



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 with regard to determining the criteria for establishing the level of financial corrections and the criteria for applying flat rate financial corrections

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 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.

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 or extrapolated financial corrections.

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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 Council¹, 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 Articles 41(1) and (2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council², 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) Articles 22(7), 85 and 144(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council³ 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)

¹ 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 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.).

No 508/2014 if one of the two following cases would arise: (i) 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 (ii) the Member State has failed to demonstrate that it had taken necessary remedy actions in cases that gave rise to suspension procedure 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. Nevertheless, flat rate financial corrections may only be applied where it is not possible to precisely quantify the amount of expenditure linked to the non-compliance with CFP rules by the Member State. Article 105(1) of Regulation (EU) No 508/2014 includes the list of cases when the Commission may impose financial correction on all or part of the operational programme. In cases covered by sub-paragraph (a) of that article, quantification of the financial impact of the non-compliance by the operator is possible based on the financing agreement between the beneficiary and the Managing Authority. Consequently, the application of flat rates for financial corrections may only refer to cases under Article 105(1)(b) of Regulation (EU) No 508/2014.
- (6) Financial consequences, including financial corrections by the Commission, imposed on Member States in cases they do not comply with CFP rules as set out pursuant to Article 102 of Regulation (EU) No 508/2014, should be proportionate to the nature, gravity, duration and repetition of the non-compliance in accordance with article 41(2) of Regulation (EU) No 1380/2013.
- (7) In order to provide transparency, proportionality and legal certainty for 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.
- (8) It is appropriate to define the levels of flat rate financial corrections by the Commission on the basis of applicable financial corrections' mechanisms of certain types of non-compliances (eg. non-compliance with the rules on public procurement) for European Structural and Investment Funds and also to ensure a sufficiently gradual mechanism so that the principle of proportionality can be adequately applied.
- (9) Given the importance of ensuring that there is a harmonised and equal treatment of Member States and operators across the EU 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
Scope

This Regulation sets out the criteria for establishing the level of financial corrections and the criteria for applying flat rates in cases where it is not possible to quantify precisely the amount of expenditure linked to non-compliance with the CFP rules by the Member States.

Article 2
Criteria of establishing the level of financial corrections

1. When deciding on the amount of a financial correction pursuant to Article 105(3) of Regulation (EU) No 508/2014 by taking into account the nature, gravity, duration and repetition of the serious non-compliance with the rules of the Common Fisheries Policy by the Member State, the Commission shall consider the following criteria
 - (a) significance of potential prejudice to the marine biological resources;
 - (b) frequency of the non-compliance;
 - (c) duration of the non-compliance;
 - (d) remedy actions taken by the Member State.

Article 3
Criteria for applying flat rates

1. Where it is not possible to quantify the amount of expenditure linked to the serious non-compliance with the rules of the Common Fisheries Policy by the Member State, and a flat-rate financial correction is to be applied by the Commission according to Article 105(3) of Regulation (EU) No 508/2014 taking into account the criteria set out in Article 1, the level of financial correction shall be fixed by the flat rate at the levels of 5 %, 10 %, 25 %, 50 % or 100 %. The range within which flat rates shall be applied in individual cases of serious non-compliance is set out in the Annex to this Regulation.
2. Where several cases of serious non-compliance are detected at the same time, the flat rates are not cumulated, but the serious non-compliance with the highest possible flat rate shall be taken as an indication to decide the flat rate.
3. After a financial correction to a certain type of serious non-compliance has been implemented and the Member State concerned does not take the appropriate corrective measures, the rates of financial correction may, due to the persistence of the serious non-compliance, be increased to the next higher level.
4. In addition to the cases where it is explicitly indicated, a flat rate financial correction of 100% may be applied if
 - (a) the serious non-compliance 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 absence of actions or deliberate negligence on side of the Member State in remedying the serious non-compliance with CFP rules.

Article 4

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

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

Done at Brussels,

For the Commission

The President

[...]