

EXPLANATORY FICHE NO 1

Implementing act laying down the criteria for establishing the level of financial corrections and for applying flat rate financial corrections VERSION 1 – 24.02.2021

RELEVANT PROVISIONS IN THE DRAFT LEGISLATION

Regulation	Provisions
EMFAF	Article 36 on financial corrections by the Commission
CPR Proposal	Article 98 on financial corrections by the Commission

This document is based on the text of the draft EMFAF consolidated agreement and of the provisional agreement on the Common Provision Rules. It is a provisional text, without prejudice to on-going discussions. This fiche is intended to guide Member States, explaining and elaborating the text of the proposal.

OBJECTIVE OF THIS FICHE

As in the 2014-2020 EMFF, the 2021-2027 EMFAF provides that the Commission is empowered to adopt implementing acts to determine the **criteria for establishing the level of financial correction** to be applied and the **criteria for applying flat rates or extrapolated financial corrections** when Member States fail to comply with their obligations under article 12(2) thereof or do not take remedial actions after their payment is suspended pursuant to article 34 thereof¹. Flat rates of correction are applied where it is not possible to quantify precisely the amount of expenditure linked to non-compliance with the CFP rules by Member States.

Contrary to the EMFF, under which these criteria are set in a delegated act, the EMFAF agreement provides for an implementing act.

The purpose of this fiche is to have a first discussion on the draft implementing regulation for the period 2021-2027.

LEGAL BASIS AND RATIONALE

The principle of conditioning financial assistance to Member States with compliance to CFP rules is included in the CFP Regulation 1380/2013, which lays down in its Art. 41 that “*Union financial assistance to Member States shall be conditional upon compliance with the CFP rules by Member States*”. It is also present in Article 33 (interruption of the payment deadline) and 34 (Suspension of payments) of the EMFAF. CPR rules complement this legislation in this regard, while also reminding EMFAF specific rules².

In order to safeguard the financial interests of the Union and its taxpayers, Art. 36 of the EMFAF provides that the Commission can apply financial corrections by cancelling all of part of the Union contribution to an operational programme 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 12(2) of the EMFAF.
- (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 34 of the EMFAF, the Member States 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.

The application of flat rates for financial corrections only applies to cases referred to in point (b). For cases covered by point (a), the 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 EMFAF programme.

The current rules applicable to the EMFF are laid down in the Commission Delegated Regulation (EU) n° 2015/1930³. This short and simple act sets **4 criteria according to which the level of financial corrections should be established:**

¹ See Art. 36(4) of the draft EMFAF consolidated agreement

² See Art. 98(5) of the CPR provisional agreement

³ See OJ L 282, 28.10.2015, p. 2–8.

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

Flat rates of financial corrections range from 2 to 100%. In the EMFAF next implementing act, it is proposed to keep the same 4 criteria. The flat rates will be applied only to the EMFAF contribution allocated to the specific objectives linked to the case of non-compliance, or to the relevant parts of these specific objectives, within the operational programmes of the Member States. These specific objectives are set out in Annex II to the EMFAF, which defines the organisation of support under shared management.

As for the EMFF, a range of flat rates will be defined for each case of non-compliance to be defined in the EMFAF Implementing Regulation (EU) 2021/xxx defining the cases of non-compliance and serious non-compliance with the CFP rules that may lead to an interruption of a payment deadline or suspension of payments under the EMFAF⁴. This list of cases was already discussed at the EMFF Expert Group of April 2019, June and November 2020. The last version of the fiche is available here:

https://ec.europa.eu/fisheries/sites/fisheries/files/2020-11-18-non-compliance_en.pdf

As in the EMFF, in addition to these cases explicitly set out, a flat rate of 100% of the Union contribution allocated to the relevant specific objectives may be applied under two cases. First, when the non-compliance with the CFP rules is so fundamental, frequent and 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 CFP. Second, when there is deliberate negligence by the Member States with regard to remedial actions (for instance, actions exist in theory on the paper, but are deliberately not being implemented).

It is worth noting that despite clear applicable rules, no financial corrections were done on the basis of these rules up to now under EMFF operational programmes. In addition, as under the EMFF, should such a financial correction, where a Member State agrees on the financial correction before the Commission adopts the decision on the financial correction, Member States may reuse the amounts concerned.⁵

APPROACH TO THE IMPLEMENTING ACT FOR THE 2021-2027 PROGRAMMING PERIOD

Under the EMFAF, the criteria for establishing the level of financial corrections and for applying flat rate financial corrections will be determined in an implementing act (instead of a delegated act under the EMFF).

In terms of content, we intend to propose a rollover of existing rules. We will need however to delete some articles of the current act (or part of) as they provide for transitional rules that are not applicable anymore.

