Compilation of legal texts related to the implementation of the
European Maritime and Fisheries Fund

Volume II
Delegated Acts

September 2016
Compilation of legal texts related to the implementation of the European Maritime and Fisheries Fund

Volume II
Delegated Acts
Table of contents

1. INTRODUCTION .......................... 7

2. COMMISSION DELEGATED REGULATIONS DERIVED FROM THE EMFF .......................... 8

   - Corrigendum to the annex of the Delegated Act (list of common indicators) - 3/12/2014
   - Corrigendum to the annex of the Delegated Act (list of common indicators) - 7/10/2015


   Commission Delegated Regulation (EU) 2015/531 of 24 November 2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels


   Commission Delegated Regulation (EU) 2015/852 of 27 March 2015 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the 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 the European Maritime and Fisheries Fund


3 COMMISSION DELEGATED REGULATIONS DERIVED FROM THE CPR .......................... 24

Commission Delegated Regulation on the code of conduct in the framework of the European Structural and Investment Funds
Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

59

60
Parts of the regulation applicable to the EMFF:

Commission Delegated Regulation on provisions supplementing Part Two, Three and Four of CPR (Regulation (EU) No. 1303/2013)

Parts of the regulation applicable to the EMFF:

Chapter I (General provisions)
Chapter II (Provisions supplementing Part Two of Regulation (EU) No 1303/2013 applicable to the ESI Funds)
Section I (Criteria for determining the level of financial correction to be applied under the performance framework)
Section II (Financial instruments)
Section III (Method for calculating the discounted net revenue of operations generating net revenue)
Section IV (Definition of the flat rates for indirect costs and related methods applicable in other Union policies)
Chapter IV (Provisions supplementing Part Four of Regulation (EU) No 1303/2013 applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF)
Section I (Data to be recorded and stored in computerised form)
Section II (The audit trail and use of the data collected during audits)
Section III (Scope and content of audits of operations and accounts and methodology for the selection of the sample of operations)
Section IV (Financial corrections by the Commission in relation to systems deficiencies)
Annex I (Reference periods)
Annex III (List of data to be recorded and stored in computerised form in the monitoring system)
Annex IV (Key requirements of management and control systems and their classification with regard to their effective functioning)

Commission Delegated Regulation amending Delegated Regulation (EU) No 480/2014 as regards the references therein to the EMFF

Parts of the regulation applicable to the EMFF:

Commission Delegated Regulation on Public Private Partnership agreements (PPPs) funded by the ESI Funds
Commission Delegated Regulation (EU) 2015/1076 of 28 April 2015 laying down, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, additional rules on the replacement of a beneficiary and on the related responsibilities, and minimum requirements to be included in Public Private Partnership agreements funded by the European Structural and Investment Funds

Parts of the regulation applicable to the EMFF:

Commission Delegated Regulation establishing a flat rate for operations funded by the ESI Funds in the Research, Development and Innovation sector

Parts of the regulation applicable to the EMFF:

Commission Delegated Regulation on the reporting of irregularities
Parts of the regulation applicable to the EMFF:
All parts

Commission Delegated Regulation on Irrecoverable Amounts Full text of the delegated regulation on Eur-Lex
Commission Delegated Regulation (EU) 2016/568 of 29 January 2016 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund

Parts of the regulation applicable to the EMFF:
All parts
1- INTRODUCTION

Compilation of legal texts related to Regulation (EU)
508/2014 on the EMFF

Volume II - Delegated Acts

The European Maritime and Fisheries Fund (EMFF) is the financial instrument that will help deliver the objectives of the reformed Common Fisheries Policy (CFP) and of the Integrated Maritime Policy (IMP) over the 2014-2020 programming period. It is one of the five European Structural and Investment funds governed by the Common Provisions Regulation (CPR) which sets out common rules to ensure coordination, synergy and efficiency across these five funds. The responsibility to implement the EMFF and the CPR lies with the Member States.

The EMFF and the CPR, like any other legally binding Union act, confer implementing powers to the Commission via implementing acts, wherever the co-legislators considered that uniform conditions of implementation were needed.

Similarly, they confer to the Commission the responsibility to define non-essential elements via delegated acts whenever such elements must be specified.

