

# MINISTERSTWO ROLNICTWA I ROZWOJU WSI

Departament Rybołówstwa

00-930 Warszawa, ul. Wspólna 30, tel. 22/ 623-24-04, fax. 22/ 623-22-04

Warszawa, dn. 24.08.2013 r.

RYBoz-AW-077-286/13 (4545)

wpięto do dnia: 29.08.2013  
Anna Krawiec  
L.dz. 600/2013

Pan  
**Franciszek Salaciak**  
Przewodniczący Konwentu  
Polskich LGR  
ul. Rynek 5  
32-640 Zator

Szanowny Panie Przewodniczący!

W odpowiedzi na pismo z dnia 14 sierpnia 2013 r. znak: L.dz. 458/W/2013 w załączeniu przesyłam kopię korespondencji prowadzonej przez Departament Rybołówstwa z Dyrekcją Generalną ds. Gospodarki Morskiej i Rybołówstwa w okresie od października 2012 r. do lipca 2013 r. Korespondencja dotyczyła zasad obliczania limitu 10 % środków przeznaczonych na wydatki bieżące lokalnych grup rybackich zgodnie z art. 44 ust. 5 rozporządzenia Rady (WE) nr 1198/2006 w sprawie Europejskiego Funduszu Rybackiego.

W październiku 2012 r. Instytucja Zarządzająca zwróciła się w piśmie znak: RYBoz-PR-055-1/12 (5456) do Komisji Europejskiej z pytaniem dotyczącym interpretacji wspomnianego art. 44 ust. 5 rozporządzenia Rady (WE) nr 1198/2006. Instytucja Zarządzająca zwróciła uwagę, że prawidłowa interpretacja tego przepisu nakazuje obliczanie limitu 10% w oparciu o wysokość środków, które zostały przyznane danej lokalnej grupie rybackiej, a nie w oparciu o wysokość zrealizowanych płatności w związku z realizacją strategii.

W odpowiedzi, pismem z dnia 26 października 2012 r. znak Ref. Ares (2012) 1273348-26/10/2012 MARE/E3/JK/mhr/ARES (2012) Komisja Europejska zakwestionowała taką interpretację wskazanego przepisu. Wskazano, że limit 10 % dotyczy „środków rzeczywiście wypłaconych w ramach wdrażania budżetu, co oznacza, że faktyczna kwota dostępna na koszty bieżące obliczana jest na koniec programu jako procent kwalifikowalnych wydatków”. Wyraźnie podkreślono, że limit nie dotyczy środków alokowanych na realizację strategii, ale odnosi się do środków faktycznie wydanych. Zarekomendowano również bieżące kontrolowanie wskazanego limitu, tak by wspomniany poziom 10 % w żadnym momencie nie został przekroczony.

Niezależnie od interpretacji przesłanej pismem z dnia 26 października 2012 r., Komisja Europejska w piśmie z dnia 3 czerwca 2013 znak Ref. Ares(2013)1640791 - 03/06/2013 EFFC/65/2010-2010D przedstawiła inną interpretację tego samego przepisu. Zdaniem Instytucji Zarządzającej obu interpretacji nie sposób pogodzić. W piśmie z 3 czerwca 2013 stwierdzono bowiem, że koszty bieżące lokalnej grupy rybackiej nie mogą być wyższe niż 10 % kwoty alokowanej na realizację strategii. A zatem odniesiono limit nie do środków faktycznie wydanych, ale do kwoty przyznanej na realizację strategii, która jest z reguły wyższa od kwoty ostatecznie wydatkowanej.

