

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/1930

of 28 July 2015

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections, and amending Commission Regulation (EC) No 665/2008

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 508/2014 of 15 May 2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council ⁽¹⁾, and in particular Article 105(4) thereof,

Whereas:

- (1) The achievement of the objectives of the common fisheries policy (CFP) should not be undermined by Member States violating CFP rules. Pursuant to Article 41(1) and (2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾, financial assistance from the European Maritime and Fisheries Fund (EMFF) is made conditional upon compliance with CFP rules by Member States and non-compliance may result in the interruption or suspension of payments or in the application of financial corrections to Union financial assistance under the CFP.
- (2) Article 22(7), Article 85 and Article 144(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽³⁾ set out cases and conditions under which financial corrections may or are to be applied by the Commission. Furthermore, under Article 144(7) of that Regulation, the fund-specific rules for the EMFF may lay down specific bases for financial corrections linked to non-compliance with rules applicable under the CFP.
- (3) In order to safeguard the financial interests of the Union and its taxpayers, the Commission may apply financial corrections by cancelling all or part of the Union contribution to an operational programme, pursuant to Article 105 of Regulation (EU) No 508/2014 in one of the two hypotheses: (a) where a Member State has not corrected expenditure included into a certified statement of expenditure affected by cases in which the beneficiary did not comply with obligations as set out in Article 10(2) of Regulation (EU) No 508/2014; or (b) where in relation to expenditure included into a certified statement of expenditure affected by cases of serious non-compliance that resulted in suspension of payments pursuant to Article 101 of the same Regulation, the Member State has failed to demonstrate that it had taken necessary remedial actions ensuring compliance with and the enforcement of applicable rules of CFP in the future.
- (4) Where it is not possible to quantify precisely the amount of expenditure linked to non-compliance with the CFP rules by Member States, a flat rate financial correction is to be applied under Article 105(3) of Regulation (EU) No 508/2014.

⁽¹⁾ OJ L 149, 20.5.2014, p. 1.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽³⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

- (5) Article 105(4) of Regulation (EU) No 508/2014 empowers the Commission to adopt delegated acts determining the criteria for establishing the level of financial corrections to be applied and the criteria for applying flat rate financial corrections. Article 105(1) of Regulation (EU) No 508/2014 includes the list of cases when the Commission may impose financial corrections on all or part of the operational programme. In cases covered by point (a) of Article 105(1), quantification of the financial impact of the non-compliance by the beneficiary is based on the financing agreement between the beneficiary and the competent national authorities responsible for the implementation of the EMFF programme. Consequently, the application of flat rates for financial corrections may only concern cases referred to in Article 105(1)(b) of Regulation (EU) No 508/2014.
- (6) In order to ensure transparency and proportionality of flat rate financial corrections, and legal certainty and equal treatment of Member States implementing EMFF programmes, it is necessary to define the criteria for establishing the level of financial corrections to be applied by the Commission and the criteria for applying flat rate financial corrections.
- (7) The level of the financial corrections decided upon by the Commission where the Member States do not comply with the CFP rules must be proportionate, having regard to the nature, gravity, duration and repetition of the serious non-compliance with the CFP rules.
- (8) It is appropriate to define the levels of flat rate financial corrections by the Commission on the basis of rates of financial corrections that exist already for certain types of non-compliances within the European Structural and Investment Funds. It is also appropriate to ensure a sufficiently gradual mechanism so that the principle of proportionality can be adequately applied.
- (9) In the field of collection, management and use of data, the provisions on flat rate financial corrections set out in this Regulation should replace those set out in Article 6 of Commission Regulation (EC) No 665/2008 ⁽¹⁾. As a consequence, that Article should be deleted.
- (10) This Regulation should not affect the continuation or the modification of assistance approved by the Commission on the basis of Council Regulation (EC) No 861/2006 ⁽²⁾.
- (11) Article 8 of Council Regulation (EC) No 199/2008 ⁽³⁾ provides that the reduction of the Union financial assistance should amount to no more than 25 % of the total annual cost of the national programme. As a consequence in the field of collection, management and use of data the maximum flat rate of financial corrections set out in this Regulation should apply only after the repeal of Article 8 of that Regulation.
- (12) Given the importance of ensuring that there is a harmonised and equal treatment of Member States across the Union from the start of the programming period, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the criteria for establishing the level of financial corrections and the criteria for applying flat rates as referred to in Article 105 of Regulation (EU) No 508/2014.

⁽¹⁾ Commission Regulation (EC) No 665/2008 of 14 July 2008 laying down detailed rules for the application of Council Regulation (EC) No 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ L 186, 15.7.2008, p. 3.)