As the current delegated act, the future implementing act will have in annex a table listing all cases of potential non-compliance by Member States to the CFP rules. It will set out the ranges within which flat rates are to be applied for each individual case.

⁴ See Art. 33 and 34 of the EMFAF consolidated agreement

⁵ See Art. 98 (4) of the provisional agreement on the CPR

You will find annexed to this fiche a draft version of this table for the period 2021-2027. The cases listed are those to be listed in the next implementing act on cases and serious cases of non-compliance with the CFP rules by Member States that may lead to an interruption/suspension of funds.

Changes to the table for the period 2014-2020 appear in red and requires us to define new ranges of flat rates. For cases already listed in the former act, we suggest a rollover of corresponding flat rate ranges.

In annex to this note, you will find a draft table listing cases of non-compliance with flat rate ranges associated.

QUESTIONS

- Do you have questions regarding the suggested approach to the new implementing act on financial corrections?
- Do you have questions on the flat rate ranges applied to new cases of non-compliance?
- Do you see room for improvement?

ANNEX I: TABLE OF CASES OF NON-COMPLIANCE WITH FLAT RATE RANGES ASSOCIATED

Cases of non-compliance ⁽¹⁾		Range of flat rates
<p>Category 1: Failure to ensure that fishing opportunities allocated to the MS pursuant to Art. 16-17 of Regulation (EU) N° 1380/2013 are respected 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 (former 1.1)</p>		
1.1	[new] Failure to monitor the use of fishing opportunities, in particular, via logbook, transshipment declarations, landing declarations, sales notes, or take-over notes and/or failure to monitor the fishing effort	10-50 %
1.2	[new] Failure to close fisheries when quotas, including under SFPAs and RFMOs, and/or fishing effort have been exhausted	10-50 %
1.3	Failure to respect rules on fishing licence and authorisation (former 5.2)	10-50 %
1.4	[new] Failure to notify the Commission with the aggregated data on catches and fishing effort	10-50 %
<p>Category 2: Failure to respect conservation measures and/or protect sensitive species and habitats for the purpose of achieving environmentally sustainable fishing and aquaculture activities in the long-term as set out in Art. 2 of the CFP to meet requirements set out in different types of conservation measures listed in Article 7 of Regulation (EU) N° 1380/2013 (former 1.2)</p>		
2.1	[new] Failure to ensure detailed and accurate documentation of all fishing trips and adequate capacity and means in order to monitor compliance with the landing obligation in accordance with the principle of efficiency and proportionality	10-50 %
2.2	[new] Failure to respect rules on scientific research	10-50 %
2.3	[new] Failure to implement the prohibition of catches, retention on board, transshipment or landing of fish or shellfish species referred to in Annex IV to Directive 92/43/EEC (except when derogations are granted under Article 16 of that Directive) in line with Article 10 of the Technical Measures Regulation	10-50 %
2.4	[new] Failure to implement the prohibition of catches, retention on board, transshipment or landing of marine mammals or marine reptiles referred to in Annexes II and IV to Directive 92/43/EEC and of species of seabirds covered by Directive 2009/147/EC in line with Article 11 of the Technical Measures Regulation	10-50 %
2.5	[new] Failure to prohibit the deployment of fishing gears specified in Annex II of TM Regulation in order to protect sensitive habitats (including vulnerable marine ecosystems).	10-50 %
2.6	[new] Failure to monitor and implement mitigation measures in order to reduce incidental catches of sensitive species	10-50 %
2.7	[new] Failure to establish and implement eel management plans	2-25%