W związku z powstałymi wątpliwościami, Instytucja Zarządzająca zwróciła się do Komisji Europejskiej o rozstrzygnięcie, który ze sposobów obliczania limitu jest poprawny: ten wskazany w piśmie z dnia 26 października 2012 r. czy ten opisany w piśmie z dnia 3 czerwca 2013 r. W odpowiedzi Komisja Europejska w piśmie z dnia 26 lipca 2013 r. Ref. Ares(2013) 2762794 - 26/07/2013 GD MARE E3/AK/ARES(2013) **wskazała, że poprawną interpretacją jest ta wyrażona w piśmie z dnia 3 czerwca 2013 r.** Przedmiotowa interpretacja jest korzystniejsza dla LGR gdyż:

- limit 10 % liczony jest od wyższej kwoty;
- wysokość środków, jaką LGR mogą przeznaczyć na swoje funkcjonowanie wynika z umowy o warunkach i sposobie realizacji LSROR;
- środki na bieżące wydatki lokalnych grup rybackich nie są uzależnione od procesu weryfikacji, przyznania i wypłaty pomocy beneficjentom przez samorzady województw.

Takie stanowisko Komisji Europejskiej jest zgodne z obranym przez Instytucję Zarządzającą sposobem obliczania limitu 10 % na wydatki bieżące LGR. W lokalnej strategii opracowanej przez LGR i zaakceptowanej przez Instytucję Zarządzającą dokonano bowiem podziału całej kwoty na różne „segmenty”. 10 % całej kwoty alokowanej na LSROR przeznaczono na wydatki bieżące LGR, 5 % na projekty współpracy międzynarodowej realizowane przez LGR a pozostałe 85 % środków na realizację operacji przez beneficjentów. Zatem już od momentu rozpoczęcia wdrażania strategii parytet 10 % przeznaczony na wydatki bieżące LGR, o którym mowa w art. 44 ust. 5 rozporządzenia Rady (WE) 1198/2006 był przestrzegany.

2 powołaniem

WZ DYREKTORA  
DEPARTAMENTU RYBOŁÓWSTWA  
Janusz Wróga  
ZASTĘPCA DYREKTORA

Załączniki:

1. Pismo RYBoz-PR-055-1/12 (5456) z dnia 2.10.2012 r.
2. Pismo Ref. Ares(2012) 1273348 - 26/10/2012 MARE/E3/JK/mhr ARES(2012) z dnia 26.10.2012 r.
3. Pismo Ref. Ares(2013) 1640791 - 03/06/2013 EFFC/65/2010-2010D z dnia 3.06.2013 r.
4. Pismo RYBoz-PR-055-2/13 (3991) z dnia 2.07.2013 r.
5. Pismo Ref. Ares(2013)2762794 - 26/07/2013 GD MARE E3/AK/ARES(2013) z dnia 26.07.2013 r.



MINISTERSTWO ROLNICTWA  
I ROZWOJU WSI  
Sekretarz Stanu

*Kazimierz Plocke*

RYB0z-PR-055- A /12 (549)

Warszawa, dn. 02.10.2012 r.

Ms  
Carla Montesi  
Director of  
**Directorate E**  
**Baltic Sea, North Sea**  
**and Landlocked Member States**  
Directorate General for Maritime  
Affairs and Fisheries (DG MARE)  
European Commission

Dear Madam,

With regard to the implementation of Priority Axis 4 of OP FISHERIES 2007–2013, a problem arose concerning the interpretation of Article 44(5) second sentence of Council Regulation (EC) No 1198/2006 of 27 July 2006 on European Fisheries Fund (OJ L 223 of 15.08.2006, p. 1). Further to the above, the Department of Fisheries would like to ask you for help in resolving our doubts about this provision.

Article 44(5) second sentence concerns the share of costs related to the functioning of Fisheries Local Action Groups in the global quota allocated for a FLAG for the implementation of its strategy. The following paragraph raises doubts:

*“Running costs for groups may not exceed, as a general rule, 10 % of the total budget allocated to a fisheries area. By way of derogation, Member States may decide to exceed this threshold on a case by case basis, in particular when the groups cannot be established on the basis of existing experienced organisations.”*

Poland has not predicted a higher threshold than the one indicated in the first sentence. Therefore, in Poland the exceptions provided for in the second sentence do not apply to the issue in question at all.

However, the doubts concern the implementation stage of Priority Axis 4 of the European Fisheries Fund that the above mentioned 10 % of the total budget, indicated in the provision as intended for running costs, refer to – the **funds allocated** for the strategy implementation or **the funds actually disbursed** under its implementation. The two amounts vary, which results from the implementation model of Axis 4 of the European Fisheries Fund.

