Commission Regulation (EU) No 1249/2010 of 22 December 2010 amending Regulation (EC) No 498/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund

COMMISSION REGULATION (EU) No 1249/2010

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[(1)], and in particular Article 102 thereof,

Whereas:

(1) Article 70(1)(b) of Regulation (EC) No 1198/2006 provides that Member States should be responsible for preventing, detecting, correcting irregularities and recovering amounts unduly paid, notifying these to the Commission and keep the Commission informed of the progress of administrative proceedings.

(2) In the light of the experience gained by the Commission and by the Member States with regard to the application of Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field[(2)], the procedures for reporting on follow-up to irregularities should be simplified. Furthermore, in order to reduce the administrative burden imposed on Member States it is necessary to determine more precisely which information the Commission requires. To that end, information on irrecoverable amounts and on the aggregated amounts related to reported irregularities should be included in the annual statement to be submitted to the Commission pursuant to Article 46 of Commission Regulation (EC) No 498/2007[(3)].

(3) The procedures for reporting on irrecoverable amounts should accurately reflect the obligations of Member States laid down in Article 70 of Regulation (EC) No 1198/2006 and in particular the obligation to ensure an effective pursuit of recoveries. It is also appropriate to simplify the procedures whereby the Commission monitors compliance with those obligations in order to render them more efficient and cost-effective.

(4) As a consequence to Article 60 of Regulation (EC) No 1198/2006, it should be clearly stated that the certifying authority is responsible for keeping complete accounting records, including, in particular, references to amounts reported as irregular to the Commission in accordance with Article 55 of Regulation (EC) No 498/2007.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1249/2010. (See end of Document for details)*

(5) In order to ensure an efficient flow of information concerning irregularities and to avoid overlaps of different contact points, it is appropriate to group the provisions on cooperation with Member States in a single Article.

(6) Regulation (EC) No 498/2007 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the European Fisheries Fund Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 498/2007 is amended as follows:

1. in Article 40, the following paragraph 4 is added:

4. In the accounting records maintained in accordance with Article 60(f) of the basic Regulation, any amount related to an irregularity reported to the Commission under Article 55 shall be identified by the reference number attributed to that irregularity or by any other adequate method.;

2. Article 46 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory sentence is replaced by the following:

By 31 March of each year, the certifying authority shall submit to the Commission a statement in accordance with the model set out in Annex X identifying for each priority axis of the operational programme:;

(ii) point (b) is replaced by the following:

(b) the amounts recovered which have been deducted from those statements of expenditure submitted during the preceding year;;

(iii) the following point (d) is added:

(d) a list of amounts for which it was established during the preceding year that they cannot be recovered or are not expected to be recovered, classified by the year in which the recovery orders were issued.;

(iv) the following subparagraphs are added:

For the purposes of points (a), (b) and (c) of the first subparagraph, aggregated amounts related to irregularities reported to the Commission under Article 55 shall be provided for each priority axis.

For the purposes of point (d) of the first subparagraph, any amount related to an irregularity reported to the Commission under Article 55 shall be identified by the reference number of that irregularity or by any other adequate method.;

(b) the following paragraphs 2a and 2b are inserted:

2a. For each amount referred to in point (d) of paragraph 2, the certifying authority shall indicate whether it requests the Community share to be borne by the general budget of the European Union.

The Community share shall be borne by the general budget of the European Union, where within one year from the date of the submission of the statement, the Commission does not carry out any of the following:

a request information for the purposes of Article 70(2) of the basic Regulation;

b inform in writing the Member State about its intention to open an enquiry in respect of that amount;

c request the Member State to continue the recovery procedure.

The time limit of one year shall not apply in cases of suspected or established fraud.

2b For the purposes of the statement referred to in paragraph 2, Member States which have not adopted the euro as their currency by the date when the statement is submitted shall convert amounts in national currency into euro using the exchange rate referred to in Article 95(3) of the basic Regulation. Where the amounts relate to expenditure registered in the accounts of the certifying authority during more than one month, the exchange rate in the month during which expenditure was last registered may be used.;

3. Article 55 is amended as follows:

(a) in paragraph 1, second subparagraph, points (l) to (o) are replaced by the following:

(l) the total eligible expenditure and the public contribution approved for the operation together with the corresponding amount of the Community contribution;

(m) the expenditure and the public contribution certified to the Commission which are affected by the irregularity and the corresponding amount of the Community contribution at risk;

(n) in case of suspected fraud and where no payment of the public contribution has been made to the persons or other entities identified under point (k), the amounts which would have been unduly paid had the irregularity not been identified;

(o) the code of region or area where the operation has been located or carried out, by specifying the NUTS level or otherwise;;

(b) in paragraph 2, first subparagraph, points (b) and (c) are replaced by the following:

(b) cases brought to the attention of the managing or certifying authority by the beneficiary voluntarily and before detection by either of them, whether before or after the inclusion of the expenditure concerned in a certified statement submitted to the Commission;

(c) cases which are detected and corrected by the managing or certifying authority before the inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.;

(c) paragraph 3 is replaced by the following:

3. Where some of the information referred to in paragraph 1, and in particular information concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available or needs to be rectified, Member States shall as far as possible supply the missing or correct information when submitting subsequent quarterly reports of irregularities to the Commission.;

4. Article 57 is replaced by the following:

Article 57

Follow-up reporting

1 In addition to the information referred to in Article 55(1), Member States shall inform the Commission, within two months following the end of each quarter, with a reference back to any previous reports made pursuant to that Article, on details concerning the initiation, conclusion or abandonment of any procedures for imposing administrative or criminal penalties related to the reported irregularities as well as of the outcome of such procedures.

With regard to irregularities for which penalties have been imposed, Member States shall also indicate the following:

a whether the penalties are of administrative or criminal nature;
b whether the penalties result from breach of Community or national law;
c a reference to the provisions in which the penalties are laid down;
d whether fraud was established.

2 At the written request of the Commission, the Member State shall provide information in relation to a specific irregularity or group of irregularities.;

5. Article 60 is amended as follows:

(a) the heading is replaced by the following:

Co-operation with Member States;

(b) paragraph 2 is replaced by the following:

2. Without prejudice to the contacts referred to in paragraph 1, where the Commission considers that, due to the nature of the irregularity identical or similar practices could occur in other Member States, it shall submit the matter to the advisory Committee for the Coordination of fraud prevention set up by Commission Decision 94/140/EC[(4)].

The Commission shall every year inform that Committee and the committee referred to in Article 101 of the basic Regulation of the order of magnitude

of the irregularities affecting the Fund which have been discovered and of the various categories of irregularities, broken down by type and number.;

6. Article 62 is deleted;

7. Article 63 is amended as follows:

(a) in paragraph 1, the second, third and fourth subparagraphs are deleted;

(b) paragraph 2 is replaced by the following:

2. Member States which have not adopted the euro as their currency by the date when the report under Article 55(1) is submitted shall convert amounts in national currency into euro using the exchange rate referred to in Article 95(3) of the basic Regulation.

Where the amounts relate to expenditure registered in the accounts of the certifying authority during more than one month, the exchange rate in the month during which expenditure was last registered may be used. Where the expenditure has not been registered in the accounts of the certifying authority, the most recent accounting exchange rate published electronically by the Commission shall be used.;

8. Annex X is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following 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, 22 December 2010.

For the Commission

The President

José Manuel BARROSO