

COMMISSION DELEGATED REGULATION (EU) 2015/852**of 27 March 2015****supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund**

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 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 ⁽¹⁾, and in particular Article 102 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 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. Non-compliance by Member States with the CFP rules may result in the interruption or suspension of payments or in the application of a financial correction to Union financial assistance under the CFP.
- (2) Articles 83(1) and 142(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽³⁾ set out the conditions under which interruption of a payment deadline or suspension of payments may be imposed, respectively. Those two Articles foresee that the fund-specific rules for the EMFF may lay down specific bases for interruption and suspension linked to non-compliance with rules applicable under the CFP.
- (3) In order to safeguard the financial interests of the Union and its taxpayers, where a Member State has failed to comply with its obligations under the CFP, or where the Commission has evidence that suggests such a lack of compliance, the Commission is allowed, as a precautionary measure, to interrupt payment deadlines pursuant to Article 100 of Regulation (EU) No 508/2014.
- (4) In addition to the interruption of the payment deadline, and in order to avoid the risk of paying out ineligible expenditure, the Commission is allowed, pursuant to Article 101 of Regulation (EU) No 508/2014, to suspend payments in cases of serious non-compliance with the CFP rules.
- (5) Financial consequences imposed on Member States if they do not comply with CFP rules should be proportionate to the nature, gravity, duration and repetition of the non-compliance.
- (6) In order to provide legal certainty for Member States implementing operational programmes under the EMFF, it is necessary to define the cases of non-compliance with CFP rules essential to the conservation of marine biological resources that may trigger interruption of the payment deadline or suspension of payments in line with Regulation (EU) No 508/2014. Those cases will serve the purposes of Regulation (EU) No 508/2014 and implement Article 41 of Regulation (EU) No 1380/2013 without prejudice to any other sanctions imposed by CFP rules.
- (7) Cases of non-compliance with CFP rules that are essential to the conservation of marine biological resources should be considered as serious, if the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption of the payment deadline.

⁽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).

- (8) Prior to the interruption or suspension of payments, the Commission has to adopt implementing acts pursuant to Articles 100(2) and 101(2) of Regulation (EU) No 508/2014 that will further specify the non-compliance of the Member State with its obligations under the CFP rules that is liable to affect the expenditure for which the interim payment is requested.
- (9) Given the importance of ensuring that there is a harmonised and equal treatment of operators in all Member States 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

Cases of non-compliance

The cases of non-compliance by a Member State with its obligations under the Common Fisheries Policy (CFP), that may trigger the interruption of the payment deadline for an interim payment claim pursuant to Article 100 of Regulation (EU) No 508/2014, are set out in the Annex to this Regulation.

Article 2

Cases of serious non-compliance

The cases of serious non-compliance by a Member State with its obligations under the CFP, that may trigger a suspension of payments pursuant to Article 101 of Regulation (EU) No 508/2014, shall be those listed in the Annex to this Regulation if, in addition:

- (a) they give rise to an interruption of the payment deadline for an interim payment claim pursuant to Article 100 of Regulation (EU) No 508/2014; and
- (b) the Member State has failed to take the necessary action to remedy the situation within the period of interruption of the payment deadline in relation to those cases.

Article 3

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, 27 March 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Category 1: Failure to contribute to the objectives of the Common Fisheries Policy as set out in Article 2(2) of 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;
- 1.2. Failure to meet requirements set out in different types of conservation measures listed in Article 7 of Regulation (EU) No 1380/2013.

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.

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;
- 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;
- 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 Article 22(5) and (6) of Regulation (EU) No 1380/2013;
- 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;
- 3.5. Failure to implement the entry/exit scheme pursuant to the requirements of Article 23 of Regulation (EU) No 1380/2013;
- 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 ⁽¹⁾.

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 Council Regulation (EC) No 199/2008 ⁽²⁾ 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;
- 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;
- 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;
- 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;

⁽¹⁾ Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).

⁽²⁾ 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).

- 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.

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 ⁽¹⁾;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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 ⁽²⁾;
- 5.10. Failure to act on alleged or reported illegal, unreported and unregulated (IUU) fishing activities pursuant to Article 26(3) and Articles 39 and 40 of Regulation (EC) No 1005/2008.

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;
- 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;
- 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;

⁽¹⁾ 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).

⁽²⁾ 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).

- 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;
 - 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;
 - 6.6. Failure to establish and adequately manage the national register of infringements in accordance with Article 93 of Regulation (EC) No 1224/2009.
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