As a result of this, it is not just the EMFF and the CPR that the managing authorities and all the actors and stakeholders involved or interested in their implementation must take into account, but also the relevant implementing acts and delegated acts which take the form of regulations or of decisions.

To facilitate access to this set of legislative acts, the Commission has produced the present electronic publication in three volumes in the 24 official languages:

- Volume one includes the EMFF and the CPR regulations
- Volume two lists the delegated acts deriving the EMFF as well as those delegated acts deriving from the CPR and of partial relevance to the implementation of the EMFF. In the latter case, those parts that are relevant to the EMFF are highlighted in a turquoise frame.
- Volume three lists the implementing acts deriving from the EMFF as well as the implementing acts deriving from the CPR and of partial relevance to the implementation of the EMFF. In the latter case, those parts that are relevant to the EMFF are highlighted in a turquoise frame.
COMMISSION DELEGATED REGULATION (EU) No 1014/2014

of 22 July 2014


(OJ L 283, 27.9.2014, p. 11)

Corrected by:

► C1 Corrigendum, OJ L 347, 3.12.2014, p. 46 (1014/2014)
► C2 Corrigendum, OJ L 260, 7.10.2015, p. 31 (1014/2014)
COMMISSION DELEGATED REGULATION (EU) No 1014/2014
of 22 July 2014


THE EUROPEAN COMMISSION,

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


Whereas:

(1) Article 107 of Regulation (EU) No 508/2014 provides for the establishment of a common monitoring and evaluation system with a view to measuring the performance of the European Maritime and Fisheries Fund (EMFF). That system should help in particular to demonstrate the progress and achievements of the Common Fisheries Policy and the Union’s Integrated Maritime Policy; to assess the effectiveness, efficiency and relevance of EMFF operations; to contribute to better targeted support for the Common Fisheries Policy and the Integrated Maritime Policy; to support a common learning process related to monitoring and evaluation; and to provide robust, evidence-based evaluations of the EMFF operations that feed into the decision-making process.

(2) The content and the construction of the common monitoring and evaluation system should be defined in order to ensure that sufficient and appropriate evaluation activities are undertaken. It is therefore necessary to determine a list of common indicators to be used by the Member States so that data can be aggregated at Union level and the performance of the EMFF can be assessed by the Commission in relation to the policy objectives set out in Regulation (EU) No 508/2014.

(3) According to Article 109 of Regulation (EU) No 508/2014 the common indicators must be applicable to each programme and must relate to the initial situation as well as to the financial execution, outputs and results of the programme. Those common indicators shall also be used for the performance review referred to in Article 21(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (1).

(4) The common indicators should be in accordance with the indicators set out for programme priorities in Article 27(4) of Regulation (EU) No 1303/2013, which include indicators related to expenditure allocated, output indicators related to the operations supported and result indicators relating to the priority concerned. They should also include context indicators related to the initial situation before the implementation of the programme.

(5) The indicators referred to in Article 107(2) of Regulation (EU) No 508/2014 relate to the impact of the programme at the level of each Union Priority and are not covered by this Regulation.

(6) In order to allow for the prompt application of the measures provided for in this Regulation, 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

Content and construction of the monitoring and evaluation system

1. The common monitoring and evaluation system referred to in Article 107 of Regulation (EU) No 508/2014 shall be constituted of the following elements:

(a) an intervention logic showing the interactions between priorities, focus areas and measures as provided for in Article 18(1)(a) and Article 116 of Regulation (EU) No 508/2014;

(b) the set of common indicators referred to in Article 109 of Regulation (EU) No 508/2014;

(c) the relevant cumulative data on operations selected for funding, as provided for in Article 97(1)(a) of Regulation (EU) No 508/2014;

(d) the annual report on the implementation of the operational programme, as provided for in Article 114 of Regulation (EU) No 508/2014 in conjunction with Article 50 of Regulation (EU) No 1303/2013;

(e) the evaluation plan as provided for in Article 115 of Regulation (EU) No 508/2014 in conjunction with Article 56 of Regulation (EU) No 1303/2013;

(f) the ex ante and ex post evaluations and all other evaluation activities linked to the EMFF programme, as provided for in Articles 115, 116 and 117 of Regulation (EU) No 508/2014 in conjunction with Article 55, 56 and 57 of Regulation (EU) No 1303/2013;

(g) the performance review as provided for in Article 21(1) of Regulation (EU) No 1303/2013.

