

**COMMISSION IMPLEMENTING REGULATION (EU) 2022/45****of 13 January 2022****implementing Regulation (EU) 2021/1139 of the European Parliament and of the Council on the European Maritime, Fisheries and Aquaculture Fund on cases of non-compliance and 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 that fund**

THE EUROPEAN COMMISSION,

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

Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 <sup>(1)</sup>, and in particular Articles 42(4) and 43(4) thereof,

Whereas:

- (1) The achievement of the objectives of the Common Fisheries Policy (CFP) contained in Regulation (EU) No 1380/2013 of the European Parliament and the Council <sup>(2)</sup> should not be undermined by Member States violating CFP rules. In accordance with Article 41 of Regulation (EU) No 1380/2013, financial assistance from the European Maritime, Fisheries and Aquaculture Fund (EMFAF) is made conditional upon compliance with CFP rules by Member States. Non-compliance by Member States with the CFP rules could 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 96 and 97 of Regulation (EU) 2021/1060 of the European Parliament and of the Council <sup>(3)</sup> laying down common provisions 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 EMFAF may lay down specific bases for interruption and suspension linked to non-compliance with rules applicable under the CFP.
- (3) It is necessary to provide legal certainty for Member States implementing operational programmes under the EMFAF, and, therefore, to define the cases of non-compliance with CFP rules, which lead to interruption of payment deadlines, and the cases of serious non-compliance with CFP rules, which lead to suspension of payments.
- (4) Cases leading to interruption of payment deadlines should be those of non-compliance with CFP rules essential to the conservation and environmental sustainability of marine biological resources.
- (5) Cases leading to suspension of payments should be those where, in addition to non-compliance leading to interruption of payment deadlines, the Member State concerned has failed to take the necessary action to remedy the situation giving rise to such non-compliance.
- (6) Article 22(4) of Regulation (EU) No 1380/2013 provides for that failure to make the report on the balance between the fishing capacity of the fleet and fishing opportunities and/or failure to implement the action plan for the fleet segments with identified structural overcapacity may result in a proportionate interruption or suspension of relevant Union financial assistance to that Member State for fleet investment in the fleet segment or segments concerned.

<sup>(1)</sup> OJ L 247, 13.7.2021, 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) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

- (7) Article 25(7) of Regulation (EU) No 1380/2013 also provides for that failure by a Member State to collect and/or to provide data in a timely manner to end-users may result in a proportionate interruption or suspension of relevant Union financial assistance to that Member State.
- (8) Given the importance of ensuring that a harmonised and equal treatment of operators in all Member States is in place 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*.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the European Maritime, Fisheries and Aquaculture Fund,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Cases of non-compliance**

The cases of non-compliance by a Member State with the rules under the Common Fisheries Policy (CFP) that may trigger the interruption of the payment deadline for a payment application pursuant to Article 42 of Regulation (EU) 2021/1139 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 the rules applicable under the Common Fisheries Policy, that may trigger a suspension of payments pursuant to Article 43 of Regulation (EU) 2021/1139 are the cases of non-compliance established under Article 1, where a Member State, which is subject to interruption of the payment deadline for a payment application pursuant to Article 42 of Regulation (EU) 2021/1139, fails to take the necessary action for compliance within the period of that interruption.

*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, 13 January 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

## CASES OF NON-COMPLIANCE REFERRED TO IN ARTICLE 1

Cases of non-compliance	Legal basis	
<b>Category 1: Failure to ensure that fishing opportunities allocated to the Member States pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 <sup>(1)</sup> are respected</b>		
1.1	Failure to respect rules on fishing licence and authorisation.	Articles 6(2) to (4), 7(2) and (4) of Control Regulation (EC) No 1224/2009 <sup>(2)</sup>
1.2	Failure to monitor the use of fishing opportunities, in particular, by not recording all data registered in the fishing logbook, transshipment declarations, landing declarations, sales notes, or take-over declarations and/or failure to monitor the fishing effort, and by not ensuring that these data are accurate complete and timely submitted.	Articles 33(1) and 109(2) of Control Regulation (EC) No 1224/2009
1.3	Failure to notify the Commission with the aggregated data on catches landed and fishing effort.	Articles 33(2) and (4) of Control Regulation (EC) No 1224/2009
1.4	Failure to close fisheries when quotas, including under sustainable fisheries partnership agreements (SFPAs) and regional fisheries management organisations (RFMOs), and/or fishing effort have been exhausted.	Article 35 of Control Regulation (EC) No 1224/2009
<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 Article 2 of Regulation (EU) No 1380/2013</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.	Article 15(13) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
2.2	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).	Article 10 of Regulation (EU) 2019/1241 on Technical Measures <sup>(3)</sup>
2.3	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.	Article 11(1) of Regulation (EU) 2019/1241 on Technical Measures
2.4	Failure to collect scientific data on incidental catches of sensitive species and certain species of seabirds.	Article 11(4) of and Annex XIII point 2 to Regulation (EU) 2019/1241 on Technical Measures
2.5	Where relevant in accordance with the best available scientific advice, failure to monitor and assess the effectiveness of mitigation measures implemented.	Article 11(4) of and Annex XIII point 4, to Regulation (EU) 2019/1241 on Technical Measures
2.6	Failure to prohibit the deployment of fishing gears specified in Annex II of Regulation (EU) 2019/1241 on Technical Measures in order to protect sensitive habitats.	Article 12 of Regulation (EU) 2019/1241 on Technical Measures

