Commission Regulation (EC) No 391/2007 of 11 April 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy

COMMISSION REGULATION (EC) No 391/2007

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea[(1)], and in particular Article 31 thereof,

Whereas:

(1) The Community has been financing Member States actions in the field of fisheries control and enforcement since 1990, in line with the objectives established under Council Regulation (EC) No 2371/2002[(2)].

(2) Improvements towards an efficient control system throughout the Community will be difficult to achieve without incentives, in particular when new technologies are to be tested and introduced where appropriate.

(3) Evidence shows that the resources of Member States are still inadequate to fulfil their obligations under Regulation (EC) No 2371/2002. In particular, Community aid to assist Member States is requested in order to overcome existing differences in their fisheries control and surveillance capabilities.

(4) Regulation (EC) No 861/2006 provides, amongst other actions, for Community financial measures for expenditure on fisheries control, inspection and surveillance for the period 2007 to 2013.

(5) Article 8(a) of Regulation (EC) No 861/2006 provides for a list of actions undertaken by Member States in the area of fisheries control and enforcement which shall be considered eligible for Community financial assistance.

(6) In view of the principle of sound financial management, Member States must have clear indications on the rules to be followed in order to benefit from Community financial assistance when incurring on expenditure in the area of fisheries control and enforcement.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 391/2007. (See end of Document for details)*

(7) It is necessary to ensure that Community funds available for such actions are allocated efficiently with a view to reducing identified weaknesses in such a way that controls are carried out to a high standard.

(8) Member States should assess their programmes and the impact of their expenditure on control, inspection and surveillance, each year and over the whole period 2007 to 2013.

(9) With the view of simplifying procedures, as of 1 January 2007 claims for reimbursement relating to expenditure approved on the basis of Council Decisions 95/527/EC[(3)], 2001/431/EC[(4)] and 2004/465/EC[(5)], shall be submitted in accordance with Annexes VI and VII to this Regulation.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation establishes detailed rules for the implementation of Regulation (EC) No 861/2006 as regards the Community financial contribution for expenditure incurred by Member States in implementing monitoring and control systems applicable to the Common Fisheries Policy in the period 2007 to 2013.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

(a) ‘Annual fisheries control programme’ means an annual programme drawn up by a Member State in accordance with Article 20 of Regulation (EC) No 861/2006;

(b) ‘Budgetary commitment’ means the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment;

(c) ‘Legal commitment’ means the act whereby the authorising authority of a Member State enters into or establishes an obligation which results in a charge.

Article 3

Annual fisheries control programmes

[[F1]1 Member States wishing to receive a financial contribution for expenditure incurred in accordance with Article 8(a) of Regulation (EC) No 861/2006 shall notify to the Commission an annual fisheries control programme by 15 November of the year preceding the year of implementation concerned.**]**

2 In addition to the information required by Article 20 of Regulation (EC) No 861/2006, Member States shall state in their fisheries control programme, for each project:

a a yearly forecast of reimbursement requests;

b the measures foreseen to make known to the public that the project received financial support from the Community;

c when the project concerns the purchase and modernisation of vessels and aircraft: the specification of the type of vessel or aircraft;

d a description of all means available by the administration for fisheries monitoring and control, drawn up in accordance with Annex I.

3 Detailed rules as to the eligibility of certain actions are set out in Annexes II, III and IV.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) No 984/2012 of 24 October 2012 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

[F2 Article 4

Commitment of expenditure

1 Member States shall enter into legal and budgetary commitments for actions considered eligible for a financial contribution under the decision provided for in Article 21 of Regulation (EC) No 861/2006 within 12 months of the end of the year in which they were notified of such decision.

2 Notwithstanding paragraph 1, Member States shall enter into legal and budgetary commitments for projects concerning the purchase or modernisation of vessels and aircrafts within 24 months of the end of the year in which they were notified of the decision provided for in Article 21 of Regulation (EC) No 861/2006.

3 Paragraph 2 shall apply as from 22 June 2010, the date on which the first Commission financing decision of 2010 was adopted.**]**

Textual Amendments

F2 Substituted by Commission Regulation (EU) No 1054/2010 of 18 November 2010 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

Article 5

Eligible expenditure

In order to be eligible for reimbursement, expenditure shall:

(a) be foreseen in the fisheries control programme; and

(b) relate to any of the actions referred to in Article 8(a) of Regulation (EC) No 861/2006;

(c) **[**F3. . . . .**]**

(d) arise from legal and budgetary commitments entered into by Member States in accordance with Article 4 of this Regulation;

(e) concern projects implemented in accordance with Article 8 of this Regulation;

(f) comply with specific Community rules, where those rules apply.

Textual Amendments

F3 Deleted by Commission Implementing Regulation (EU) No 984/2012 of 24 October 2012 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

Article 6

Eligible expenditure related to certain actions

1 Expenditure incurred on new control technologies shall be eligible to the extent that it complies with Annex II and it is used for monitoring and control of fishing activities, as declared by the Member State concerned.

[[F2]2 Expenditure incurred on the purchase and modernisation of aircraft and vessels shall be eligible to the extent that it complies with Annex III and it is used for monitoring and control of fishing activities, as declared by the Member State concerned, for at least 25 % of the time. In cases where the vessels or aircraft are used less than 100 % of the time for monitoring and control of fishing activities, reimbursement shall be made at a rate which reflects the percentage use.**]**

3 Expenditure incurred on training and exchange programmes and on seminars and media tools shall be eligible to the extent that it complies with Annex IV. Such expenditure may cover, *inter alia*:

a fisheries surveillance methodology;

b Community legislation governing the Common Fisheries Policy and, in particular, control;

c the use of fisheries control techniques;

d the implementation by Member States of the applicable control system, in accordance with the Common Fisheries Policy rules.

Textual Amendments

F2 Substituted by Commission Regulation (EU) No 1054/2010 of 18 November 2010 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

Article 7

Non-eligible expenditure

1 Expenditure shall not be eligible if incurred before January 1 of the year in which the annual fisheries control programme is submitted to the Commission.

[[F4]In case of projects co-financed under several successive Commission decisions, the first subparagraph shall apply only with regard to the first Commission decision approving the projects concerned.**]**

[[F4]2 Expenditure for which reimbursement has not been claimed within the time specified in Article 11 paragraph 1 shall be considered as ineligible.**]**

[[F5]3**]**. Value added tax (VAT) shall not be eligible for reimbursement.

[[F5]4**]**. An indicative list of non-eligible expenditure items is set out in Annex V.

Textual Amendments

F4 Inserted by Commission Regulation (EU) No 1257/2009 of 15 December 2009 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

F5 Substituted by Commission Regulation (EU) No 1257/2009 of 15 December 2009 amending Regulation (EC) No 391/2007 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States in implementing the monitoring and control systems applicable to the Common Fisheries Policy.

Article 8

Implementation of projects

1 Projects shall be started and completed in accordance with the schedule laid down in the annual fisheries control programme.

2 The schedule shall state the foreseen date of commencement and termination of projects.

Article 9

Non-implementation and delay of projects

When a Member State decides not to implement all or part of the projects for which a financial contribution has been granted, or a delay occurs, it shall immediately inform the Commission in writing, stating:

(a) the implications for its annual fisheries control programme, including those of a financial nature;

(b) the reasons for the delay or non-implementation;

(c) the foreseen new implementation time frame.

Article 10

[[F1]Pre-financing**]**

1 At the reasoned request of a Member State, the Commission may grant **[**[F1]a**]****[**[F1]pre-financing**]** for each project of up to 50 % of the financial contribution granted in the decision