2. When applying Articles 97(1)(a) and Articles 114 to 117 of Regulation (EU) No 508/2014, in conjunction with Articles 21(1), 50, 55, 56, 57 of Regulation (EU) No 1303/2013, the managing authority shall use the list of common indicators referred to in Article 109 of Regulation (EU) No 508/2014 throughout the different elements of the common monitoring and evaluation system.

**Article 2**

**List of Common Indicators**

The list of common indicators referred to in Article 109 of Regulation (EU) No 508/2014 is set out in the Annex to this Regulation.

**Article 3**

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.
ANNEX

COMMON INDICATORS TO BE USED IN THE COMMON MONITORING AND EVALUATION SYSTEM

1. CONTEXT INDICATORS (1)

Union priority 1 — Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries

1. Fishing fleet
   (a) number of vessels
   (b) kW
   (c) GT

2. Gross value added per FTE (1) employee (thousand euros per FTE employee)

3. Net profit (thousand euros)

4. Return on investment of fixed tangible assets (2) (%)

5. Indicators of biological sustainability (3)
   (a) sustainable harvest indicator
   (b) stocks-at-risk indicator

6. Fuel efficiency of fish capture (litres fuel/tonne landed catch)

   (a) Extent of the seabed significantly affected by human activities for the different substrate types (%) (5)
   (b) Rates of incidental catches of cetaceans in fisheries (by-catch per unit effort) (6)

8. Number of employed (FTE)
   (a) Number of employed (FTE) including male and female
   (b) Number of employed (FTE) female

9. Incidence of work-related injuries and accidents
   (a) Number of work-related injuries and accidents
   (b) % in relation to total fishers

10. Coverage of marine protected areas (MPAs) (7)
    (a) Coverage of Natura 2000 areas designated under the Birds and Habitats directives (km²)
    (b) Coverage of other spatial protection measures under Article 13.4 of Directive 2008/56/EC (km²)

Union priority 2 — Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture

(1) Context indicators shall be provided at EU aggregated level.
1. Volume of aquaculture production (tonnes)
2. Value of aquaculture production (thousand euros)
3. Net profit (thousand euros)
4. Volume of production organic aquaculture (tonnes)
5. Volume of production recirculation system (tonnes)
6. Number of employed (FTE)
   (a) Number of employed (FTE) including male and female
   (b) Number of employed (FTE) female

Union priority 3 — Fostering the implementation of the CFP (Control and Data Collection)

A. Control Measures
1. Serious infringements in the MS (total number in the last 7 years)
2. Landings that are subject to physical control (%)
3. Existing resources available for control
   (a) Control vessels and aircrafts available (number)
   (b) Number of employed (FTE)
   (c) Budgetary allocation (evolution last 5 years, thousand euros)
   (d) Vessels equipped with ERS and/or VMS (number)

B. Data Collection Measures
Fulfilment of data calls under DCF (%) (%)

Union priority 4 — Increasing employment and territorial cohesion

Extent of coastline, main waterways and main water bodies
(a) Extent of coastline (km)
(b) Extent of main waterways (km)
(c) Extent of main water bodies (km²)

Union priority 5 — Fostering marketing and processing
1. Producer organisations (POs), associations of POs, inter-branch organisations (IBOs)
   (a) Number of POs
   (b) Number of associations of POs
   (c) Number of IBOs
   (d) Number of producers or operators per PO
   (e) Number of producers or operators per association of POs
   (f) Number of producers or operators per IBO
   (g) % of producers or operators member of PO
### Union priority 6 — Fostering the implementation of the Integrated Maritime Policy

1. Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain (%)

2. Coverage of marine protected areas (MPAs)
   - (a) Coverage of Natura 2000 areas designated under the Birds and Habitats directives (km²)
   - (b) Coverage of other spatial protection measures under Article 13.4 of Directive 2008/56/EC (km²)

### OUTPUT INDICATORS

**Union priority 1 — Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries (Number of operations) (°Indicators also relevant to operations in inland fisheries)**

1. Innovation, advisory services and partnerships with scientists °

2. Systems of allocation of fishing opportunities °

3. Added value, quality, use of unwanted catches and fishing ports, landing sites, actions halls and shelters °

4. Conservation measures, reduction of the fishing impact on the environment and fishing adaptation to the protection of species °