2.8	[new] Failure to respect conservation measures on eels (reduction of fishing effort where applicable and reaching of targets) and/or failure to report to the Commission on the monitoring, effectiveness and outcome of those measures as set out in Regulation No 1100/2007	2-25%
2.9	[new] Failure to submit to the Commission an annual report on the implementation of rules regarding shark finning in accordance with the requirements of regulation 1185/2003, article 6.	2-25%
Category 3: Failure to meet international obligations on conservation in order to ensure sustainable exploitation, management and conservation of marine resources and environment as set out in Art. 28 of the CFP Regulation 1380/2013 (former 2 and 2.1)		
3.1	[new] Failure to ensure that Union fishing vessels flying the Member State's flag and operating outside Union waters are in a position to provide detailed and accurate documentation of all fishing and processing activities	10-50%
3.2	[new] Failure to ensure that Union fishing vessels outside Union waters are authorised in line with the respective provisions in the SMEFF regulation	10-50%
Category 4: Failure to ensure that the fleet is in balance with the natural resources in accordance with Art. 22 of the CFP Regulation 1380/2013 (former 3)		
4.1	Failure to ensure that any exit from the fleet supported by public aid is preceded by the withdrawal of the respective fishing licence and authorisations and that the withdrawn capacity is not replaced (former 3.3)	10-50 %
4.2	Failure to ensure that the fishing capacity does not exceed at any time the ceilings set out in Annex II to the CFP Regulation (EU) No 1380/2013 (former 3.4)	10-50 %
4.3	Failure to implement the entry/exit scheme in such a way that the entry into the fleet of new capacity without public aid is compensated for by the prior withdrawal of capacity without public aid of at least the same amount (former 3.5)	10-25 %
4.4	Failure to submit to the Commission the information to be recorded in the Union fleet register as set out in the CFP Regulation (EU) No 1380/2013 and Commission Implementing Regulation 2017/218; (former 3.6)	10-50 %
4.5	[new] Failure to draw up separate assessments for fleets in outermost regions and for vessels operating exclusively outside Union waters when assessing the balance between the fishing capacity of the fleet and fishing opportunities;	10-50%
4.6	[new] Failure to control and monitor fishing capacity and engine power of fishing vessels	10-50%
Category 5: Failure to contribute to the collection of scientific data as required by Art 2 (4) of the CFP Regulation 1380/2013 Data collection and scientific advice (former 4)		
5.1	Failure to submit annually a report on the implementation of national work plans for data collection in the fisheries and aquaculture sectors (former 4.2)	2-10 %
5.2	Failure to ensure national coordination of the collection and management of	2-5 %

	scientific data for fisheries management, including socio-economic data (former 4.3)	
5.3	Failure to coordinate data collection activities with other Member States in the same region (former 4.4)	2-25 %
5.4	Failure to make data available to end users: (i) ensuring completeness, (ii) respecting quality standards and/or validation (former 4.5)	2-25 %
Category 6: Failure to operate an effective control system in order to ensure compliance with the CFP rules as required by Art. 36(3) of the CFP Regulation 1380/2013 (former 5)		
6.1	Failure to respect the general principles of control and enforcement (former 5.1)	10-50 %
6.2	Failure to ensure accurate weighing of fishery products and/or control the marketing in order to ensure effective traceability of fisheries and aquaculture product (former 5.3)	10-50 %
6.3	Failure to establish and implement National Control Action Programmes and, when relevant, to carry out specific control and inspection programmes established by the Commission (former 5.5)	10-50 %
6.4	Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives, notably action plans and any other measures such as closure of fisheries, deduction and transfers of quotas and fishing effort and emergency measures (former 5.7)	10-50 %
6.5	Failure to meet the requirements as regards analysis, validation, access, exchange of data and information (former 5.8)	2-25 %
Category 7: Failure to operate an effective enforcement system as required by Art. 36(3) of the CFP Regulation 1380/2013 (former 6)		
7.1	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 (former 5.4)	10-50 %
7.2	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 (former 5.6)	2-50 %
7.3	Failure to establish the criteria to determine the serious character of the infringement of the CFP rules (former 6.3)	10-50 %
7.4	Failure to ensure that effective sanctions are applied systematically for breaches of CFP rules and that the level of those sanctions is of adequate 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 (former 6.4)	10-50 %
7.5	Failure to apply the point system for serious infringements for holders of fishing licences as well as for masters as set out in Regulation (EC) No 1224/2009	10-50 %

	establishing a Union control system (former 6.5)	
7.6	Failure to manage the national register of infringements in accordance with applicable rules (former 6.6)	10-50 %
Category 8: Failure to act against IUU fishing as required by Art. 36(3) of the CFP Regulation 1380/2013		
8.1	Failure to take measures in accordance with applicable rules in order to ensure that (IUU) fishing is prevented, deterred and eliminated in accordance with Regulation (EC) No 1005/2008 (former 5.10)	5-50 %
8.2	Failure to carry out verifications related to the catch certification scheme in accordance with Article 17 of Regulation (EC) No 1005/2008, in particular in cases of risk in accordance with Article 17(3) as well as in the specific cases listed in Article 17(4) in conjunction with Title II, Chapter II of Regulation (EC) No 1010/2009 (former 5.9)	10-50 %
Category 9: Failure to respect rules on a common organisation of the markets in fisheries and aquaculture products in order to contribute to the achievement of the objectives of the CFP as required by Art. 35(1) of the CFP Regulation 1380/2013		
9.1	[new] Failure to ensure that all criteria laid down in Regulation (EU) No 1379/2013 for the recognition of producers organisations and interbranch organisations are met when granting such recognition	10-50%
9.2	[new] Failure to carry-out checks in order to verify whether recognised collective organisations still meet all criteria over time	10-50%