

## COMMISSION IMPLEMENTING REGULATION (EU)

of [...] 2021

### **Implementing Regulation (EU) No [...] of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) [...] No [...] of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund of the European Parliament and of the Council, and in particular Article 36(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>1</sup>, financial assistance from the European Maritime, Fisheries and Aquaculture Fund (EMFAF) 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 98 of Regulation (EU) No [new CPR] of the European Parliament and of the Council sets out cases and conditions under which financial corrections may or are to be applied by the Commission. Furthermore, under Article 98(5) of that Regulation, the fund-specific rules for the EMFAF 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 36 of Regulation (EU) No [EMFAF] 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 Regulation (EU) No [EMFAF]; 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 34 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 36(3) of Regulation (EU) No [EMFAF].

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<sup>1</sup> Regulation (EU) No 1380/2013, OJ L 354, 28.12.2013, p. 22–61

- (5) Article 36(4) of Regulation (EU) No [EMFAF] 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 36(1) of Regulation (EU) No [EMFAF] 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 36(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 EMFAF programme. Consequently, the application of flat rates for financial corrections may only concern cases referred to in Article 36(1)(b) of Regulation (EU) No [EMFAF].
- (6) In order to ensure transparency and proportionality of flat rate financial corrections, and legal certainty and equal treatment of Member States implementing EMFAF 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) 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 36 of Regulation (EU) No [EMFAF].

#### *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 36(1) of Regulation (EU) No [EMFAF] 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 States.

### *Article 3*

#### **Criteria for applying flat rates**

1. The flat rates of financial correction referred to in Article 36(3) of Regulation (EU) No [EMFAF] shall be 2 %, 5 %, 10 %, 25 %, 50 % or 100 % of the Union contribution allocated to the relevant specific objectives, or to the relevant part of those specific objectives, 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 specific objective several cases of non-compliance with the CFP rules are identified by the Commission within the same implementing act pursuant to Article 33 of Regulation (EU) No [EMFAF], 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 specific objectives, or to the relevant part of those specific objectives, 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 (EU) No 508/2014.

### *Article 5*

#### **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*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.  
Done at Brussels, 2021.

*For the Commission*  
*The President*  
Ursula von der Leyen

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ANNEX

Cases of non-compliance <sup>(2)</sup>		Range of flat rates
<b>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</b>		
1.1	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	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 license and authorization	10-50 %
1.4	Failure to notify the Commission with the aggregated data on catches and fishing effort	10-50 %
<b>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</b>		
2.1	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	Failure to respect rules on scientific research.	10-50 %
2.3	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	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	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	Failure to monitor and implement mitigation measures in order to reduce incidental catches of sensitive species	10-50 %
2.7	Failure to establish and implement eel management plans	2-25%
2.8	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	2-25%

<sup>2</sup> As defined pursuant to Article 34 (4) of Regulation (EU) No xxx/2021 of the European Parliament and the Council of ... 2021 on the European Maritime, Fisheries and Aquaculture Fund.

	set out in Regulation No 1100/2007	
2.9	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%
<b>Category 3: Failure to meet international obligations 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</b>		
3.1	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	Failure to ensure that Union fishing vessels outside Union waters are authorized in line with the respective provisions in the SMEFF regulation	10-50%
<b>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)</b>		
4.1	Failure to ensure that any exit from the fleet supported by public aid is preceded by the withdrawal of the respective fishing license and authorizations and that the withdrawn capacity is not replaced	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	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	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	10-50 %
4.5	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	Failure to control and monitor fishing capacity and engine power of fishing vessels	10-50%
<b>Category 5: Failure to contribute to the collection of scientific data as required by Art 2 (4) of the CFP Regulation 1380/2013 <del>Data collection and scientific advice</del> (former 4)</b>		
5.1	Failure to submit annually a report on the implementation of national work plans for data collection in the fisheries and aquaculture sectors	2-10 %
5.2	Failure to ensure national coordination of the collection and management of scientific data for fisheries management, including socio-economic data	2-5 %
5.3	Failure to coordinate data collection activities with other Member States in the same region	2-25 %
5.4	Failure to make data available to end users: (i) ensuring completeness, (ii) respecting quality standards and/or validation	2-25 %
<b>Category 6: Failure to operate an effective control system in order to ensure compliance with the</b>		

<b>CFP rules as required by Art. 36(3) of the CFP Regulation 1380/2013</b>		
6.1	Failure to respect the general principles of control and enforcement under Title II of Regulation (EC) 1224/2009	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	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	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	10-50 %
6.5	Failure to meet the requirements as regards analysis, validation, access, exchange of data and information	2-25 %
<b>Category 7: Failure to operate an effective enforcement system as required by Art. 36(3) of the CFP Regulation 1380/2013 (former 6)</b>		
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	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	2-50 %
7.3	Failure to establish the criteria to determine the serious character of the infringement of the CFP rules	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	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 establishing a Union control system	10-50 %
7.6	Failure to manage the national register of infringements in accordance with applicable rules	10-50 %
<b>Category 8: Failure to act against IUU fishing as required by Art. 36(3) of the CFP Regulation 1380/2013</b>		
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	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)	10-50 %

	No 1010/2009	
<b>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</b>		
9.1	Failure to ensure that all criteria laid down in Regulation (EU) No 1379/2013 for the recognition of producers organisations and inter-branch organisations are met when granting such recognition	10-50%
9.2	Failure to carry-out checks in order to verify whether recognized collective organisations still meet all criteria over time	10-50%

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