The Irish authorities addressed the Danish authorities to assign six penalty points to the Danish vessel for having fished in Irish waters without a quota. When the Irish authorities have determined that a serious infringement of the fishery regulation has taken place, the fisherman is inadmissible for 12 months, according to the regulation.

The Danish authorities rejected to assign penalty points to the vessel, among other things because there was no inspection report, which was required by the Danish authorities before they would process the case to assign penalty points. Shortly after the infringement, the ministry approved a unilateral agreement to transfer additional quotas from the Netherlands to Denmark, which, according to the Danish authorities, then allowed the fisherman to catch the illegally obtained fish. The Irish authorities, however, maintained that the fisherman had committed a serious infringement.

The unilateral agreement to transfer quotas was stated as one of the main reasons for the Danish authorities to abstain from assigning penalty points to the fisherman for having committed an infringement in Irish waters, according to the case.

Side Box

Briefing that the infringement may lead to penalty points: Pursuant to Article 82 in the Control Regulation, then information will be provided at inspections that an infringement will lead to the assignment of penalty points in case of infringements, according to the statutory remarks, and that this will be carried out routinely in those cases where an infringement is included in the 12 categories of serious infringements.

In addition, the minister informed the Parliamentary Committee for Food, Agriculture and Fisheries in March 2012, that during inspections, controllers must report suspected infringements in an audit and inform the respective person that the infringement may lead to the assignment of penalty points.

51. It is the opinion of the Public Accounts Committee that the result of the Irish authorities' concrete assessment, that the owner of a vessel had committed a serious infringement of the fishery regulation, is that the ministry has awarded DKK 2 million in support to an applicant, who, as the case has highlighted, is inadmissible.

52. The ministry has informed that it will conduct an analysis, which will seek to determine whether there is basis for resuming the case.

Compliance with the requirement that a possible offender be notified in writing that the infringement may lead to the assignment of penalty points

53. According to the EU regulation, then an offender must be notified that the infringement may lead to the assignment of penalty points.

54. The study shows that the Ministry of Foreign Affairs has not met this requirement in the EU regulation sufficiently. In several cases of infringement, the fisherman has not been notified that the infringement may lead to the assignment of penalty points even though the ministry has indicated to the Public Accounts Committee that the cases should have been assessed with a view to assign penalty points.

55. The Ministry of Foreign Affairs has informed that it has emphasised to the controllers of the Danish Fisheries Agency that they must inform that infringements may lead to the assignment of penalty points and that the information must be documented. Similarly, this will be entered in the instructions when this is adjusted.

Results

The study shows that the Ministry of Foreign Affairs failed to meet the requirements in the EU regulation that infringements that are identified and sanctioned by foreign authorities, and which relate to Danish vessels/captains, be recorded in the Danish register. The ministry has informed that it will correct this.

In this connection, the Public Accounts Committee notes that the serious infringement of the fishery regulations by one Danish vessel, which was noted by the authorities of another Member State, was not recorded. The consequence was that the Ministry of Foreign Affairs in one case paid out DKK 2 million in support to an applicant, who, as the case has been highlighted, was inadmissible.

The Public Accounts Committee also note that the Ministry of Foreign Affairs in numerous cases has failed to inform the offender that the infringement may lead to penalty points, even though this is determined in the regulation for reasons of legal rights of the fishermen. The ministry has informed that it will do this going forward.

2.3 The Ministry of Foreign Affairs' handling of cases of serious infringement

56. We have investigated whether the Ministry of Foreign Affairs has enforced the rules for serious infringements in accordance with the legal basis. Infringements of the fishery regulations are considered serious, dependent on how serious the infringement in question is, which will be determined by the fishery authorities. If the infringement is considered serious, then it must be assigned penalty points simultaneously.

First, we examined whether the Ministry of Foreign Affairs has assigned the penalty points it should. Second, we examined whether the ministry has done so in a uniform way. We have done this by determining whether the fishermen, who have committed the same infringements, have been assigned uniform sanctions.

Assignment of penalty points by the Ministry of Foreign Affairs

57. We have examined 299 infringement cases spread over 66 vessels, all related to applications of support under the scheme 'Investments in fishing vessels.' Box 3 shows the process for an infringement- and a penalty point case.

BOX 3

The process for an infringement and a penalty point case

An infringement case related to a fishing vessel is initiated based on the controller's assessment on whether the fishery regulations have been complied. If infringements are determined, a report is prepared, and a consultative procedure is conducted in accordance with the general rules. The offender is being informed that the infringement may lead to the assignment of penalty points, which is noted in the report.

When the circumstances of the case have been uncovered, the Ministry of Foreign Affairs will determine whether the infringement will lead to an ordinary sanction, fx. withdrawal of the license or a prosecution request to the police for a fine or possible confiscation of an illegal catch.

When the Ministry of Foreign Affairs decides on such general sanctions, the justifications and possible excusable circumstances emphasised by the ministry when making the decision, are shown in the case.

When the Ministry of Foreign Affairs will then decide whether the fisherman in addition to the general sanction will also be assigned additional penalty points, this will be done through an assessment of the circumstances of the case already stated in connection with the decision of the general sanctions. When assessing cases to establish whether penalty points will be assigned, no new case journal will be created. At this time, the ministry has all the necessary information needed to assess whether the infringement was so serious that penalty points should be assigned.

If the ministry after a concrete assessment of the circumstances of a case determines that an infringement was so serious that it should be assigned penalty points, then the offender will be informed through letter.

Source: The ministry's instructions on handling of infringement cases, which may lead to the assignment of penalty points, November 2012.

58. In our examination of the 299 infringement cases, our focus has been on those types of infringement the Ministry of Foreign Affairs has previously sanctioned with penalty points, or which have been considered especially serious infringements or aggravating circumstances, cf. the statutory remarks. We have examined the files in the 299 cases to determine whether the ministry in its decisions of the infringement cases, has put emphasis on excusable circumstances. Including, for example, those presented by the fishermen in connection with the consultative procedure prior to a decision on the infringement case. This means that the analysis is based on the documentation the ministry has based its decisions on in the infringement cases. If the ministry has not emphasised excusable circumstances in these cases, then the ministry should in addition to the general sanction also have assigned penalty points.

59. Our criteria for assessing whether the Ministry of Foreign Affairs has assigned the penalty points it should have, stem from the ministry's instructions, the statutory remarks and the ministry's practice, respectively.

Indications in the instructions on how cases can be selected for assessment of penalty points

60. We have examined whether the ministry has used the indications in the instructions on how infringement cases can be selected for assessment of penalty points. The instructions show that cases with a total fine and confiscation-value of approximately DKK 50,000 may form the basis for a case on the assignment of penalty points. The study shows that the ministry has not used this criterion consistently.

The study shows that cases, where the total fine and confiscation-value is approximately DKK 50,000 are not consistently selected for an assessment of penalty point. In eight cases on incorrect logbook entries, for example, the ministry failed to assign penalty points even though the infringements were sanctioned with fines of over DKK 50,000. It does not appear from the infringement cases that they had been selected for an assessment of penalty points.

At the same time, the study shows that the Ministry of Foreign Affairs has mainly assigned penalty points in cases with a total fine- and confiscation-value of less than DKK 50,000. In those cases, the ministry has emphasised other conditions than those in the instructions or in the statutory remarks.

61. Overall, a review of the penalty point cases shows that in none of the cases are there documented concrete assessments of the circumstances of the cases compared with the criteria for assigning penalty points as listed in the instructions or the regulatory basis.

Assigning penalty points in accordance with the statutory remarks

62. According to the statutory remarks, then four infringements and aggravating circumstances should lead to assignment of penalty points as a rule. Table 3 shows our review of the infringement cases in comparison with the statutory remarks.

Table 3: Penalty points that should be assigned, cf. the statutory remarks

Serious infringement	Number of infringe-	Infringement cases where	Infringement cases where
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	ment cases	penalty points have been assigned	penalty points should have been assigned
Fishing in a closed area, including, fx. fishing in a special areas of conservation (SAC)	13	2	11
Fishing by species subject to a moratorium	7	0	7
Infringements committed intentionally, misleading logbook entry	8	0	8
Control efforts are undermined	0	0	0
Total	28	2	26

Source: The Public Accounts Committee's review of infringement proceedings.

Table 3 shows that in 26 out of 28 cases, the Ministry of Foreign Affairs has not assigned penalty points even though these particularly serious infringements as a rule should have led to the assignment of penalty points, cf. the statutory remarks. The ministry is under obligation by the statutory remarks to sanction the four infringements and circumstances. The obligation means that these infringements must be assigned penalty points unless there are specific circumstances which are excusable. In the cases reviewed, the ministry has already made a concrete assessment in connection with the assignment of other sanctions. As the cases have been presented, there has not been any excusable circumstances.