In the local strategy developed by the Fisheries Local Action Group (FLAG) and accepted by the Managing Authority, the entire amount was divided into different "segments". 10 % of the entire amount was allocated for FLAG running costs, as referred to at the beginning of the provision that arouses doubts, 5 % for the international cooperation projects implemented by the FLAG, and the remaining 85 % of resources for the implementation of operations by beneficiaries. Thus, at the strategy initiation phase the 10 % threshold, as referred to in Article 44(5) of Regulation No 1198/2006 was respected, and there are no doubts about it.

The strategy implementation and allocation of the funds under the strategy by a FLAG involves, however, the FLAG organising competitions for the selection of operations for the remaining 85 % of resources under the strategy. Following the result of the competition and of the procedure for granting aid carried out by the Intermediate Body, the financial resources are delivered to beneficiaries. However, in practice it turns out that some competitions are not as popular as a FLAG expected or that applications are poorly prepared and do not obtain aid. Thereby, at the end of the strategy implementation period it may turn out that not all the resources allocated under the strategy have been used for the implementation of operations by beneficiaries (i.e. for example 85 % instead of for example 75 %). Consequently, the share of FLAG running costs in the amount of actually disbursed funds under the strategy may be higher than 10 %.

The doubts arise as to whether in such a situation the amount for FLAG's functioning should be lowered proportionally (i.e. the amount allocated for its running costs). According to the Managing Authority, it is not necessary. It results directly from the wording of Article 44(5) first sentence of Regulation No 1198/2006. It states that running costs of Groups "may not exceed 10 % of the total budget" rather than „10 % of the value of operations implemented by beneficiaries". The exact wording of the provision indicates however that it refers to the planning stage, to the intended budget, and not to the strategy implementation phase which may be different from the assumed values for reasons independent of FLAGs. Another argument in favour of this position is that in the case of referring the 10 % mentioned in the provision to the values of operations actually implemented by beneficiaries, a FLAG – until the end of its strategy implementation period – would not know the exact amount it could allocate for its running costs and would face some uncertainty as to whether the threshold indicated in Article 44(5) has already been exceeded. Thus, the risk of a FLAG violating the provision of Article 44(5) of Regulation No 1198/2006 would be dependent on the circumstances beyond the FLAG's control, since despite a well-run campaign promoting competitions under the strategy implementation and a well-run competition for operations, it is not able to guarantee either the number of and amounts of financing agreements signed or the value indicated in the requests for payment submitted by beneficiaries.

Sincerely,





**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

BALTIC SEA, NORTH SEA AND LANDLOCKED MEMBER STATES

Ref. Ares(2012)1273348 - 26/10/2012

Brussels,  
MARE/E3/JK/mhr ARES(2012)

Mr. Kazimierz Plocke  
Secretary of State  
Department of Fisheries  
Ministry of Agriculture and Fisheries  
ul. Wspólna 30  
PL - 00-930 Warsaw

**Subject :** Your letter of 02 October 2012 with No RYBoz-PR-055-1/12(5456) on the interpretation of Article 44.5 of Regulation (EC) No 1198/2006

Dear Mr. Plocke,

In reply to your inquiry I would like to present the following position:

The 10% limit for running costs for FLAGs is calculated on the basis of the "total public budget allocated to a fisheries area" (article 44.5). This budget includes costs for implementing projects (including cooperation projects) and running costs, i.e. the budget allocated to a FLAG for the measures eligible under article 44.1 (a)-(j).

The 10% limit refers to the funds actually disbursed under its implementation, i.e. the actual amount available for running costs is calculated at the end of the programme as a percentage of the total eligible expenditure.

Therefore it is recommended that during the whole life of the programme the actual 10% should not be exceeded so that adjustments can be made more easily if necessary.

Since the 10% limit does not refer to the funds initially allocated to a FLAG for the implementation of its strategy but to the funds actually spent, the FLAG will need to do a careful estimate based on its performance in terms of strategy implementation, i.e. amount which is spent on projects, to know approximately which amount will be available for running costs.

