COMMISSION IMPLEMENTING REGULATION (EU) 2022/44

of 13 January 2022

laying down rules for the application of Regulation (EU) 2021/1139 of the European Parliament and of the Council as regards the criteria for establishing the level of financial corrections and for applying flat-rates linked to serious non-compliance with Common Fisheries Policy rules

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 on the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 ([1]), and in particular Article 45(4) thereof,

Whereas:

(1) The achievement of the objectives of the common fisheries policy (CFP) contained in Regulation (EU) No 1380/2013 ([2]), of the European Parliament and of the Council should not be undermined by Member States violating CFP rules. Under Article 41(1) and (2) of Regulation (EU) No 1380/2013 financial assistance from the European Maritime, Fisheries and Aquaculture Fund (EMFAF) is conditional on Member States' compliance with CFP rules. Non-compliance could result in the interruption or suspension of payments, or the application of financial corrections to Union financial assistance under the CFP.

(2) Article 104(1) of Regulation (EU) 2021/1060 ([3]) of the European Parliament and of the Council sets out the cases in which the Commission applies financial corrections. Furthermore, under Article 104(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 45(1) of Regulation (EU) 2021/1139.

(4) Under Article 45(3) of Regulation (EU) 2021/1139, where it is not possible to quantify precisely the amount of expenditure linked to a Member State's serious non-compliance with the CFP rules, a flat-rate financial correction is to be applied.

(5) Article 45(4) of Regulation (EU) 2021/1139 allows the Commission to adopt implementing acts determining the criteria for establishing the level of financial corrections to be applied and the criteria for applying flat-rate financial corrections. Article 45(1) of Regulation (EU) 2021/1139 includes the lists of cases in which the Commission may impose financial corrections on all or part of the Union contribution to the programme. In cases covered by point (a) of Article 45(1), quantification of the financial impact of the beneficiary's non-compliance 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 be applied only in cases referred to in Article 45(1) (b) of the Regulation (EU) 2021/1139.

([1]) OJ L 247, 13.7.2021, 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) 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).

(6) It is therefore necessary to adopt criteria for establishing the level of financial corrections to be applied and the criteria for applying flat-rate corrections. This will ensure legal certainty and equal treatment of Member States implementing EMFAF programmes as well as the transparency and proportionality of flat-rate financial corrections.

(7) The level of financial correction must be proportionate having regard to the nature, gravity, frequency and duration of the Member State's serious non-compliance with the CFP rules.

(8) It is appropriate to provide for a graduated system of flat-rates that allows for the proper application of proportionality.

(9) Given the importance of ensuring a harmonised and equal treatment of 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*.

(10) 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

Subject matter

This Regulation sets out the criteria for establishing levels of financial correction to be applied in cases of serious non-compliance with the CFP rules and the criteria for applying flat-rates, as referred to in Article 45 of Regulation (EU) 2021/1139.

Article 2

Criteria for establishing levels of financial correction

The levels of financial correction referred to in Article 45(1)(b) of Regulation (EU) 2021/1139 shall be established on the basis of the following criteria:

(a) the significance of the potential harm to marine biological resources resulting from non-compliance with the CFP rules;

(b) the frequency of non-compliance;

(c) the duration of non-compliance;

(d) the remedial actions taken by the Member State in question.

Article 3

Criteria for applying flat rates

1. The flat-rates of the financial correction referred to in Article 45(3) of Regulation (EU) 2021/1139 shall be 2 %, 5 %, 10 %, 25 %, 50 % or 100 % of the Union contribution allocated to the relevant EMFAF specific objectives, or to the relevant part thereof, in the operational programme of the Member State concerned.

2. The range within which flat-rates are to be applied in individual cases of non-compliance with the CFP rules is set out in the Annex. The rate to be used will be determined in accordance with the criteria set out in Article 2.

3. Where, pursuant to Article 45(1)(b) of Regulation (EU) 2021/1139, the Commission adopts an implementing act making financial corrections under the same EMFAF specific objective for several cases of serious non-compliance as identified in accordance with Article 43(4) of the same Regulation, the flat-rates shall not be cumulated, but the financial correction shall be set within the highest range applicable to those cases as set out in the Annex.

4. Where the Commission applies a financial correction for non-compliance with the CFP rules and the Member State does not take the appropriate remedial action, the flat-rate may be raised to the next higher level within the range applicable to that case of non-compliance with the CFP rules as established in the Annex.