63. The Ministry of Foreign Affairs has informed that the ministry will conduct a legal assessment to clarify whether the cases can be resumed. These assessments will for example take into consideration any limitation periods, etc.

64. The Ministry of Foreign Affairs has in connection with the Public Accounts Committees examination explained that there has not been assigned penalty points in several of the cases included in table 3, because it was infringements of national rules, which in the opinion of the ministry were not covered by the penalty point system. The ministry has thus explained that numerous fisheries in a closed area in 2013 did not lead to the assignment of penalty points because it was an infringement of a national rule, cf. box 4.

Box 4: Fishing in a closed area

On the same day in 2013, an operator fished for industrial fish with four vessels in a closed area. This fishery meant that Denmark, at this given time, exceeded the total EU quota for the fish species concerned. The four vessels were not assigned penalty points, even though the fishery inspectors in their control report, assessed that they could. The Ministry of Foreign Affairs has informed

that no penalty points were assigned because it was an infringement of a national rule. There is no documentation on the case on whether this was the reason why penalty points were not assigned.

In connection with the Public Accounts Committee's examination, the EU Commission has announced that when assigning penalty points, the Ministry of Foreign Affairs should not distinguish between national rules and EU rules if the national rules seeks to implement the Common Fisheries Policy. At the same time, the EU Commission has assessed that the example of a national rule, which is shown in box 4, is covered by the penalty point system.

The Ministry of Foreign Affairs has informed that the fact that the case must be considered as being subject to an assessment on penalty points, does not necessarily mean that penalty points must be assigned. Whether penalty points are to be assigned in the individual cases must thus depend on a concrete assessment of whether the infringement is particularly serious.

It appears from the cases that the Ministry of Foreign Affairs has already made a concrete assessment. The Public Accounts Committee therefore believes that the ministry should have assigned penalty points in the specific cases since there were no excusable circumstances in the ministry's decisions of the infringement cases that could justify a deviation from the statutory remarks.

Side Box

Industrial fishing: Fishing mainly after the species, sandeels, sperling, horse mackerel and sprat. Industrial fishery is mainly used for production of fishmeal or fish oil.

65. A review of the infringement cases also shows that the Ministry of Foreign Affairs in several cases sanctioned national rules with the assignment of penalty points. The ministry's past distinction between national rules and EU rules is therefore not supported by the ministry's practice for assigning penalty points. This is further supported by the fact that the ministry in an appeal case emphasised that the assignment of penalty points was based on an infringement of a national rule.

Assignment of penalty points in accordance with the practice of the Ministry of Foreign Affairs

66. We have examined whether the Ministry of Foreign Affairs has assigned penalty points in infringement cases where the ministry has previously assigned penalty points. This means that we are looking at the ministry's practice of assigning penalty points. Table 4 shows our review of infringement cases in comparison with the practice of the ministry.

Table 4: Penalties that should be assigned, cf. the ministry's practice

Serious infringement	Number of infringement cases	Infringement cases where penalty points have been assigned	Infringement cases where penalty points should be assigned
Repeated infringements of incorrect entries in the logbook	17	1	(16)
Infringement of the catch composition rules	26	25	1
Fishing without a valid license	3	1	2
Fishing with prohibited fishing gear	4	2	2
Total	50	29	5 (21)

Source: The Public Accounts Committee's review of 299 infringement proceedings.

According to table 4, then the Ministry of Foreign Affairs has in one single case sanctioned repeated infringements of incorrect entries in the logbook. The ministry has not clearly motivated the assignment of penalty points in the specific case. Since the ministry has failed to set out criteria in its instructions on how many repetitions it takes before assigning penalty points in repeated infringements, we cannot assess if penalty points should have been assigned in the other 16 cases. However, the Public Accounts Committee assesses that there is a risk that the ministry should have assigned penalty points in all 16 cases where vessels repeatedly infringed the maximum logbook tolerance permitted.

67. Table 3 and 4 show overall that the Ministry of Foreign Affairs should have assigned penalty points to a further 31 infringements, according to the assessment by the Public Accounts Committee. Furthermore, by comparing the tables it shows that the ministry has primarily assigned penalty points for infringements, which are not considered particularly serious in the statutory remarks, or which do not fulfil the instructions on how to select and assess cases for assignment of penalty points, for example when infringing the catch composition rules.

By comparing table 3 and 4, it is also clear that for five types of infringements, penalty points have been assigned for some, but not for other similar infringements. This is the case, for example, for the infringement of the catch composition rules,

where the Ministry of Foreign Affairs in 25 cases decided to sanction the infringement with penalty points, while failing to do so in a single case.

Number of cases where penalty points have been assigned to vessels during the period 2013-2017

68. The Ministry of Foreign Affairs has assigned penalty points in 34 cases during the period 2013-2017, cf. table 5.

Table 5: Penalty point cases in the period 2013-2017

	2013	2014	2015	2016	2017	Total
Cases where penalty points have been assigned	22	7	2	1	2	34

Source: The Ministry of Foreign Affairs.

It shows in table 5 that the Ministry of Foreign Affairs' cases, where penalty points have been assigned, has declined after 2013. The ministry has informed that the decline is due to the introduction of the landing obligation in 2015, after which it became a requirement for fishers to bring the catch ashore, regardless of the catch composition.

69. The Public Accounts Committee assesses that penalty points should have been assigned in a further 29 cases, which in total includes the 31 infringements shown in table 3 (26 infringements) and 4 (5 infringements).

Side Box

Catch Composition Rules: The catch composition rule is a term used in industrial fishery for the species targeted by the fishery. If the catch contains other fish, the catch composition rules may have been infringed. The catch composition rules are often expressed as a percentage of the total catch, which as a minimum must be complied. If the percentage of components of the species is too low, the rule has been violated. Infringements of these rules are not sanctioned with a fine but through withdrawal of the license.

Consequences of the failure to assign penalty points for the management of funding

70. According to the assessment of the Public Accounts Committee, seven operators and one vessel would have been inadmissible by correct administration of the penalty point system. In the reviewed sample, these seven operators and the vessel in question had been accepted for support of approximately DKK 12.5 million, corresponding to

around 24% of the sample of approximately DKK 53 million. In the cases reviewed, the Ministry of Foreign Affairs has already carried out a concrete assessment in connection with the assignment of other sanctions. The way the cases have been described there has not been any excusable circumstances. The ministry should therefore in addition to the general sanction also have assigned penalty points.

71. The Ministry of Foreign Affairs has informed that the EU Commission's response to the ministry's inquiry on the penalty point system means that, based on an immediate assessment, there will be more types of cases, which may be considered as subject to an assessment of penalty points. The ministry has informed that should penalty point cases be resumed, then it will conduct a legal analysis of whether support will have to be paid back.

Discrimination of fishermen

72. The preamble to the EU's Control Regulation shows that *each Member State shall ensure that control, inspection and enforcement are carried out on a non-discriminatory basis as regards sectors, vessels or persons, and on the basis of risk management.*

73. The examination shows that the Ministry of Foreign Affairs has discriminated fishermen in decisions on penalty points. The assignment of penalty points and other sanctions has consequences for fishermen in relation to fishing opportunities, the value of the vessel (penalty points follow the vessel when sold) and possibilities to apply for support, which include EU funds.

74. Based on the review of the cases, we have identified discrimination in cases of repeated infringements of logbook tolerance, regulations on fishing gear, fishery license, fishery in a closed area and on catch components rules in industrial fishery. The consequence is that fishermen, who have not been sanctioned with penalty points, are better positioned when applying for funding under the EMFF-programme than other fishermen, who have committed similar infringements and who has been assigned penalty points. Box 5 shows examples of discrimination.

Box 5: Examples of discrimination

Discrimination in case of the infringement missing catch composition (infringement No. 2, Table 2)

Infringement of the catch composition rule in industrial fisheries is the type of infringement which has most often led to assignment of penalty points in the period 2013-2017. It has happened in 25 of the 34 cases where penalty points were assigned. In one case, however, the Ministry of Foreign Affairs did not assign penalty points to a fisherman who committed this infringement. No information exists on the case, which may explain why the ministry failed to assign penalty points in this specific

case, just as there is no documentation that the ministry has made a concrete assessment that would speak against the assignment of penalty points. Nevertheless, it is clear from the case that penalty points have not been assigned after a concrete assessment of the circumstances of the case, including the extent and processing time of the case.

Discrimination in case of infringement of the requirement for fishing permit (infringement no. 7, table 2)

As the cases have been explained, two vessels commit identical infringements of the fishery regulation's requirement for fishing permits, at the same time in January 2013. One vessel is assigned 7 penalty points for fishing for sprat in January 2013 without having a special permit for fishing after sprat in the Baltic Sea. The other vessel receives a fine of DKK 2,500 for fishing for sprat in January 2013 without a special permit for fishing for sprat in the Baltic Sea.