2.7	Failure to respect rules on scientific research.	Article 25(1)(e) of Regulation (EU) 2019/1241 on Technical Measures
2.8	Failure to establish and implement eel management plans.	Articles 2(1), (3) and (10), 5(2) and 6(1) of Council Regulation (EC) No 1100/2007 on European eels <sup>(4)</sup> .
2.9	Failure to respect conservation measures on eels (reduction of fishing effort where applicable and reaching of targets).	Article 8(1) of Council Regulation (EC) No 1100/2007 on European eels
2.10	Failure to report to the Commission on the monitoring, effectiveness and outcome of conservation measures on eels.	Article 9 of Council Regulation (EC) No 1100/2007 on European eels
2.11	Failure to submit to the Commission an annual report on the implementation of the rules on shark finning.	Article 6 of Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels <sup>(5)</sup>

**Category 3: Failure to conduct external fisheries relations in accordance with international obligations and policy objectives and principles as set out in Article 28 of Regulation (EU) No 1380/2013**

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.	Article 31(8) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
3.2	Failure to ensure that Union fishing vessels outside Union waters are authorized in line with the relevant provisions of the Sustainable Management of External Fishing Fleet Regulation (EU) 2017/2403.	Articles 5(1), 6(2), 6 (4), 7(3) to (7), 11(1), 18(1) and 25(1) of Sustainable Management of External Fishing Fleet (SMEFF) Regulation (EU) 2017/2403 <sup>(6)</sup>

**Category 4: Failure to ensure that the fleet fishing capacity is in balance with the natural resources as required by Article 22 of Regulation (EU) No 1380/2013**

4.1	Failure to put in place measures to adjust the fleet fishing capacity to fishing opportunities taking into account trends and best scientific advice with the objective of achieving a stable and enduring balance between them.	Article 22(1) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
4.2	Failure to draw up separate assessments for fleets in the outermost regions and for vessels operating exclusively outside Union waters.	Article 22(3) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
4.3	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.	Article 22(5) and (6) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
4.4	Failure to ensure the respect of the fishing capacity ceiling set out in Annex II to the CFP Regulation (EU) No 1380/2013.	Article 22(7) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
4.5	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.	Article 23(1) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy

4.6	Failure to submit to the Commission the information to be recorded in the Union fleet register as set out in Article 24(1) of the CFP Regulation (EU) No 1380/2013 and in the Commission Implementing Regulation on the Union fishing fleet register.	Article 24(2) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy as well as Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (7)
4.7	Failure to control and monitor fishing capacity and engine power of fishing vessels.	Articles 38, 39(2), 40(1) and 41 of Control Regulation (EC) No 1224/2009

**Category 5: Failure to contribute to the objective of the CFP to collect scientific data as set out in Article 2(4) of Regulation (EU) No 1380/2013**

5.1	Failure to collect and manage biological, environmental, technical and socioeconomic data.	Article 25(1) of Regulation (EU) No 1380/2013 on the Common Fisheries Policy
5.2	Failure to coordinate data collection activities with other Member States in the same region.	Articles 6(4) and 9(1) of Regulation (EU) 2017/1004 on Data Collection Framework (8)
5.3	Failure to ensure proper implementation of national correspondents' tasks.	Article 7 of Regulation (EU) 2017/1004 on Data Collection Framework
5.4	Failure to submit annually a report on the implementation of national work plans for data collection in the fisheries and aquaculture sectors.	Article 11(1) of Regulation (EU) 2017/1004 on Data Collection Framework
5.5	Failure to comply with rules on use of data.	Articles 14, 16, 17, 19 and 20 of Regulation (EU) 2017/1004 on Data Collection Framework

**Category 6: Failure to operate an effective control system in order to ensure compliance with the CFP rules as required by Article 36(3) of Regulation (EU) No 1380/2013**