5. In addition to the cases explicitly provided for in the Annex, a flat-rate of 100 % of the Union contribution allocated to the relevant EMFAF specific objectives or to the relevant part thereof within the operational programme of the Member State concerned may be applied if

(a) the non-compliance with the rules of the CFP is so fundamental, frequent or widespread that it represents a complete failure of the system concerned and compromises the legality of actions of the Member State or the regularity of the financing of the CFP; or

(b) there is evidence of deliberate negligence from the Member State with regard to adopting measures aiming at remedying the non-compliance with the rules of the CFP.

Article 4

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

ANNEX

CASES OF NON-COMPLIANCE REFERRED TO IN ARTICLE 1 [1]

	Cases of non-compliance	Range of flat rates
Category 1: Failure to ensure that fishing opportunities allocated to the Member States pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 are respected		
1.1	Failure to respect rules on fishing licence and authorisation	10-50 %
1.2	Failure to monitor the use of fishing opportunities, in particular, by not recording all data registered in the fishing logbook, transhipment 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.	10-50 %
1.3	Failure to notify the Commission with the aggregated data on catches landed and fishing effort.	10-50 %
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	10-50 %
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		
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 implement the prohibition of catches, retention on board, transhipment 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).	10-50 %
2.3	Failure to implement the prohibition of catches, retention on board, transhipment 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.	10-50 %
2.4	Failure to collect scientific data on incidental catches of sensitive species and certain species of seabirds.	10-50 %
2.5	Where relevant in accordance with the best available scientific advice, failure to monitor and assess the effectiveness of mitigation measures implemented.	10-50 %
2.6	Failure to prohibit the deployment of fishing gears specified in Annex II to Regulation (EU) 2019/1241 on Technical Measures in order to protect sensitive habitats.	10-50 %
2.7	Failure to respect rules on scientific research.	10-50 %
2.8	Failure to establish and implement eel management plans.	2-25 %
2.9	Failure to respect conservation measures on eels (reduction of fishing effort where applicable and reaching of targets).	2-25 %

[1] The list of cases listed below is the same one as in the Commission Implementing Regulation 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, where a reference to the relevant legal basis is available.

2.10	Failure to report to the Commission on the monitoring, effectiveness and outcome of conservation measures on eels.	2-25 %
2.11	Failure to submit to the Commission an annual report on the implementation of the rules on shark finning.	2-25 %

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.	10-50 %
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.	10-50 %

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.	10-50 %
4.2	Failure to draw up separate assessments for fleets in the outermost regions and for vessels operating exclusively outside Union waters.	10-50 %
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.	10-50 %
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.	10-50 %
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.	10-50 %
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.	10-50 %
4.7	Failure to control and monitor fishing capacity and engine power of fishing vessels.	10-50 %

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 socio-economic data.	10-50 %
5.2	Failure to coordinate data collection activities with other Member States in the same region.	2-25 %
5.3	Failure to ensure proper implementation of national correspondents' tasks.	2-5 %
5.4	Failure to submit annually a report on the implementation of national work plans for data collection in the fisheries and aquaculture sectors.	2-10 %
5.5	Failure to comply with rules on use of data.	2-25 %

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.	10-50 %
6.2	Failure to control access to waters and resources and activities outside Union waters carried out by Union fishing vessels flying their flag.	10-50 %
6.3	Failure to adopt appropriate measures and allocate adequate financial, human and technical resources for control, inspection and enforcement.	10-50 %
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.	10-50 %
6.5	Failure to ensure compliance with rules concerning National Control Action Programmes, and control and inspection programmes established by the Commission.	10-50 %
6.6	Failure to ensure compliance with rules for marketing, traceability, first sale and weighing of fishery and aquaculture products.	10-50 %
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.	10-50 %
6.8	Failure to meet the requirements as regards analysis, validation, access, exchange of data and information.	2-25 %
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.	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 gravity of the infringement to the CFP rules.	10-50 %
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.	10-50 %
7.5	Failure to apply the point system for serious infringements for holders of fishing licenses as well as for masters.	10-50 %
7.6	Failure to manage the national register of infringements.	10-50 %
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	5-50 %
8.2	Failure to carry out verifications related to the catch certification scheme	10-50 %
8.3	Failure to respect rules related to Approved Economic Operators (AEOPs)	10-50 %

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	10-50 %
9.2	Failure to carry-out requisite checks on recognised collective organisations	10-50 %