Discrimination in the use of illegal fishing gear (infringement no. 2, table 2)

In August 2017, a vessel was assigned 4 penalty points for the infringement of the provisions on illegal fishing gear following a control by a German control vessel in January 2016. The German authorities measured the meshes to be approximately 113.2 mm, where the minimum size is 120 mm, and further to that also imposed the offender a fine of approx. DKK 52,000. It is clear from the case that the ministry also considered that it was a serious infringement which should lead to the assignment of penalty points.

In another case, a control found that a vessel had used a fishing net with a mesh size of 113 mm on 25 May 2017. The law requires a minimum of 120 mm. In addition, no sorting grid was installed on the trawl. The owner had catch values of DKK 87,800 confiscated, but was not assigned penalty points, even if the infringement was equal to the one above which was assigned penalty points.

Discrimination on repeated infringements of logbook tolerance (violation no. 1, table 2)

In one case, the ministry has assigned penalty points because a vessel twice infringed the rule of a maximum permitted logbook tolerance of 10%. It is clear from the case file that the vessel had a margin of incorrect entries in the logbook of 67%.

However, 16 vessels in the Public Accounts Committees sample have committed infringements of the above rule at least twice and were not assigned penalty points. In one case out of the 16, a vessel has violated the rule 5 times without the Ministry of Foreign Affairs having assigned penalty points. In one single case, a vessel exceeded the logbook tolerance twice by more than 1000% without the ministry assigning penalty points.

Results

The examination shows that the Ministry of Foreign Affairs failed to assign penalty points for serious infringements of the fishery rules in accordance with key EU regulations. The examination also shows that the ministry has failed to assign penalty points as it was provided for in the legal framework. The examination shows that the ministry has not in practice assigned penalty points in accordance with the distinction between national rules and EU rules used by the ministry so far.

The Public Accounts Committee can therefore state that the Ministry of Foreign Affairs in total has assigned penalty points 34 times in the period 2013-2017, where the Public Accounts Committee at the same time assesses that the ministry should have assigned penalty points in a further 29 cases.

Of the 28 serious infringements found in the sample, which, according to the statutory remarks, should have led to the assignment of penalty points, the ministry has assigned penalty points in two cases.

There has been provided support for operators and vessels of approximately DKK 12.5 million, according to the Public Accounts Committees assessment, corresponding to approximately 24% of the sample that would have been inadmissible by proper administration of the penalty points system. In the cases reviewed, the Ministry of Foreign Affairs has already made a concrete assessment in connection with the assignment of other sanctions. As the cases have illustrated, there have been no excusable circumstances. The ministry should therefore have assigned penalty points in addition to the general sanction.

Furthermore, the Public Accounts Committee believes that the Ministry of Foreign Affairs has discriminated against fishermen in decisions on assignment of penalty points. Some fishermen are assigned penalty points for infringements, which other fishermen are not assigned penalty points for.

The Public Accounts Committee's examination of cases where penalty points have been assigned, show that assigning penalty points is not motivated and documented based on a concrete assessment of the criteria that, according to the instructions, should be used.

The examination also shows that the Ministry of Foreign Affairs has primarily assigned penalty points for infringements that do not comply with the instructions for how an infringement case should be selected for assessment.

The Ministry of Foreign Affairs will conduct a legal analysis of the basis for resuming infringement cases with a view to assign penalty points and repay any funds.

2.4. The Ministry of Foreign Affairs' case handling of the basic requirement to receive and keep funding from the EMFF-programme

75. In the previous sections we have examined the Ministry of Foreign Affairs' assignment of penalty points to fishing vessels, we will in this section examine how the ministry in the cases of the individual schemes has assessed whether the applicants meet the basic condition to receive and keep funding.

76. We have examined the Ministry of Foreign Affairs' case handling of whether a number of funding cases meet the basic conditions for receiving and keeping funding for the schemes Investments in fishing vessels, Investments in aquaculture and Production and Marketing plans in the EMFF-programme.

Case handling of admissibility for Investments in fishing vessels

77. The study shows that the Ministry of Foreign Affairs in the case handling of applications for support for the scheme Investments in fishing vessels has had an insufficient basis for assessing whether the vessel or operator were admissible.

The case handling has been based on an internal list of inadmissibility of vessels, which the Ministry of Foreign Affairs did not believe could receive support because they had been assigned too many penalty points. The study shows that all vessels (apart from one) on the current list of inadmissibility were in fact admissible according to EU rules and could therefore have applied for support from the EMFF-programme. This is because their infringements are outdated.

78. According to the legal framework, penalty points will be void after three years from the administrative decision, but that the inadmissibility of applications for the scheme Investments in fishing vessels are void after 12 months. The Ministry of Foreign Affairs was not aware of this distinction, and the list therefore contained vessels which should have been deleted from the list 12 months after the administrative decision.

79. Furthermore, it follows from the regulation that the Ministry of Foreign Affairs must distinguish between inadmissible vessels and inadmissible operators to get a fair picture of whether applications should be rejected. 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 in the assessment of other applications for support to other vessels, cf. figure 4 and 5. Our examination of the case handling shows that the ministry has never distinguished between the two types of inadmissibility and in practice have only examined whether the vessel – and therefore not the operator - is inadmissible.

80. The Ministry of Foreign Affairs has indicated that admissibility will be fully examined in the future.

Case handling of admissibility for Production and Marketing-plans

81. In this scheme, admissibility is assessed on the same basis as in Investments in fishing vessels above. The examination shows that support has been given even though the ministry did not know whether the application complied with the basic condition for receiving and keeping the support.

82. We have reviewed the 3 cases in which support has been granted and can state that the Ministry of Foreign Affairs has not examined the admissibility of applicants sufficiently. In 2 of the cases, the case worker has stated that it is not relevant to examine the admissibility of the application. In the third case, the case worker has stated that there are no vessels in the application. All 3 cases contain activities in the application which involve participation of fishermen. It is the opinion of the Public Accounts Committee that the ministry should have examined which fishermen were to participate in the activities and whether the concrete fishermen lived up to the requirement of admissibility before support was granted.

Side Box

The list of inadmissibility: The list of inadmissibility is used by the individual case workers to assess whether the applications received can be considered for receiving and keeping support from the funding programme.

It is only recognised producer organisations which can apply for funding from the scheme Production and Marketing-plans.

Case handling of admissibility in Investments in Aquaculture

83. For the scheme Investment in Aquaculture, the admissibility of the application must be assessed on whether the applicant has committed a criminal offense, according to the regulation. Box 6 shows examples of offenses that causes the application to be inadmissible.

Box 6: Criminal offenses which lead to inadmissibility

- discharge, emission or supply of a quantum of materials to air, soil or water that may cause significant damage to the quality of the air, the soil or the water, as well as to animals or plants
- any behavior that causes significant damage of habitats within a protected area.

84. In practice, the admissibility of the applicant is examined by contacting the relevant supervisory authority. To determine whether the applicant is admissible, it is necessary to ask for all the applicant's fish farms and aquacultures, which will often mean that the case worker must contact several municipalities and/or the Environmental Protection Agency.

Side Box

The municipalities are supervising fish farms and aquacultures, which are closer than 1 nautical mile from shore. The Environmental Protection Agency is supervising aquacultures further than 1 nautical mile from shore.

85. We have examined 20 cases under the scheme Investment in Aquaculture. We can state that the Ministry of Foreign Affairs has not examined the admissibility of the applicants in accordance with the requirements in the regulation in any of the cases. The ministry has not examined the admissibility of all the applicant's fish farms and/or aquacultures, despite this being a requirement. In none of the cases in the reviewed sample, where funding has been given, is there a documented check of admissibility in connection with the actual payment. Therefore, the ministry may have granted and provided funding to aquaculture companies which, according to EU legislation, do not meet the basic conditions for funding. The ministry has indicated that a full admissibility check will be carried out in future.

Results

The examination shows that the Ministry of Foreign Affairs' case handling of admissibility does not comply with the regulatory framework of the 3 examined schemes.

The Ministry of Foreign Affairs has not examined admissibility of the scheme Investments in fishing vessels in accordance with the regulatory requirements. The ministry has therefore not been able to distinguish between applications for funding from the scheme that were admissible and applications that were inadmissible.

The Public Accounts committee must note that the other fishermen who have been assigned penalty points within the last 3 years, based on the Ministry of Foreign Affairs' incorrect operationalisation of the inadmissibility period of 12 months, may have refrained from applying for funding. The ministry has informed that only one applicant has been wrongly rejected based on the list of inadmissibility. The ministry has subsequently resumed the case.