⁽²⁾ Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea (OJ L 160, 14.6.2006, p. 1.)

⁽³⁾ Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ L 60, 5.3.2008, p. 1.)

*Article 2***Criteria of establishing the level of financial corrections**

The level of the financial correction in cases of non-compliance with the CFP rules referred to in Article 105(1) of Regulation (EU) No 508/2014 shall be established in accordance with the following criteria:

- (a) significance of the potential prejudice to the marine biological resources resulting from the non-compliance with the CFP rules;
- (b) frequency of the non-compliance with the CFP rules;
- (c) duration of the non-compliance with the CFP rules;
- (d) remedial actions taken by the Member State.

*Article 3***Criteria for applying flat rates**

1. The flat rates of financial correction referred to in Article 105(3) of Regulation (EU) No 508/2014 shall be 2 %, 5 %, 10 %, 25 %, 50 % or 100 % of the Union contribution allocated to the relevant Union priorities, or to the relevant part of those priorities, within the operational programme of the Member State.
2. The range within which flat rates shall be applied in individual cases of non-compliance with the CFP rules is set out in the Annex.
3. Where in relation to the same Union priority several cases of non-compliance with the CFP rules are identified by the Commission within the same implementing act pursuant to Article 102 of Regulation (EU) No 508/2014, the flat rates shall not be cumulated, but the financial correction shall be set within the highest of the ranges applicable to those cases.
4. After a financial correction by the Commission for a certain case of non-compliance with the CFP rules has been implemented and the Member State concerned does not take the appropriate remedial action, the flat rate may be increased to the next higher level within the range applicable to that case of non-compliance with the CFP rules.
5. In addition to the cases for which it is explicitly set out in the Annex, a flat rate of 100 % of the Union contribution allocated to the relevant Union priorities, or to the relevant part of those priorities, within the operational programme of the Member State may be applied if:
 - (a) the non-compliance with the CFP rules is so fundamental, frequent or widespread that it represents a complete failure of the system concerned and puts at risk the legality of actions of the Member State or the regularity of the financing of the common fisheries policy; or
 - (b) there is evidence of deliberate negligence on side of the Member State with regard to remedying the non-compliance with the CFP rules.

*Article 4***Transitional provisions**

This Regulation shall not affect the continuation or modification, including the partial or total cancellation, of assistance approved by the Commission in accordance with Regulation (EC) No 861/2006.

*Article 5***Amendments to Regulation (EC) No 665/2008**

In Regulation (EC) No 665/2008, Article 6 is deleted.

*Article 6***Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

However, with regards to cases of non-compliance in the field of collection, management and use of data included in category 4 of the Annex, Article 3(5) of this Regulation shall apply from the date of repeal of Article 8 of Regulation (EC) No 199/2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 2015.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Cases of non-compliance ⁽¹⁾	Range of flat rates
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Category 1: Failure to contribute to the objectives of the common fisheries policy as set out in Article 2(2) of the Regulation (EU) No 1380/2013 that are essential to the conservation of marine biological resources

1.1	Failure to ensure that fishing opportunities allocated to the Member State pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 are respected	25-100 %
1.2	Failure to meet requirements set out in different types of conservation measures as listed in Article 7 of the Regulation (EU) No 1380/2013	10-100 %

Category 2: Failure to meet international obligations on conservation

2.1	Failure to meet obligations deriving from Article 28 of Regulation (EU) No 1380/2013	10-100 %
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Category 3: Failure to ensure that the fleet is in balance with the natural resources

3.1	Failure to submit the report on the balance between the fishing capacity of the fleet and the fishing opportunities that complies with all the requirements of Article 22(2) of Regulation (EU) No 1380/2013;	2-25 %
3.2	Failure to implement the action plan pursuant to Article 22(4) of Regulation (EU) No 1380/2013, if such a plan is included into the report submitted annually;	5-25 %
3.3	Failure to ensure that in case of fishing capacity withdrawn by public finances, respective fishing licences and authorisations are withdrawn in advance and the capacity is not replaced as referred to in Articles 22(5) and 22(6) of Regulation (EU) No 1380/2013;	10-50 %
3.4	Failure to ensure that the fishing capacity does not exceed at any time the ceilings set out in Article 22(7) and Annex II to Regulation (EU) No 1380/2013;	10-50 %
3.5	Failure to implement the entry/exit scheme pursuant to the requirements of Article 23 of Regulation (EU) No 1380/2013;	10-25 %
3.6	Failure to manage the fishing fleet register in compliance with Article 24 of Regulation (EU) No 1380/2013 and Commission Regulation (EC) No 26/2004 ⁽²⁾ ;	10-50 %

