



Brussels, **XXX**  
[...](2015) **XXX** draft

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of **XXX****

**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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

The achievement of the objectives of the reformed Common Fisheries Policy (CFP) is only possible if Member States as well as operators comply with all the rules laid down in the relevant legislation. Therefore, access to Union financial assistance is conditional upon compliance of both Member States and operators with CFP rules. Pursuant to Articles 41(2) and 42(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, non-compliance by Member States or operators may result in financial corrections to Union financial assistance.

Article 105 of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the establishment of the European Maritime and Fisheries Fund (EMFF) enables the Commission to apply flat rate or extrapolated financial corrections where it is not possible to precisely quantify the amount of expenditure linked to the non-compliance with the CFP rules by the Member State. Nevertheless, this Regulation does not specify the criteria for and the level of those financial corrections but empowers the Commission to do so by a delegated act.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Consultations have been carried out in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

All parts of the delegated act have been discussed at expert group meetings involving experts from all Member States. The European Parliament and the Council were duly notified of the dates of the meetings, agendas and relevant documents to enable requests to attend the meetings. The proposed content of the delegated act was discussed in the expert group meetings on 16 September and 7 November 2013, as well as on 10 March and 8 June 2015.

The meetings allowed for a full presentation of the Commission's draft provisions and a thorough exchange of views on all aspects of the draft. The procedure consisted of clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly. This allowed rules to be clarified and specified in response to experts' comments. In all cases, the experts were also able to submit written comments following the meetings. The questions and comments informed the drafting of the rules concerned.

Following the proposal of the experts, it has been made more explicit that the percentages of flat rate financial correction by the Commission will be applied on 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 (eg. in case of a non-compliance committed by a Member State in the field of data collection where no remedial action by the same Member State proves to be effective, the flat rate financial correction by the Commission will be applied only on the measure related to data collection within Union priority 3 and the level of the financial correction will be defined within the range as stipulated in the Annex to this Regulation taking into account the principle of proportionality).

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 105(4) of Regulation (EU) No 508/2014 empowers the Commission to determine the criteria for establishing the level of financial corrections to be applied and the criteria for applying flat rate or extrapolated financial corrections. This delegated act defines the level of

financial corrections and the criteria for setting this level when the Commission applies flat rate financial corrections. The delegated act does not cover the option of applying financial corrections by the Commission on the basis of extrapolation, however this may be included at a later stage if need emerges.

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 508/2014 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<sup>1</sup>, 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<sup>2</sup>, 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<sup>3</sup> 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)

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

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 the Member State has failed to demonstrate that it had taken necessary remedial actions ensuring compliance with and the enforcement of applicable rules CFP in the future in cases that resulted in the suspension of payment pursuant to Article 101 of the same Regulation.

- (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.
- (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 that 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<sup>4</sup>. As a consequence, that Article should be deleted.

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<sup>4</sup> 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.)

- (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<sup>5</sup>.
- (11) Article 8 of Council Regulation (EC) No 199/2008<sup>6</sup> 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.

*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 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.

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<sup>5</sup> 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.)

<sup>6</sup> 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.)

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,

*For the Commission  
The President*