In addition, the Public Accounts Committee finds that all vessels (apart from one) on the current list of inadmissibility according to EU rules, were admissible and could have received funding.

The Public Accounts Committee assesses that the Ministry of Foreign Affairs on the scheme Production and Marketing-plans has not adequately examined admissibility for applications, although it is a regulatory requirement.

For the scheme Investment in aquaculture, the Public Accounts Committee believes that the Ministry of Foreign Affairs has failed to perform a sufficient check of the applicant's admissibility in all the 20 selected funding cases, despite the fact that this is a regulatory requirement.

Forward-looking initiatives by the Ministry of Foreign Affairs

86. The Ministry of Foreign Affairs has stated that the ministry will take the following steps as a follow-up to the identified issues, cf. box 7.

Box 7: Forward-looking initiatives by the Ministry of Foreign Affairs

The ministry will review the administrative basis for assigning penalty points to extend this and correct any omissions. The ministry will therefore:

- Prepare a guide on penalty points
- Develop a new comprehensive instruction on penalty points, which will lay down criteria for assessing the seriousness of the 12 different types of infringements as set out in EU regulation
- When preparing the instructions, rectify the incorrect statement that according to the instructions, infringements on incorrect entries in the logbook are exempted from penalty points
- Operationalise the statutory remarks on the fishery rules on which infringements must be considered as being aggravating and the legal remarks that repetition as a rule will point towards gross negligence or intention with the possibility to assign penalty points
- Prepare procedures for written documentation in the case of assessment of infringement cases in relation to the assignment of penalty points, including a reference to decisions in previous similar cases
- Going forward, incorporate Danish vessel's infringements that have been identified and sanctioned by foreign authorities in the Danish Fisheries Agency's register of infringements
- Ensure that the agency's controllers inform that infringements may lead to the assignment of penalty points and that this be documented

In this connection, the ministry will work on digital support for the administrative framework with the purpose of further preventing errors and omissions when handling infringement cases.

The ministry also informs that it will conduct a legal analysis of the extent to which infringement cases must be resumed with a view to assign possible penalty points. This analysis will also include a legal analysis of the Commission's response regarding the use of the penalty point system in relation to national rules as well as an assessment of which cases this may concern.

The Ministry has stated that as part of the thorough review of the administrative framework, it will in future organise the administration of the funding cases in such a way that the admissibility check is carried out in accordance with the regulatory framework.

3. The Ministry's administration of the other important criteria

Partial conclusion

The Public Accounts Committee assesses that the Ministry of Foreign Affairs has failed to ensure that the other important requirements for receiving and keeping funds have been complied with. Particularly for the largest scheme, the ministry has in numerous cases granted and paid out funding that was not in accordance with the regulatory framework. This is partly because the ministry has operationalised the requirements of the EU regulation incorrectly or unclearly, and partly because there has been a long list of various errors in the ministry's management and control of whether the requirements are being met.

The Ministry of Foreign Affairs has not used the correct support rates when granting approval of funding. In those cases where the ministry has paid out funding to itself as public authority, the ministry has administered on an unclear basis, which means there is a risk that the ministry will have to repay funds to the EU equivalent to approximately DKK 15 million, according to the Public Accounts Committee's assessment. For the largest scheme, the ministry has operationalised the regulatory framework incorrectly and has in 60 of the 80 reviewed cases in the audit granted approval for 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, corresponding to approximately 40% of the funds approved that were checked during the audit. The ministry has checked half of the flawed cases identified by the Public Accounts Committee, and based on this, agrees that unwarranted approval for funding of approximately DKK 8 million has been granted.

The Ministry of Foreign Affairs' management of the largest scheme has been insufficient in key areas since the ministry has failed to meet the requirements, which

are intended to support that funding only be granted to offers with reasonable prices. E.g. the ministry has in more than 20% of the reviewed cases failed to ensure that the requirements of offers were met, likewise, the ministry has in 20% of the reviewed cases has failed to ensure that the requirements relating to invoicing and documentation of payment were met. This means that applicants and contractors in numerous cases, and contrary to regulation, have for example been mutually dependent on each other. This may also mean that some offers are invalid because the offerors have been mutually dependent, or the applicant has obtained an offer and traded with its own companies. The study shows that in other cases the invoicing information indicates the use of front men and fraud.

In a further 12% of the cases, the Ministry of Foreign Affairs has failed to ensure that the beneficiaries of the funding meet the requirements that apply to be able to keep the grant commitment or funding. This is because the ministry has not adequately controlled whether the regulatory requirements were met in relation to the physical location and maintenance of the investments, and therefore failed to notice that the holder of the undertaking (the grantee) did not comply with the duty of disclosure to the ministry.

In case of intentional actions by the applicant, which affects the right to funding or the scope of funding, then it may be fraud. The Public Accounts Committee notices that our review only includes a share of all the funding cases, which is why there may be further problems with the remaining cases, which have not been reviewed. Taking into consideration the level of errors, the Public Accounts Committee recommends that the Ministry of Foreign Affairs should review all funding cases.

The Ministry of Foreign Affairs informs that it will review the administrative basis to strengthen it with the aim to prevent errors and shortcomings in future. The ministry has at present asked the Legal Adviser to the Danish Government to review 18% of the cases, which are part of the Public Accounts Committee's audit, with the aim to establish whether there is basis to suspect fraud. The ministry expects to report at least 10% of the cases covered by the Public Account Committee's audit to the police. Further to this, the Legal Adviser to the Danish Government is investigating a series of cases, and the ministry will report cases with suspected fraud to the European Anti-Fraud Office (OLAF).

The Ministry of Foreign Affairs will conduct a legal analysis with the aim to assess which concrete funding cases should be reopened for review. Furthermore, the ministry will carry on examining whether there are more cases with reason to suspect fraud.

87. This chapter is about whether the Ministry of Foreign Affairs has ensured that a range of other important requirements to receive and keep funding have been met.

When an applicant has fulfilled the basic requirements for grant approval, there are a range of additional requirements that must be fulfilled to receive and keep the grant. In this chapter we examine whether the Ministry of Foreign Affairs has ensured that these requirements have been met. First, we examine whether the ministry has ensured that the correct support rates are being applied. Then we examine whether the ministry has ensured that the requirements on offer, invoicing and documentation of payment have been fulfilled. Finally, we examine whether the ministry has ensured that the conditions for registering the vessel and the physical location and maintenance of the investments have been complied with. Figure 6 shows the case handling process.

Figure 6: Case handling process

UNDERTAKING/REJECTION	DISBURSEMENT	SUBSEQUENT CONTROL/FOLLOW-UP
<p>1) Which percentage can the project receive?</p> <p>Is the investment/project eligible for funding?</p> <p>Are the requirements on vessel registration being met?</p> <p>Are the requirements on offers in the application being met?</p> <p>Is there arm's length and independence?</p>	<p>2) Are requirements on invoicing and documentation of payment being met?</p>	<p>3) Are the requirements on the physical location and maintenance of the investment being met?</p>
<p>BASIC CONDITION: ADMISSIBILITY</p>	<p>BASIC CONDITION: ADMISSIBILITY</p>	<p>BASIC CONDITION: ADMISSIBILITY</p>

Source: Public Accounts Committee

It is evident from figure 6 that the Ministry of Foreign Affairs starts with examining whether the investment is eligible to funding and which support rate it can obtain. Then the ministry examines whether the requirements on the registration of the vessel have been met and whether the offer requirements are being met, including whether there is arm's length and independence between the parties involved. Prior to the

grant payment, the ministry examines whether requirements on invoicing and documentation of payment have been met. Finally, the ministry examines whether the requirements relating to the physical location of the investment and its maintenance are being met.

3.1 Requirements to receive the highest percentage in support

88. We have examined whether the ministry has ensured that the correct support rates are being applied within 3 support schemes: investments in aquaculture projects, Authority control and Investments in fishing vessels.

Support for Investments in aquaculture projects

89. Following the regulation on investments in aquaculture, the Ministry of Foreign Affairs can only support aquaculture projects of micro-, small- and medium-sized companies (SME's) with a maximum of 40% of the total expenses eligible for support, while bigger companies can be supported with a maximum of 30% of the total eligible expenses.

Our study of 20 of the total 35 cases under this scheme shows that the Ministry of Foreign Affairs in all 20 cases has awarded 40% of the financial support. The ministry has awarded the support based on the information provided by the applicants without quality assuring these by crosschecking, e.g. in official company registers. The ministry has informed that the ministry assessed the size of the companies from the information provided in the application forms, which the applicators are obliged to report. However, the ministry has neither controlled the information nor has it requested documentation for or obtained an accountant's statement for the accuracy of the information provided.