I would like to stress that running costs include expenditure linked to operating (i.e. office) costs, personnel costs (staff salaries, travel costs), costs linked to public relations and networking, etc. However, activities related to the acquisition of skills (e.g. training) or animation of the community (information meetings, participatory strategic planning,

salaries for project development officers etc.), even when carried out by the FLAG, do not fall under measure (j) of article 44.1 but under measure (i) ("acquiring skills and facilitating the preparation and implementation of the local development strategy") and are therefore not concerned by the 10% limit which applies only to running costs.

Please note that the above interpretation does not prejudice the interpretation that could be given by the European Court of Justice, which is the only body competent to issue legal opinions on the validity and interpretation of acts adopted by EU institutions.

Yours sincerely,



Carla MONTESI  
Director

Copy: Mr Marcin Ruciński, Counsellor at the Permanent Representation of the Republic of Poland to the EU, 139 rue Stevin, 1000 Brussels



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES  
POLICY DEVELOPMENT AND CO-ORDINATION  
STRUCTURAL POLICY AND ECONOMIC ANALYSIS

Brussels,  
EFFC/65/2010 - 2010D

FAX

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Number of pages:

**SUBJECT : Article 44(5) of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund**

**Explanatory note of the Commission services on the interpretation of Article 44(5) of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund (EFF)**

Article 44(5) of Council Regulation (EC) No 1198/2006 on the EFF reads as follows:

*"5. Running costs for groups may not exceed, as a general rule, 10 % of the total budget allocated to a fisheries area. By way of derogation, Member States may decide to exceed this threshold on a case by case basis, in particular when the groups cannot be established on the basis of existing experienced organisations."*


This provision shall be interpreted in such a way that the running costs for a Fisheries Local Action Group (FLAG) cannot be higher than 10% of the total budget allocated to the relevant fisheries area.

The use of the expression "*may not exceed*" in this provision allows a Member State to apply stricter rules on running costs, in particular a lower threshold on running costs.

The expression "*may decide to exceed this threshold*" in the second sentence of this same paragraph, indicates that this threshold may be exceeded for a particular FLAG, provided the Member State has justified this derogation in its EFF operational programme.

Finally, if the budget allocated to a fisheries local action group changes during the programming period, this change shall be reflected in the calculation of the eligible running costs by summing up:

- running costs for the period preceding the change of budget. For example if a Flag's budget is changed in October 2009, the eligible amount for its running costs will be 10% of the budget allocated originally, from January 2007 to October 2009,
- and running costs for the period following the change of budget. In the above example, this would mean 10% of the modified budget allocated, from November 2009 till the end of the programming period.



Elisa ROLLER  
Head of Unit

*This note has been prepared by DG MARE.*

*The note sets out the reading that DG MARE will give to the relevant articles of the Regulations on this issue in its dealings with Member States.*

*This note responds to questions raised by Member States in written and oral submissions to Commission services.*

*Interpretations given here do not prejudice an eventual decision of the Court of Justice which alone is competent to give legal opinions on the validity and the interpretations of acts adopted by EU institutions.*





MINISTRY OF AGRICULTURE  
AND RURAL DEVELOPMENT  
Secretary of State

*Kazimierz Plocke*

RYBoz-PR-055-2/13 (333)

Warsaw, on 2 07.2013

Dear Madam  
Carla MONTESI  
**Directorate E**  
**Baltic Sea, North Sea**  
**and Landlocked Member States**  
Directorate General for Maritime  
Affairs and Fisheries (DG MARE)  
European Commission

In reference to your letter of 3 June 2013 no. Ref. Ares(2013)1640791 - 03/06/2013 EFFC/65/2010 — 201 OD, concerning the rules for calculation of the 10% limit for running costs of Fisheries Local Action Group (FLAG) and including an interpretation of Article 44(5) of the Council Regulation (EC) No 1198/2006 on the European Fisheries Fund, I would like to ask for clarification as regards the following concerns.