5. Permanent cessation

6. Protection and restoration of biodiversity and ecosystems (°°)

7. Energy efficiency and mitigation of climate change °

8. Replacement or modernisation of engines °

9. Promoting human capital and social dialogue, diversification and new forms of income, start-ups for fishermen and health/safety °
10. Temporary cessation

11. Mutual funds

**Union priority 2 — Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture**

(Number of operations)

- 1. Innovation, advisory services
- 2. Productive investments in aquaculture
- 3. Limiting the impact of aquaculture on the environment (eco-management, audit schemes, organic aquaculture environmental services)
- 4. Increasing potential of aquaculture sites and measures on public and animal health
- 5. Promoting human capital of aquaculture in general and new aquaculture farmers
- 6. Aquaculture stock insurance

**Union priority 3 — Fostering the implementation of the CFP: Control and Data Collection.**

(Number of operations)

- 1. Implementing the Union’s control, inspections and enforcement system
- 2. Supporting the collection, management and use of data

**Union priority 4 — Increasing employment and territorial cohesion**

(Number of operations, except 1)

- 1. Number of local development strategies selected
- 2. Preparatory support
- 3. Cooperation

**Union priority 5 — Fostering marketing and processing**

(Number of operations, except 1 and 4)

- 1. Number of producers organisations or associations of producers organisations supported for production and marketing plans
- 2. Marketing measures and storage aid
- 3. Processing
- 4. Number of operators benefitting from compensation schemes

**Union priority 6 — Fostering the implementation of the Integrated Maritime Policy**

(Number of operations)

- 1. Integrated maritime surveillance
### III. RESULT INDICATORS

#### Union priority 1 — Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries

1. Change in the value of production (thousand euros)
2. Change in the volume of production (tonnes)
3. Change in net profits (thousand euros)
4. Change in unwanted catches (\(^{(1)}\))
   - (a) Change in unwanted catches (tonnes)
   - (b) Change in unwanted catches (%)
5. Change in fuel efficiency of fish capture (in litres of fuel/tonnes landed catch)
6. Change in the % of unbalanced fleets (\(^{(3)}\))
7. Employment created (FTE) in the fisheries sector or complementary activities
8. Employment maintained (FTE) in the fisheries sector or complementary activities
9. Change in the work-related injuries and accidents
   - (a) Change in the number of work-related injuries and accidents
   - (b) Change in the % of work-related injuries and accidents in relation to total fishers
10. Change in the coverage of marine protected areas (MPAs) relevant for UP 1:
    - (a) Change in the coverage of Natura 2000 areas designated under the Birds and Habitats directives (\(\text{km}^2\))
    - (b) Change in the coverage of other spatial protection measures under Article 13.4 of Directive 2008/56/EC (\(\text{km}^2\))

#### Union priority 2 — Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture

1. Change in volume of aquaculture production (tonnes)
2. Change in value of aquaculture production (thousand euros)
3. Change in net profit (thousand euros)
4. Change in the volume of production organic aquaculture (tonnes)
5. Change in the volume of production recirculation system (tonnes)
6. Change in the volume of aquaculture production certified under voluntary sustainability schemes (tonnes)

7. Aquaculture farms providing environmental services (number of farms)

8. Employment created (FTE)

9. Employment maintained (FTE)

Union priority 3 — Fostering the implementation of the CFP (Control and Data Collection)

A. Control Measures

1. Amount of serious infringements detected (\(14\))

2. Landings that have been the subject to physical control (%)

B. Data Collection Measures

Increase in the percentage of fulfilment of data calls (%) (\(15\))

Union priority 4 — Increasing employment and territorial cohesion

\(\n\)

Union priority 5 — Fostering marketing and processing

Change in the EU production with distinction between POs and non-POs

(a) Change in value of first sales in POs (thousand euros)

(b) Change in volume of first sales in POs (tonnes)

(c) Change in value of first sales in non-POs (thousand euros)

(d) Change in volume of first sales in non-POs (tonnes)

Union priority 6 — Fostering the implementation of the Integrated Maritime Policy

1. Increase in the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain (%)

2. Change in the coverage of marine protected areas (MPAs) relevant for UP 6:

(a) Change in the coverage of Natura 2000 areas designated under the Birds and Habitats directives (km\(^2\))
Change in the coverage of other spatial protection measures under Article 13.4 of Directive 2008/56/EC (km²)