Furthermore, the audit also shows that the Ministry of Foreign Affairs has e.g. failed to examine whether a company is part of a larger corporation since the consolidated financial statements are not shown in the application up until 2016. There is no documentation that the ministry has checked the company's declaration on consolidated companies after 2016. Because of the lack of documentation there is a risk that more projects have been awarded too high a support percentage.

Support for Authority control

90. The Ministry of Foreign Affairs has granted financial support to itself under the scheme Control Authority. Part of the financing of this scheme comes from the EU while the remaining part comes from national co-financing. There are 2 models for this type of support, which operates with different support rates and different degrees of own payment.

Our examination of 20 of the 36 cases under this scheme shows that the Ministry of Foreign Affairs in all the examined cases has used the support model, which entitles to 100% support and at the same time does not have own payment (co-financing). In the assessment of the Public Accounts Committee, it is not clear from the EU regulations that the ministry can apply this support model.

The Ministry of Foreign Affairs will therefore have this clarified with the European Commission. If the European Commission assesses that the ministry is covered by the other support model, in which the ministry has a degree of own payment, then there is a risk that the ministry must repay funds from the operational allocation. In the 20 cases reviewed this corresponds to DKK 13.2 million, which have been received from the EU, and DKK 1.5 million, which has been financed nationally. On top of that are funding from the 16 cases, which are not part of our examination.

SIDE BOX

Operational allocation: Operational allocation includes expenses, income and smaller grants closely related to the operation.

Support for fishing vessels

91. According to regulations, the Ministry of Foreign Affairs can grant support to projects that includes investments in technologies on the so-called technology-list, which aims to:

- reduce the impact of fisheries on the marine environment, promote a gradual elimination of discards and ease the transition to a sustainable exploitation of living marine biological resources (article 38)
- increase the added value of fishery products (article 42)
- or increase the quality of fishery products (article 42).

The Ministry of Foreign Affairs has in a decree established that technologies, which are covered by article 38, and relates to the landing obligation, can be supported with 50% in 2015 and with 40% in 2016 and 2017. Investments covered by article 42 can throughout the entire funding period be supported by 30%.

Further to this, it is evident from the regulation that large corporations (corporations above the SME-threshold) can maximally be supported with 30% , regardless of the purpose of the investment, just as the support scheme for Investments in aquaculture. This rule was first introduced by the Ministry of Foreign Affairs in a decree in 2017, that is 2 years after the scheme came into force.

92. The examination shows that the ministry has granted support with the wrong percentages. Our review shows that the ministry has granted 50% in support for numerous of the largest fishery companies in Denmark without checking whether

these companies were above the limit for SME's. If they were above the limit, they should have received no more than 30% in support.

93. The Ministry of Foreign Affairs has up till 2017 neither in guidance nor in declaration informed the applicants of the regulation's rules regarding the size of the company. In its guidance for the 2017 application round, the ministry stated that circumvention of the support requirements – including when an applicant artificially divides the company to gain access to support – will be considered fraud. From 2017, the ministry has asked applicants to attach an income statement in the applications but failed to control whether the figures were correct and has not requested documentation or obtained a statement from the accountant to verify the correctness of the information provided.

94. During the review of the support cases we have seen, among other things, an applicant from a larger Danish fishery company, reporting a significantly lower turnover than the gross profit stated in the publicly available earnings report, cf. box 8.

Side Box

Technology list

Every decree includes a list of the types of equipments and technologies that are entitled for financial support. The technology list has been prepared by DTU Aqua in corporation with local fishery organisations. The list is then approved by the Ministry of Foreign Affairs.

Landing obligation

As from January 1, 2015, all catches of certain species must be landed, regardless of whether the catch complies with the minimum sizes. The landing obligation will be introduced gradually in the period up till 2019, when more regions and species will come under the landing obligation.

BOX 8

Example of incorrect financial information provided in an application for support from the EMFF-programme

The applicant states that the company has annual turnover of approximately DKK 13 million. Though, in the publicly available annual report the company has a gross profit of over DKK 200 million. It seems unlikely that the gross profit of DKK 200 million can be higher than the annual turnover of DKK 13 million. The Ministry of Foreign Affairs paid out the high rate to the company.

Side Box

Annual turnover

The annual turnover is the result of the year's sales.

Gross profit

The gross profit is the annual turnover excluding any relevant expenses.

95. The review of 80 support cases for the period 2015-2017 shows that the Ministry of Foreign Affairs has granted support for combined projects, which contains technologies that are covered by different provisions in the regulation.

96. The Ministry of Foreign Affairs has informed that the ministry up till and including 2016 has applied the practise that a project could include several technologies. The decisive factor has been the purpose of the project. Since 2017, the ministry has imposed a more rigorous practise in relation to mixed projects and requested that applicants split projects into 2 independent applications. The ministry has informed that going forward, the ministry will process applications following the 2 articles separately.

97. The consequences of the Ministry of Foreign Affairs granting support to combined projects, which has article 38 as an overall purpose in the declaration, is that too high support is granted to those technologies that relates to the requirements in the declaration for technologies covered by article 42 in the regulation. Box 9 shows an example of a combined project.

Box 9

Example of financial support for combined technologies which fall under separate financial support levels.

In 2015, a vessel applied for support for, among other things, topless trawl, ice machines and weighing equipment in the same application. The topless trawl is a selective tool, covered by article 38, whereas the ice machines and weighing equipment are covered by article 42. The Ministry of Foreign Affairs supported the above investments with 50% even though it was only the topless trawl that was eligible for this support rate, according to the ministry's rules. The ice machines and weighing equipment can only be supported by 30%.

The example shows that the Ministry of Foreign Affairs in this specific case has provided financial aid 20 percentage points above what is permitted under the rules for certain technologies .

98. The examination also shows that the Ministry of Foreign Affairs in December 2016 operationalised the requirements in the regulation to be able to award support for investments, which has the purpose of raising the quality of the catch pursuant to article 42. This means that there were no rules for the scheme relating to this requirement for nearly 2 years. To obtain support for innovative investments on board, it is a prerequisite that the applicant uses selective tools on the vessel.

99. The Ministry of Foreign Affairs has informed that the ministry has never controlled whether this prerequisite to grant support under article 42 was in fact met. There has therefore been made decisions in those cases to award and pay out support on an erroneous basis.

100. In May 2016, the Ministry of Foreign Affairs reported the extent of undertakings in the Danish EMFF-programme in 2015 in relation to article 38 and article 42 to the European Commission, cf. box 10.

Box 10

The Ministry of Foreign Affairs report to the European Commission

The Ministry of Foreign Affairs has in the annual programme reports for 2014 and 2015 reported that in 2015, commitments were given to 127 projects relating to article 38, and to 24 projects which relates to article 42. The ministry has in the annual report for 2016 informed the European Commission that commitments have been given to 111 projects related to selectiveness (article 38) with a total framework of EUR 4.2 million and to 39 projects relating to quality (article 42) with a total framework of EUR 1 million in 2016. The ministry has informed the European Commission that there has been very large interest from applicants to complete projects that will contribute to reducing unwanted catches.

101. The Public Accounts Committee assesses that because the Ministry of Foreign Affairs has had the practise in its grant management to combine support to technologies which fall under different articles 38 and 42, that the ministry has reported intermixed figures and information in its annual reports to the European Commission.

Support to equipment, which is not eligible for support

102. According to the regulation, then equipment being supported pursuant to article 38 must be demonstrably better than the standard equipment otherwise used in the fishing industry. The examination shows that the Ministry of Foreign Affairs has granted support to equipment that was not demonstrably better than the standard equipment.

103. From the ministry's technology list in 2015, 2016 and 2017, there are 4 types of equipment that, according to the ministry's description, only allows to *either* store more tools on board, *or* allow the vessel to use more tools simultaneously. E.g. the 4 types of equipment are in themselves not demonstrably better than the standard equipment.

Side Box

Demonstrably better than standard equipment

EU Regulation 508/2014, article 38 (4), states that support shall only be granted where the gear or other equipment has a demonstrably better size-selection or a demonstrably lower impact on the ecosystem and on non-target species than the standard gear or other equipment permitted under EU legislation, or under relevant national law adopted in the context of regionalisation as provided for in EU Regulation 1380/2013.

The 4 technologies that enable, but are not in themselves demonstrably better than standard equipment:

- Additional drums or split drums
- New or reconstruction of existing net drums
- Reconstruction of the stern
- Reconstruction of the shelter deck.

In 2015, the ministry was in doubt whether the 4 types of equipment were eligible for support and addressed the European Commission for a clarification. In its reply to the ministry, the European Commission reiterated the wording of the regulation that the requirements to investments in equipment, covered by article 38, e.g. that investments shall be demonstrably more selective or have demonstrably lower impact on ecosystems. Without any certainty for this, the ministry then decided to include the 4 types of equipment on the technology list.