Category 4: Failure to implement the Community framework for the collection, management and use of data in line with Article 25 of Regulation (EU) No 1380/2013 as further specified in Regulation (EC) No 199/2008 that result in a lack of information on natural resources

4.1	Failure to collect and manage biological, environmental, technical and socioeconomic data necessary for fisheries management as set out in Articles 4, 13 and 17 of Regulation (EC) No 199/2008;	2-25 %
4.2	Failure to submit annually a report on execution of national data collection programmes and to make this report publicly available as set out in Article 7 of Regulation (EC) No 199/2008;	2-10 %
4.3	Failure to ensure a national coordination of the collection and management of scientific data for fisheries management as set out in Article 4 of Regulation (EC) No 199/2008;	2-5 %

Cases of non-compliance ⁽¹⁾		Range of flat rates
4.4	Failure to coordinate data collection activities with other Member States in the same region as set out in Article 5 of Regulation (EC) No 199/2008;	2-25 %
4.5	Failure to provide data in a timely manner to end-users in accordance with Articles 18 to 20 of Regulation (EC) No 199/2008;	2-25 %

Category 5: Failure to operate an effective control and enforcement system

5.1	Failure to respect the general principles of control and enforcement in accordance with Title II of Council Regulation (EC) No 1224/2009 ⁽³⁾ ;	10-50 %
5.2	Failure to ensure that the general conditions for access to waters and resources in accordance with Title III of Regulation (EC) No 1224/2009 are respected;	10-50 %
5.3	Failure to control the marketing in order to ensure effective traceability of fisheries and aquaculture products, in accordance with Title V of Regulation (EC) No 1224/2009;	10-50 %
5.4	Failure to carry out effective surveillance and inspections, and to ensure systematic and adequate enforcement action in respect of any breaches of the rules of the CFP, in accordance with Titles VI, VII and VIII of Regulation (EC) No 1224/2009;	10-50 %
5.5	Failure to establish and implement national control action programmes according to Article 46 of Regulation (EC) No 1224/2009 and, when relevant, to carry out specific control and inspection programmes established by the Commission in accordance with Title IX of that Regulation;	10-50 %
5.6	Failure to cooperate with the Commission in order to facilitate the accomplishment of the Commission officials tasks during their missions of verification autonomous inspections and audits in accordance with Title X of Regulation (EC) No 1224/2009;	2-50 %
5.7	Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives, such as action plans and any other measures in accordance with Title XI of Regulation (EC) No 1224/2009;	10-50 %
5.8	Failure to meet the requirements as regards analysis, validation, access and exchange of data and information, in accordance with Title XII of Regulation (EC) No 1224/2009;	2-25 %
5.9	Failure to control the implementation of an effective catch certificate scheme also provided for in Chapter III of Council Regulation (EC) No 1005/2008 ⁽⁴⁾ ;	10-50 %
5.10	Failure to act on alleged or reported illegal, unreported and unregulated (IUU) fishing activities pursuant to Articles 26(3), 39 and 40 of Regulation (EC) No 1005/2008.	5-50 %

Category 6: Failure to establish and operate a functioning system of effective, proportionate and dissuasive penalties

6.1	In the event of an infringement, failure to notify the flag Member State, the Member State of which the offender holds the citizenship and any other Member State interested in the follow-up of the measures taken to ensure compliance in accordance with Article 89(4) of Regulation (EC) No 1224/2009;	2-10 %
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Cases of non-compliance ⁽¹⁾		Range of flat rates
6.2	Failure to take immediate measures in accordance with Article 91 of Regulation (EC) No 1224/2009 to prevent masters of fishing vessels or other legal or natural persons who had been caught in committing serious infringement, from continuing to do so;	10-50 %
6.3	Failure to establish the criteria to determine the serious character of the infringement of the CFP rules under Article 42 of Regulation (EC) No 1005/2008;	10-50 %
6.4	Failure to ensure that effective sanctions are applied systematically for breaches of CFP rules and that the level of those sanctions is of adequate in severity and proportionate to the seriousness of such infringements, so as to ensure deterrence and, as a minimum, effectively deprive perpetrators of the economic benefit derived from their infringement in accordance with Title VIII of Regulation (EC) No 1224/2009;	10-50 %
6.5	Failure to apply the point system for serious infringements for holders of fishing licences as well as for masters in accordance with Article 92 of Regulation (EC) No 1224/2009;	10-50 %
6.6	Failure to establish and adequately manage the national register of infringements in accordance with Article 93 of Regulation (EC) No 1224/2009.	10-50 %

⁽¹⁾ As defined pursuant to Article 102 of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

⁽²⁾ Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).

⁽³⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

⁽⁴⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).