6.1	Failure to control the activities carried out by any natural or legal person within the scope of the common fisheries policy on their territory and fishing waters under their sovereignty or jurisdiction.	Article 5(1) of Control Regulation (EC) No 1224/2009
6.2	Failure to control access to waters and resources and activities outside Union waters carried out by Union fishing vessels flying their flag.	Article 5(2) of Control Regulation (EC) No 1224/2009
6.3	Failure to adopt appropriate measures and allocate adequate financial, human and technical resources for control, inspection and enforcement.	Article 5(3) of Control Regulation (EC) No 1224/2009
6.4	Failure to ensure that control, inspection and enforcement are carried out in a non-discriminatory basis as regards sectors, vessels or persons and on the basis of risk management.	Article 5(4) of Control Regulation (EC) No 1224/2009
6.5	Failure to ensure compliance with rules concerning National Control Action Programmes, and control and inspection programmes established by the Commission.	Articles 46 and 95(4) of Control Regulation (EC) No 1224/2009
6.6	Failure to ensure compliance with rules for marketing, traceability, first sale and weighing of fishery and aquaculture products.	Articles 56(1), 57(1), 58, 59(1), 60(1) and (2) of Control Regulation (EC) No 1224/2009

6.7	Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives concerning action plans established following verifications or autonomous inspections, including closure of fisheries, verification, autonomous inspection and audit reports, deduction and transfers of quotas, fishing effort and emergency measures.	Articles 36, 102, 104, 105, 106, 107 and 108 of Control Regulation (EC) No 1224/2009
6.8	Failure to meet the requirements as regards analysis, validation, access, exchange of data and information.	Articles 109(1), (3), (4), (6), (8), 110, 111, 114 and 116 of Control Regulation (EC) No 1224/2009

**Category 7: Failure to operate an effective inspection and enforcement system as required by Article 36(3) of Regulation (EU) No 1380/2013**

7.1	Failure to carry-out effective surveillance and inspections.	Articles 71, 72(1) and (2), 74, 78(1), 80, 83(1) and (2), 84(2), 85, 87 of Control Regulation (EC) No 1224/2009
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.	Article 96(2) of Control Regulation (EC) No 1224/2009
7.3	Failure to establish the criteria to determine the gravity of the infringement to the CFP rules.	Articles 3(2) and 42 of IUU Regulation (EC) No 1005/2008 and Article 90(1) of the Control Regulation (EC) No 1224/2009
7.4	Failure to ensure the systematic adoption of appropriate measures and of effective, proportionate and dissuasive sanctions and accompanying sanctions for breaches of CFP rules.	Articles 89(1), (2), (3) and 90 of the Control Regulation (EC) No 1224/2009 as well as Article 43, 44, 45, 46 and 47 of IUU Regulation (EC) No 1005/2008
7.5	Failure to apply the point system for serious infringements for holders of fishing licenses as well as for masters.	Article 92(1), (2) and (6) of Control Regulation (EC) No 1224/2009
7.6	Failure to manage the national register of infringements.	Article 93(1) of Control Regulation (EC) No 1224/2009

**Category 8: Failure to act against illegal, unreported and unregulated (IUU) fishing as provided for by Article 36(1) of Regulation (EU) No 1380/2013**

8.1	Failure to take measures to ensure that IUU fishing is prevented, deterred and eliminated in accordance with Regulation (EC) No 1005/2008.	Article 1(2) of IUU Regulation (EC) No 1005/2008
8.2	Failure to carry out verifications related to the catch certification scheme.	Article 17(3) and (4) of IUU Regulation (EC) No 1005/2008
8.3	Failure to respect rules related to Approved Economic Operators (AEOPs).	Articles 10(2), 16(1), 17(1), 20(3), 21(3), (5) and (7), 23(1), 25, 26(2), 27(4), 29(1) and 30(1) of Regulation (EC) No 1010/2009 (*)

**Category 9: Failure to respect rules on a common organisation of the markets in fisheries and aquaculture products established in order to contribute to the achievement of the objectives of the CFP as set out in Article 35(1) of Regulation (EU) No 1380/2013**

9.1	Failure to comply with criteria for the recognition of producers organisations and inter-branch organisations.	Articles 14(1) and 16(1) of Regulation (EU) No 1379/2013 on the Common Market Organisation (CMO) <sup>(10)</sup>
9.2	Failure to carry-out requisite checks on recognised collective organisations.	Article 18(1) and (2) of Regulation (EU) No 1379/2013 on the CMO

<sup>(1)</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>(2)</sup> 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).

<sup>(3)</sup> Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.7.2019, p. 105).

<sup>(4)</sup> Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel (OJ L 248, 22.9.2007, p. 17).

<sup>(5)</sup> Council Regulation (EC) No 1185/2003 of 26 June 2003 on the removal of fins of sharks on board vessels (OJ L 167, 4.7.2003, p. 1).

<sup>(6)</sup> Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

<sup>(7)</sup> Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (OJ L 34, 9.2.2017, p. 9)

<sup>(8)</sup> Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) No 199/2008 (OJ L 157, 20.6.2017, p. 1).

<sup>(9)</sup> Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 280, 27.10.2009, p. 5).

<sup>(10)</sup> Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).