Consequences of using too high support rates and grant support to equipment ineligible for support

103. The examination shows that in 60 of the 80 assessed cases under the scheme Investments in fishing vessels, support has been granted using too high percentage rates or to equipment, which should not have been supported. Totally, it is the assessment of the Public Accounts Committee that the 60 cases have ineligibly been granted commitments of up to approximately DKK 21 million out of a sample size of approximately DKK 53 million. Of the DKK 21 million, approximately DKK 13 million have been paid out at present.

104. The Ministry of Foreign Affairs has reviewed 31 of the 60 cases where the Public Accounts Committee has pointed out that there were errors in the support rates. The ministry agrees with the Public Accounts Committee that there are errors in 22 of the 31 cases. Based on its review of half of the cases in the Public Accounts Committee's sample, the ministry agrees that ineligible commitments for support of DKK 8 million have been granted. The ministry's assessment is based on the ministry continuing to believe that the high support rate can be granted to equipment that is not in itself demonstrably better than standard equipment. However, the ministry has

informed that the ministry will once more address the European Commission on whether the 4 types of equipment are eligible for support.

Results

The examination shows that the Ministry of Foreign Affairs has not granted commitments of support using the correct support rates and has awarded support to equipment, which according to the wording of the regulation, should not have been supported. For 2 of the schemes, the ministry has also administered on an unclear basis, which poses a risk that the ministry may have to repay funds corresponding to at least DKK 14.7 million.

For the scheme Investments in fishing vessels there are in 60 of the 80 cases reviewed granted commitments for support with too high support rates. After having reviewed half of the cases containing errors, identified by the Public Accounts Committee, the Ministry of Foreign Affairs agrees that the ministry has awarded unwarranted commitments for support of approximately DKK 8 million, corresponding to 15 % of the funds committed for in the Public Accounts Committee's sample. It is the assessment of the Public Accounts Committee that unwarranted commitments of up to approximately DKK 21 million has been granted, out of a sample size of approximately DKK 53 million, e.g. 40 % of the funds committed in the Public Accounts Committee's sample.

Taking the level of errors into consideration, the Public Accounts Committee believes that the Ministry of Foreign Affairs should review all funding cases. The ministry has informed that based on a legal analysis, the ministry will look at whether there is basis for reassessing the cases.

Finally, the examination shows that the Ministry of Foreign Affairs' reports to the European Commission on the level of support given to selective tools in the fisheries, contains mixed figures and information.

3.2 Requirements for vessel registration

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

106. The Ministry of Foreign Affairs has informed that the ministry interprets the regulation in such a way that it is not necessary that the fishery activity corresponding to 60 days at sea must have taken place in the EU by an EU-registered vessel. The ministry believes that it is only a requirement that it is an EU-registered vessel at the

time when the grant commitment is made. The ministry has failed to operationalise the requirements of registration and days at sea in its internal instructions and guidance.

107. The examination shows that the practise of the Ministry of Foreign Affairs varies. The review of the cases shows 3 examples of the ministry granting commitment of support without having made the necessary control of whether the applicant is in fact eligible for support. E.g. the ministry has stated that the requirement has been met without having any basis for assessing it, or the ministry has asked the applicant to sign a sworn declaration that the vessel has been fishing for more than 60 days within the past 2 years.

108. In another case, it was unclear who really owned the vessel at the time the application was submitted in 2015, just as it was unclear how often it had fished as the vessel was registered differently in the Register of Vessels and the Register of Shipping. Box 11 describes the case more closely.

BOX 11

Example of ownership of a vessel registered differently in the Register of Vessels and the Register of Shipping

A vessel was included in the Register of Shipping as imported from Norway. It is unclear which fishery company owned the vessel at the time it was imported to Denmark.

According to the Ministry of Foreign Affairs' internal registrations, the vessel was active, imported to Denmark and owned by a fishery company at the time the application for support was submitted. The ministry therefore marked the support requirements as fulfilled in the commitment scheme, provided grant commitment and financial support to the vessel.

According to the Register of Shipping, the applying vessel was however not owned by the applicant at the time of submitting the grant application. According to the Register of Shipping, the applicant only took over the vessel approximately six months later. At the time of both the application and the grant commitment, it was unclear who really owned the vessel and thereby the fishery licence issued by the ministry at the time, according to the Register of Shipping.

109. The Ministry of Foreign Affairs has informed that the ministry in 2018 has examined all 466 grant commitments for errors in the registration of vessel ownership and found two further cases, where the registration of ownership did not match. The ministry is currently assessing whether there are grant commitments that should be annulled in 2018.

Results

The examination shows that the requirements for registration are not clearly described in the administrative basis and that the Ministry of Foreign Affairs' management of the requirements for registration are based on information in the Register of Vessels and not the Register of Shipping. The Public Accounts Committee has found 3 examples out of a sample of 80 cases, which shows that the ministry has failed to perform the necessary control of whether the applicant really was eligible for support. The ministry has informed that the ministry in an examination of all 466 grant commitments has found further 2 cases.

The Ministry of Foreign Affairs has informed that the ministry will strengthen the administrative basis for applications concerning newly registered vessels. The ministry has asked the Legal Adviser to the Danish Government to examine some of the cases more closely.

3.3 Requirements for offers

110. The regulations states that Member States must respect the principle of responsible economic management, which, among other things, means that Member States must control the fairness of prices. We have examined whether the ministry ensures that applicants only receive support for reasonable expenses.

111. To ensure that expenses eligible for support are reasonably priced, the Ministry of Foreign Affairs requires that the applicant submit 2 price offers when applying for support for investments.

The requirement of 2 offers should ensure that prices cannot be rigged due to convergence of interest between seller and buyer or between 2 suppliers, submitting an offer. If arm's length and independence exist between seller and buyer of a given service or between 2 offerors, then there is only a modest risk that they have agreed a too high price.

112. The examination shows that the Ministry of Foreign Affairs has operationalised the requirements for offers in the ministry's internal instructions and guidance, and that these over time have become more detailed. In the case handling, the ministry must consider a series of questions concerning the content of the offers and whether there is arm's length and independence between the seller and buyer or between the 2 offerors. The ministry must separately consider whether there is suspicion of fraud, e.g. deliberate illegal acts from the applicant's side, which affects the right to receive support or the extent of support. Box 12 shows examples of the considerations the ministry must make when case handling offers.

Box 12

Considerations the ministry must make in case handling of offers

Examples of questions relating to the content of the offer	Examples of parties always considered interest-related or dependent
<p>The ministry must consider:</p> <ul style="list-style-type: none">• Is the price artificially high?• Is the supplier fictional?• Do the offers look home-made?• Do the offers look alike?• Do the offers have the same date?• Does the applicant favour a specific supplier?• Is the same offer used in more applications?	<ul style="list-style-type: none">• Spouses or other family, where one is the grant beneficiary, or the other operates the company, supplying the goods or services for the project• Companies owned by the same person• A company, which owns another company (e.g. parent company, subsidiary) Other affiliated companies• By interest-related/dependant Is meant that between 2 parties there is a mutual ownership, a controlling or significant influence, family relations or a common association to the same larger organisational unit.
<p>In the first check lists from 2015 it appears that the ministry should spend maximum 5 minutes to check whether there were arm's length between the applicant and the offeror and independence between the offerors.</p>	

Source: The ministry's check list and ABC – alphabetical instructions for project support schemes.

113. Our case review shows that the Ministry of Foreign Affairs in 19 out of the 80 cases failed to notice that the requirements of independence between the offerors or arm's length between the offeror and applicant were not met. We found the infringement by looking up in the Central Business Register (CVR) and in the Danish Maritime Authorities' Register of Shipping, which are publicly available registers.

The review also shows that, especially applications from 2 operators in the sample of beneficiaries, in several cases did not comply with the principles of independency between offerors or arm's length between offerors and applicant. Box 13 shows examples of lack of independence between the acting parties.

Box 13

Examples of lack of arm's length and independence

There are several cases in which 2 offerors together own a third supplier, or in which the 2 offerors are both owned by the same company, or where one of the offerors owns a stake in the other.

We have seen examples of one offer, which is from 2013 even if it is used in an application in 2016, or that one of the offers is addressed to another person than the one submitting the application.

There are also cases, where there has not been arm's length between the offeror and applicant, e.g. because the applicant had received an offer from the applicant's own company or because the applicant is spouse or otherwise in family with the offeror. E.g. one case with offers from 2 companies, of which one at the time of the application is owned by the applicant. At the time of grant pay-out, the applicant also owns 40% of the other offering company.

In such cases the offerors are interest-related and there is a risk that the price in the offers has been agreed between the offerors and set too high.

Further to the 19 cases, where requirements were not met, we have seen 7 cases where the requirements were not met initially. The Ministry of Foreign Affairs has handled these cases by asking the applicant to send another offer.

