Commission Delegated Regulation (EU) 2015/1930 of 28 July 2015 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections, and amending Commission Regulation (EC) No 665/2008

COMMISSION DELEGATED REGULATION (EU) 2015/1930

of 28 July 2015

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections, and amending Commission Regulation (EC) No 665/2008

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 508/2014 of 15 May 2014 of the European Parliament and of the Council 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 105(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[(2)], financial assistance from the European Maritime and Fisheries Fund (EMFF) 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 22(7), Article 85 and Article 144(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council[(3)] set out cases and conditions under which financial corrections may or are to be applied by the Commission. Furthermore, under Article 144(7) of that Regulation, the fund-specific rules for the EMFF 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 105 of Regulation (EU) No 508/2014 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 10(2) of Regulation (EU) No 508/2014; or (b) where in relation to expenditure included into a certified

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statement of expenditure affected by cases of serious non-compliance that resulted in suspension of payments pursuant to Article 101 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 105(3) of Regulation (EU) No 508/2014.

(5) Article 105(4) of Regulation (EU) No 508/2014 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 105(1) of Regulation (EU) No 508/2014 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 105(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 EMFF programme. Consequently, the application of flat rates for financial corrections may only concern cases referred to in Article 105(1)(b) of Regulation (EU) No 508/2014.

(6) In order to ensure transparency and proportionality of flat rate financial corrections, and legal certainty and equal treatment of Member States implementing EMFF 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) In the field of collection, management and use of data, the provisions on flat rate financial corrections set out in this Regulation should replace those set out in Article 6 of Commission Regulation (EC) No 665/2008[(4)]. As a consequence, that Article should be deleted.

(10) This Regulation should not affect the continuation or the modification of assistance approved by the Commission on the basis of Council Regulation (EC) No 861/2006[(5)].

(11) Article 8 of Council Regulation (EC) No 199/2008[(6)] provides that the reduction of the Union financial assistance should amount to no more than 25 % of the total annual cost of the national programme. As a consequence in the field of collection, management

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and use of data the maximum flat rate of financial corrections set out in this Regulation should apply only after the repeal of Article 8 of that Regulation.

(12) 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 105 of Regulation (EU) No 508/2014.

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 105(1) of Regulation (EU) No 508/2014 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 State.

Article 3

Criteria for applying flat rates

1 The flat rates of financial correction referred to in Article 105(3) of Regulation (EU) No 508/2014 shall be 2 %, 5 %, 10 %, 25 %, 50 % or 100 % of the Union contribution allocated to the relevant Union priorities, or to the relevant part of those priorities, 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 Union priority several cases of non-compliance with the CFP rules are identified by the Commission within the same implementing act pursuant to Article 102 of Regulation (EU) No 508/2014, the flat rates shall not be cumulated, but the financial correction shall be set within the highest of the ranges applicable to those cases.

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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 Union priorities, or to the relevant part of those priorities, 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 (EC) No 861/2006.

Article 5

Amendments to Regulation (EC) No 665/2008

In Regulation (EC) No 665/2008, Article 6 is deleted.

Article 6

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*.

However, with regards to cases of non-compliance in the field of collection, management and use of data included in category 4 of the Annex, Article 3(5) of this Regulation shall apply from the date of repeal of Article 8 of Regulation (EC) No 199/2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 July 2015.

For the Commission

The President

Jean-Claude JUNCKER

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