In October 2012 the Managing Authority addressed the European Commission by way of a letter no. ref. RYBoz-PR-055-1/12 (5456) with a question concerning interpretation of the said Article 44(5) of the Council Regulation (EC) No 1198/2006. In the letter the Managing Authority emphasized that the correct interpretation of the provision requires to calculate the 10% limit on the basis of the amount of funds allocated to a given FLAG, and not on the basis of the amount of payments executed in relation to the strategy implementation.

In response to the question, the European Commission contested such an interpretation of this provision by way of a letter of 26 October 2012 no. Ref. Ares (2012) 1273348-26/10/2012 MARE/E3/JK/mhr/ARES (2012). It was indicated that the 10% limit refers to the funds actually disbursed under the budget implementation, i.e. the actual amount available for running costs is calculated at the end of the programme as a percentage of the total eligible expenditure. It was clearly emphasised that the limit does not refer to the funds allocated to the strategy implementation, but to the funds **actually spent**. It was also recommended to control the indicated limit on an ongoing basis, so as prevent exceeding the said 10% limit at any moment of the programme implementation.

In relation to the letter the Management Authority undertook a number of actions aimed at reduction of the running costs of FLAGs. The FLAGs were obliged to declare savings in the subsequent years in relation to the previously planned expenditures for running costs. Given that at the initial stage of the strategy implementation by the FLAGs, the percentage of costs for administration was very high as compared to the amount of funds paid to other beneficiaries (but it did not exceed the 10% amount allocated to the strategy). However, the indicated interpretation did not allow for determining in advance the amount for running expenditure that is at the disposal of each FLAG, as it was dependent on the effects of the strategy implementation and payments for other beneficiaries.

Regardless of the implementation sent via a letter of 26 October, the European Commission presented another interpretation of the same provision in a letter of 3 June no. Ref. Ares(2013)1640791 - 03/06/2013 EFFC/65/2010 — 201 OD. According to the Managing Authority these two interpretations are inconsistent. The letter of 3 June states that the running costs of FLAG may not exceed 10% of the amount **allocated** for the strategy implementation. Thus in this letter the limit was referred not to the funds actually spent, but to the amount allocated for the strategy implementation, which is, in general, higher than the amount finally disbursed. The interpretation of 3 June is more favourable for FLAGs. Firstly, in line with the interpretation of 3 June the 10% limit is calculated on the basis of the higher amount, secondly, such an interpretation makes it possible to establish in advance the amount of funds that FLAGs may allocate to administration (the amount, which is used as the basis to calculate the 10% limit is known from the beginning).

Due to concerns regarding the method of the limit calculation, please decide which method for the limit calculation is correct: the one indicated in the letter of 26 October 2013, or the one described in the letter of 3 June 2013.

SEKRETARZ STANU  


*Kozłowska Ploche*



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES  
BALTIC SEA, NORTH SEA AND LANDLOCKED MEMBER STATES

Brussels,  
DG MARE E3/AK/ARES(2013)

Mr Kazimierz Plocke  
Secretary of State  
Ministry of Agriculture and Rural Development  
ul. Wspólna 30  
00-930 Warsaw  
POLAND

**Subject:** Follow-up on the interpretation of the Article 44(5) of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund (EFF)

**Your references:** RYBoz-PR-055-2/13(3391) – our reference: ARES(2013)2640636

**Our references:** ARES(2013)1640791 and ARES(2012)1273348

Dear Mr Plocke,

Thank you for your letter and your concerns regarding the Article 44(5) of Council Regulation (EC) No 1198/2006.

By this document I would like to confirm that 10% refers to the budget initially allocated to the FLAG for the implementation of the strategy and not to the total eligible expenditure at the end of the programming period. Therefore, the explanatory note dated 03/06/2013 ARES(2013)1640791 is applicable.

Yours sincerely,

Carla MONTESI  
Director

Copy: Mr Marcin Rucinski, Permanent Representation of the Republic of Poland to the European Union,  
Rue Stevin 139, 1000 Brussels, Belgium  
Elisa Roller (A3)