We have also seen cases where the beneficiary itself has informed of the lack of arm's length between the acting parties at the time of pay-out. In these cases, the expenses eligible for support must then be reduced to cost prices, according to the Ministry of Foreign Affairs' internal guidelines, which also states that in case where it is not possible to forecast the cost price, it is the offer price/market price depreciated by 25%. The examination shows that the depreciation to cost prices did not happen in all the cases examined. In 3 cases, cost prices were depreciated by just under 20% and in other cases, the ministry accepted the depreciated price used by the applicant. There is no documentation of the ministry's assessment of the reasonableness of the cost price.

The Ministry of Foreign Affairs has informed that the ministry is aware that there is a need to strengthen the administrative basis related to independency and arm's length, furthermore, the ministry will carry out further training of its grant administrators. The ministry has asked the Legal Advisor to the Danish Government to review the cases pointed out by the Public Accounts Committee.

Identical offers

114. The administrative basis states that the Ministry of Foreign Affairs must control whether the same offer is being used in several different projects.

The review shows that it is not apparent from the cases how the Ministry of Foreign Affairs in practise has carried out this control. We have found examples of the same offer being used in several applications, often relating to the same vessel owner.

115. The Ministry of Foreign Affairs has informed that the ministry from 2017 has controlled that the applicants name appears in the offer in order to ensure that there are no identical offers across the cases. Furthermore, the ministry has informed that the ministry has not developed a cross check procedure that ensures that an applicant doesn't own several vessels that apply for identical investments. The ministry will now develop an administrative model, so that case handling can control the existence of identical offers.

Results

The examination shows that in just over 20% of the reviewed cases there has been either dependent offers or a lack of arm's length between the offeror and the grant applicant. Besides the 19 examples identified by the Public Accounts Committee, there are a further 7 examples found by the ministry in its control. The ministry's current administrative basis to ensure reasonable prices does therefore not work properly, which overall carries the risk that offer prices are not reasonably priced.

The Ministry of Foreign Affairs has informed that it wishes to strengthen the administrative basis and review the cases pointed out by the Public Accounts Committee as possible cases of fraud. Considering the level of errors, the Public Accounts Committee recommends that the ministry should review all cases. The ministry has informed that based on a legal analysis of the rules on resumption and statute-barred cases, it will decide which cases must be re-examined.

3.4. Requirements for invoicing and documentation of payment

116. The Ministry of Foreign Affairs has in an act laid down rules for how the grant recipient must send a payment request, a statement of expenses eligible for support, all expense claims, documentation for payment and a final report to the ministry. With the documentation, the ministry must for example ensure that no transaction has taken place between dependent parties and that investments are paid by the beneficiary and at market prices.

The more specific requirements are laid down in the Ministry of Foreign Affairs' instructions on pay-outs that is the basis for the ministry's administrative control of whether the commitment holder has paid the invoice concerned, and whether the payment has been made to the correct supplier.

If an applicant does not comply with these requirements for invoicing and documentation of payment, then the Ministry of Foreign Affairs will either reduce the eligible amount or extend the case handling period. In the cases, where control gives the ministry suspicion of and subsequently detects fraud, support should be

discontinued completely and possibly lead to exclusion from support, a fine or, in more serious cases, imprisonment.

117. In the administration of the grant, it must be documented that the grant administrator has addressed the risk of fraud and has responded to possible suspicions. Fraud is here defined as a conscious act, affecting the right to support or the extent of support. It can for example be incorrect declarations or documents or neglect of the duty of disclosure.

118. Our review of the 48 cases in the sample, which contain invoices and documentation of payment, shows that in 10 cases there are discrepancies or inadequacy in the documentation. Box 14 shows examples of this.

Box 14

Examples of discrepancies or inadequacy in documentation of payment

In 2 different cases, cost calculations have been undated and 100% identical. The invoice for both vessels was practically identical. Furthermore, it was not the grantee paying the invoices for the investments in the vessel but another company. Incidentally, the example relates to one of the corporations with the highest lack of independence.

There are also examples of coincidence between the person paying and the person receiving the payment. In other cases, it has not been the beneficiary of support paying the invoice. Finally, there are examples of where the provided documentation does not demonstrate that the payment has actually taken place.

The examples in box 14 may be indications of e.g. the use of front men/fake companies or trade between dependent parties or even trade with oneself.

119. In those cases where the Ministry of Foreign Affairs notices irregularities in documentation, including cases where the applicant has provided incorrect information, this does not lead to further control by the ministry's side based on suspicion of fraud. In these cases, the ministry reduces the amount to be paid out so that it corresponds with the invoices.

120. The Ministry of Foreign Affairs is aware that there is a need to carry out further training in this area and will look at whether the administrative basis is adequate. In the light of the Public Accounts Committee's remarks, the ministry will review the cases and assess whether some of them should be re-examined, including whether fraud has been committed.

Results

The examination shows that in just over 20% of the reviewed cases, requirements for invoicing and documentation of payment have not been met.

The Ministry of Foreign Affairs has informed that the ministry will strengthen the administrative basis and review the cases pointed out by the Public Accounts Committee as possible cases of fraud. Considering the level of errors, the Public Accounts Committee believes the ministry should review all cases. The ministry has informed that it will review additional support cases with the aim to examine whether there are more cases with reason to suspect fraud, which should be subject to a more thorough scrutiny.

3.5 Requirements for the investment's physical location and maintenance

121. It is stated in regulations that the owner of a fishing vessel, who has received support, is not allowed to transfer this vessel to a country outside the EU during at least 5 years following the date of the actual payment of support to the beneficiary. It is also stated in regulations that support to an investment must be repaid if the investment within 5 years after pay-out *ceases* or *moves* outside Denmark.

The Ministry of Foreign Affairs has informed that the ministry interprets the regulation in such a way that the investment cannot be separated from the vessel, i.e. that commitments are tied to the investment for the individual vessel. In other words, one cannot after the completion of the project transfer the actual investment to another vessel.

The Ministry of Foreign Affairs has in a regulation allowed that commitments of support can be transferred to another fisher after application, if the person concerned complies with the requirements to be commitment holder (e.g. requirements of admissibility), and that the fisher handed over the commitment enters all rights and obligations after the commitment. The fishers must submit information regarding the transfer to the ministry, which will approve this.

The examination shows that the Ministry of Foreign Affairs did not organise its administration so that the ministry can continuously follow up on whether investments, i.e. equipment and the related vessels, *either* cease *or* are moved outside Denmark *or* outside the EU within 5 years after the commitment. The ministry's administration says fishers comply with their obligation to inform the ministry themselves, if the investment ceases or is moved outside Denmark or the EU all together. Furthermore, the ministry has informed that it will be noted in the general physical random check (the so-called 1-per cent control), if the fishers do not comply with their obligation to inform.

122. During the review of the 80 cases, we have seen 10 cases in which the Minister of Foreign Affairs is not aware of whether a vessel, that has received support for the investment, has been sold – either out of the EU, out of the country or within the country's borders. This is because the holder of the commitment has not complied with the obligation to apply for transfer of the investment as well as the ministry in its general administration of pay-outs or during the following random check has failed to detect that the investment has been transferred or ceased.

123. Box 15 shows examples of vessels with investments have been sold, transferred or have ceased.

Box 15

Examples of vessels changing owner without the Ministry of Foreign Affairs knowing about it

We have seen 2 support cases, where the same subsidised vessel has been sold out of the EU only 4 months after the investments were bought and installed. At the time the Ministry of Foreign Affairs paid out the support, the ministry should have seen that the vessel was sold and should have made a decision to cancel the commitment and pay-out.

We have also seen 3 support cases, where the vessels with commitment or established investments were sold out of Denmark. Thus, commitment or the paid-out grants in their entirety should have been annulled since the vessels were sold outside the programme area. In one single case, support is awarded to a vessel, which was scrapped the following year. In 2 other cases, support is awarded to a vessel, which is being sold within the borders of Denmark. This means e.g. that support is paid out to a fishery company that no longer owns the vessel.

We have also seen 2 examples of cases, where investments are being transferred between wrongly registered owners without the ministry noticing this.

124. The Ministry of Foreign Affairs has informed that the ministry will now begin to plan the follow-up of requirements for the investment's physical location and maintenance. The ministry has stated that several of the investments under the vessel scheme in the EMFF-programme are only just being completed now and it has therefore not been necessary to follow up on whether the requirements are met until now. Our review of the sample of 80 cases shows that 48 projects are paid-out in either 2015, 2016 and 2017, which is why the follow-up on the requirements is too late.

