



**GREENPEACE**



Warsaw, 21<sup>th</sup> November 2016

**Mr Kurt Vander Eecken**

Acting Head of Unit 3. Structural actions: Belgium, Denmark, Germany, Estonia, Latvia, Lithuania, the Netherlands, Poland, Finland, Sweden and landlocked Member States

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*Dear Sir,*

The MARE Foundation, representing the Polish non-governmental organisations active in the field of nature conservation in the Monitoring Committee of the Operational Programme “Fisheries and the Sea” 2014-2020, hereby requests the European Commission to conduct an assessment of compliance of the Ordinance of the Minister of Maritime Economy and Inland Navigation of 16 September 2016 on detailed conditions of granting and reimbursement of financial aid under the Priority 1: promoting fisheries environmentally sustainable, resource efficient, innovative, competitive and knowledge based, under the Operational Programme “Fisheries and the Sea” (Journal of laws, item 1495) with the Regulation (EU) of the European Parliament and the Council (UE) 508/2014 of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011.

This request originates from the fact that the Polish Ordinance significantly restricts potential beneficiaries of the European Maritime and Fisheries Fund. These restrictions have been made despite repeated appeals made by the MARE Foundation during public consultations, which referred, among others, to the lack of delegations of power under the Regulation (EU) 508/2014, to introduce such restrictions under the national legislation.

Restrictions of potential beneficiaries in the Polish legal act in relations to the list contained in the Regulation (EU) 508/2014 refer, inter alia, to the list of beneficiaries of support under Article 40 of the Regulation (EU) 508/2014, including protection and restoration of marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities.

Article 40 of the Regulation states that "The operations referred to in this Article may be implemented by scientific or technical public law bodies, Advisory Councils, fishermen or organisations of fishermen which are recognised by the Member State, or by non-governmental organisations in partnership with organisations of fishermen or in partnership with FLAGs".

The Ordinance of the Polish Minister significantly restricts the list of potential beneficiaries of these operations, by:

- limiting the list of potential beneficiaries of operations referred to in Article 40, point 1 (a) of the Regulation (EU) 508/2014 to: "fisheries organisations and vessel owners for operations referred to in Article 7 points a–f of the Regulation 2015/531", "fishermen conducting small scale coastal fishing, referred to under Article 3, para 2. 14 of the Regulation 508/2014" and other beneficiaries than those referred to in points 1 and 2, engaged in fishing activities", the funding being conditional on the co-operation with non-governmental organisations. However, non-governmental organisations co-operating with fishermen have been excluded from the list of potential beneficiaries. This is inconsistent with the above-mentioned provisions of Article 40 of the Regulation 508/2014 and interferes with the competitiveness on the market.
- limiting the list of potential beneficiaries of operations referred to in Article 40, point 1, sub-points b-g of the Regulation 508/2014 by narrowing the scope of operations, which can be carried out on the basis of a list of potential eligible costs, included in the Commission Delegated Regulation 2015/531. In this context, non-governmental organisations are only eligible for funding of operations referred to under Article 8, points a–c of the Regulation 2015/531. According to the MARE Foundation, such restriction of the list of potential beneficiaries and operations is unjustified, because the Regulation 508/2014 does not provide appropriate delegation of power to restrict the list of potential beneficiaries and operations referred to under Article 40 of the Regulation. Moreover, the Commission Delegated Regulation 2015/531 only refers to the eligible costs of operations and should not be the basis to any restrictions of the list of potential beneficiaries and operations referred to under the Regulation 508/2014 at national level.

The above mentioned examples of unjustified restrictions to the list of potential beneficiaries refer only to the operations related to the protection of marine biodiversity, described in Article 40 of the Regulation 508/2014. We would like to draw the attention to the fact that unjustified restrictions also apply to other operations in the framework of the Priority 1 of the Operational Programme and may result in inefficient spending of public money, as well as jeopardise the attainment of the Programme objectives in Poland.

It should be borne in mind that the Regulations of the European Parliament and the Council are mandatory provisions of law in the European Union, including Poland. They have a general application, are binding in its entirety and are directly applicable in all Member States. These provisions do not require inclusion in the national law, because they become binding after their publication in the Official Journal of the EU. When applying the provisions of the Regulation, direct applicability of the EU law must be taken into account, which means that the provisions of the European law should be the legal basis for the decision on granting the rights to an entity. Provision of national law cannot modify or withdraw such rights. The national authorities are obliged to repeal any laws incompliant with the regulation and cannot adopt legal acts incompliant with its content. In the event of such case, the national court, on the basis of direct effect of the European law has to derogate from the application of national provisions, assuming the priority of the EU law. This means that no provision of the Polish Ordinance should be contrary to the Regulation of the European Parliament and the Council, and therefore, the list of potential beneficiaries cannot be restricted in the above mentioned case, if the EU Regulation grants such right. According to the MARE Foundation, restriction of the list of potential beneficiaries in the provisions of national law, in the event that the provisions of the EU law grant such rights, is incorrect and incompliant with the existing law as it introduces unnecessary contradictions in the EU and Polish existing law. In addition, it should be noted that despite the lack of some potential beneficiaries in the national regulations, in accordance with the EU regulation, these beneficiaries may apply for funding and in the case of a decision of non-eligibility for support, they can challenge this decision in the national courts.

In view of the above, we hereby ask the Commission to:

1. Conduct an in-depth analysis of compatibility of the Ordinance of the Minister of Maritime Economy and Inland Navigation of 16 September 2016 on detailed conditions of granting and reimbursement of financial aid under the Priority 1: promoting fisheries environmentally sustainable, resource efficient, innovative, competitive and knowledge based, under the Operational Programme "Fisheries and the Sea" (Journal of Laws, item 1495) with the Regulation 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011.
2. Provide an opinion whether restrictions applied in the Polish Ordinance to the list of potential beneficiaries as compared to the lists contained in the Regulation 508/2014 are compliant with the existing law.

3. Provide an opinion whether the restrictions applied in the Polish Ordinance para 41, 42, 45 as compared to the list of potential beneficiaries and operations referred to under Article 40 of the Regulation 508/2014 of the European Parliament and the Council 508/2014 are compliant with the existing law.
4. Provide an opinion whether there is a possibility to apply for support by entities referred to under Article 40 of the Regulation 508/2014 of the European Parliament and the Council 508/2014 notwithstanding the fact that they are not mentioned as potential beneficiaries under the Polish Ordinance, given the direct effect of the EU legislation.
5. In the case of a negative answer to question 2 and/or 3, to undertake the necessary actions to ensure the compliance of the Polish legislation with the EU Regulation 508/2014.

I remain at your disposal in case of any further clarifications.

In the name of the non-governmental organisations signed below:

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Sincerely yours,



Piotr Prędko

Chair of the Board of the MARE Foundation

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CC:

1. Agnieszka Korbel, Programme Manager – EU Policies Rue Joseph II 99 / Josef II-straat 99 1000 Bruxelles/Brussels Belgique
2. Janusz Wrona, Ministry of Maritime Economy and Inland Navigation, Fisheries Department, Nowy Świat 6/12, 00-400 Warsaw