Results

The examination shows that the Ministry of Foreign Affairs does not separately control the regulatory requirements for the investment's physical location and maintenance. The Public Accounts Committee's review shows that the ministry in 10 out of 80 cases was therefore unaware that the beneficiary no longer complied with the requirements to keep the grant commitment or financial support received because the vessel receiving the support was sold – either out of the EU, out of the country or within the borders of the country. The grantee has neither informed the ministry of the change nor requested that the project be transferred to another vessel or another owner. Therefore, the ministry cannot know whether the requirement of admissibility is still complied with. It is the assessment of the Public Accounts Committee that the ministry's control of the EU regulatory requirements for the investment's physical location and maintenance has not been adequate.

The Ministry of Foreign Affairs has informed that it will review the concrete cases in relation to additional control.

The Ministry of Foreign Affairs' forward-looking measurers

125. The Ministry of Foreign Affairs has informed that the ministry will take the following steps as a follow-up of the issues identified in this chapter, cf. box 16.

Box 16

The Ministry of Foreign Affairs' forward-looking measurers

The ministry informs that the ministry, as part of the thorough review of the administrative basis will, among other things, strengthen this and when necessary, carry out further training with the aim of preventing errors and deficiencies with regards to:

- **Assessment of whether an applicant is covered by the term small and medium sized companies**
- **Handling of applications that relates to newly imported vessels**
- **Assessment of questions on dependency between offerors and/or grantee and reasonable prices**
- **Handling of cases where there is suspicion of fraud**
- **Control of invoices and documentation of payment**
- **Control of requirements for the investment's physical location and maintenance**

The ministry will in this context assess the possibility for digital support of the administrative basis in order to prevent errors and deficiencies in the case handling. The ministry will address the European Commission in terms of:

- **The basis for financial support for the controlling authority**
- **Whether within the framework of articles 38 and 42 of regulation 508/2014 can be granted support for investments that allow for, or is a necessary consequence of investments in selective equipment**

The ministry will carry out a legal analysis with the aim to assess which concrete support cases must be re-examined. Furthermore, the ministry will in its work going forward assess whether there are more cases with reason to suspect fraud.

The Public Accounts Committee, 3rd October 2018

Appendix 1. Methodical approach

The purpose of the examination is to assess whether the ministry has a correct management of the support schemes under the EMFF-programme in the area of fisheries. There, we have examined the following:

- Does the Ministry of Foreign Affairs have a management, which enables the ministry to assess if the basic requirements for receiving and keeping support from the EMFF-programme were met?
- Has the Ministry of Foreign Affairs ensured that a series of other significant requirements to receive and keep support are complied with?

The examination primarily concerns the period 2014-2017. The delimitation is because the current programme period for the European Maritime and Fisheries Fund (EMFF) started in 2014 and is still active.

Our review of infringement cases and penalty point cases include the period 2012-2018. The period is extended because penalty points follow a vessel in 3 years after the administrative decision. We have therefore included infringement cases from 2012. Infringement cases that were either completed or in process up till the beginning of February 2018 have also been included since the basic condition applies for 5 years after receiving support.

The examination is based on a review of documents and random checks. Furthermore, we have held meetings with key players in the area.

Document assessment

We have assessed a series of documents, including:

- Cases on support for Investments in aquaculture, Investments in fishing vessels, Producer- and marketing plans as well as Regulatory control
- Infringement cases in the infringement register
- Regulations, which are relevant for the EMFF-programme
- Legislation, which is relevant for implementation and administration of the EMFF-programme
- Guidelines and instructions on awarding and paying out support as well as awarding penalty points in infringement cases
- Internal ministerial notes and related material
- Correspondence between relevant players (beneficiaries of support, foreign authorities and DTU Aqua) and the ministry
- Data on the history of incidents and log files from record systems and the infringement register developed by the Danish Fisheries Agency

The purpose of the review of the documents has been to show whether the Ministry of Foreign Affairs has had a correct management of support for arrangements within fishery and aquaculture etc.

Meetings and visits

We have held meetings and visited the following players:

- The Ministry of Foreign Affairs
- The Danish Fisheries Agency

The purpose of the meetings has been to organise, and quality assure the examination as well as gain access to relevant case material.

Sample checks

The purpose of the sample checks has been to determine whether the ministry has a correct management of support for arrangements within fisheries and aqua culture etc. In connection with the review of both the support cases and the infringement cases, we have compared information from a series of registers with material from the individual cases. We have looked up entries in the Register of Vessels, the Register of Shipping, the Register of Infringements and the Central Business Register (CVR). We have also compared information in applications with the ministry's registrations of vessel transactions and subsequently compared them with registrations in the Danish Maritime Agency's Register of Shipping. We have also used CVR to examine whether beneficiaries of support and suppliers of services are independent parties.

Support cases

The case review of the chosen random sample has been carried out for 4 separate support schemes: Investments in fishery vessels, Investment in aquaculture, Regulatory Control and Production- and marketing-plans. The 4 support schemes have been chosen because of preliminary results seen in the revision, which was carried out in the annual audit. The random check covers approximately DKK 200 million, corresponding to 2/3 of the total amount of the 4 chosen support schemes of approximately DKK 300 million. The EMFF-programme covers a total of 10 support schemes in the fishery area, which in total amounts to DKK 536.5 million.

The basis for selecting the cases in the random check is the economic extent of the individual cases as well as a series of risk factors. It is therefore not simple random samples.

The random check by the Public Accounts Committee

Scheme	No of cases	Amount	Sample	Amount in the sample
Investment in fishing vessels	432	DKK 120,794,754.60	80	DKK 53,382,800.00
Investments in Aquaculture	35	DKK 80,078,431.34	20	DKK 60,580,720.13

Regulatory control	36	DKK 82,996,426.80	20	DKK 74,065,857.15
Production- and marketing-plans	3	DKK 14,976,429.77	3	DKK 14,976,429.77
Total	506	DKK 298,846,042.52	123	DKK 203,005,807.00

Note: All amounts and number of cases are calculated as per 25th October 2017

Source: The Public Accounts Committee

Infringement cases

Based on the 80 support cases in the random check relating to the support scheme Investments in fishing vessels, we have further to that reviewed 299 infringement cases and 34 penalty point cases to see if the applicants in the 80 support cases in the random check have committed serious infringements of fishery regulations and whether they have been awarded penalty points for this.

When going through the infringement cases, we have used the Ministry of Foreign Affairs' descriptions of the administrative procedure. According to the instructions, then an infringement case concerning a fishery vessel is initiated based on the controller's assessment of whether the fishery regulation has been complied with. If infringements are found, a report is prepared and a consultation of interested parties is carried out in accordance with the applicable rules. The violator is informed that the infringement can lead to the award of penalty points, which is noted in the report. Once the circumstances of the case have been uncovered, the ministry will decide whether the infringement will lead to a general sanction, e.g. confiscation of the permit or a request of prosecution to the police for the purposes of penalties or possible confiscation of illegal catch. When the ministry decides on such general sanctions, the cases will state which reasons were given and which excusable circumstances the ministry has emphasised when making the decision.

When the Ministry of Foreign Affairs will then decide whether the fisher in addition to the general sanction will also be awarded additional penalty points, this will happen through an assessment of the circumstances of the case, already evident in the decision of the general sanction. If the ministry after a concrete assessment of the circumstances of the case then decides that the infringement is so serious that it should be awarded penalty points, then the violator will be informed per letter.

In our review of 299 infringement cases, we have focused on the types of infringements which the Ministry of Foreign Affairs has previously awarded penalty points, or which are considered especially serious infringements, cf. the statutory remarks. We have compared the ministry's infringement cases with decisions in penalty points cases to establish whether the ministry awards penalty points in

accordance with the statutory remarks, and to assess the established practise of the ministry for awarding penalty points.

In connection with the review of the infringement cases we have examined whether the Ministry of Foreign Affairs in its decisions of infringement cases has emphasised excusable circumstances. If the ministry has failed to emphasise excusable circumstances and thereby has sanctioned the infringement, we assume that the ministry in addition to the general sanction should also have awarded penalty points, if the committed infringements are covered by the types of infringements, which are considered particularly gross in the statutory remarks, or if the ministry has previously established a practise of sanctioning similar infringements.

Standards for public-sector audit

The audit has been conducted in accordance with standards for public-sector audits. The standards establish what users and the public should expect from the audit in order to have good professional service. The standards are based on the basic principles of audits in the public-sector audits' international standards (ISSAI 100-999).

Side Box

Support cases

Support cases are those cases in which an applicant has applied for support, and the ministry has handled the application.

Infringement cases

Infringement cases are those cases where the ministry has registered infringements of the fishery regulation and decided whether the infringement should be sanctioned or not.

Penalty points cases

Penalty points cases are those cases where the ministry, in addition to the decision to apply a sanction to the infringement case, has also awarded additional penalty for the infringement in the form of penalty points.

(End of Translation)