(1) Employment measured in full time equivalents.
(2) As defined in the guidelines for analysis of the balance between fishing capacity and fishing opportunities. Value of indicator where available in the fleet report.
(3) As defined in the guidelines for analysis of the balance between fishing capacity and fishing opportunities. Value of indicators where available in the fleet report.
(7) Data on nationally designated MPAs are included in the Common Database on Designated Areas (CDDA) maintained by the European Environment Agency. Descriptive and spatial data for each Nature 2000 area are available in http://natura2000.eea.europa.eu
(8) 100 % minus failures to deliver the full data set required within a module within a specific data call relative to the overall number of data calls in %.
(10) Including operations under the relevant EMFF measure that may support the objectives of achieving and maintaining a good environmental status as required by Directive 2008/56/EC.
(11) Promotion of the protection of marine environment, and the sustainable use of marine and coastal resources.
(12) Catches which are landed not for human consumption.
(13) According to starting values estimates in the EMFF OPs.
(14) The necessary data will be available to the Commission via a website that every Member State should have had installed since 1.1.2012, in accordance with Articles 93 and 116 of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.
(15) 100 % minus failures to deliver the full data set required within a module within a specific data call relative to the overall number of data calls in %.
CORRIGENDA

the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003,
the European Parliament and of the Council with regards to the content and construction of a
common monitoring and evaluation system for the operations funded under the European
Maritime and Fisheries Fund

(Official Journal of the European Union L 283 of 27 September 2014)

On page 16, in the Annex, Part II 'Output indicators', Section 'Union priority 4 — Increasing employment and territorial
cohesion (Number of projects, except 1)'

for: ‘1. Number of local development strategies implemented’;
read: ‘1. Number of local development strategies selected’;

on page 17, in the Annex, Part III 'Result indicators', Section 'Union priority 1 — Promoting environmentally sustain-
able, resource efficient, innovative, competitive and knowledge based fisheries':

for: ‘5. Change in fuel efficiency of fish capture (in litres of fuel/EUR landed catch)’;
read: ‘5. Change in fuel efficiency of fish capture (in litres of fuel/tonnes landed catch)’;

on page 19, in the Annex, Part III 'Result indicators', Section 'Union priority 4 — Increasing employment and territorial
cohesion':

for: ‘1. Employment created (FTE) in the aquaculture sector’;
read: ‘1. Employment created (FTE)’;

on page 19, in the Annex, Part III 'Result indicators', Section 'Union priority 4 — Increasing employment and territorial
cohesion':

for: ‘2. Employment maintained (FTE) in the aquaculture sector’;
read: ‘2. Employment maintained (FTE)’. 
CORRIGENDA


(Official Journal of the European Union L 283 of 27 September 2014)

On page 15, in the Annex, Part II ‘Output indicators’:

for: ‘Union priority 1 — Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries (Number of projects) (*Indicators also relevant to projects in inland fisheries)’,

read: ‘Union priority 1 — Promoting environmentally sustainable, resource efficient, innovative, competitive and knowledge based fisheries (Number of operations) (*Indicators also relevant to operations in inland fisheries)’.

On page 16, in the Annex, Part II ‘Output indicators’:

1. for: ‘Union priority 2 — Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture (Number of projects)’,

read: ‘Union priority 2 — Fostering environmentally sustainable, resource efficient, innovative, competitive and knowledge based aquaculture (Number of operations)’;

2. for: ‘Union priority 3 — Fostering the implementation of the CFP: Control and Data Collection. (Number of projects)’,

read: ‘Union priority 3 — Fostering the implementation of the CFP: Control and Data Collection. (Number of operations)’;

3. for: ‘Union priority 4 — Increasing employment and territorial cohesion (Number of projects, except 1)’,

read: ‘Union priority 4 — Increasing employment and territorial cohesion (Number of operations, except 1)’.

On page 17, in the Annex, Part II ‘Output indicators’:

1. for: ‘Union priority 5 — Fostering marketing and processing (Number of projects, except 1 and 4)’,

read: ‘Union priority 5 — Fostering marketing and processing (Number of operations, except 1 and 4)’;

2. for: ‘Union priority 6 — Fostering the implementation of the Integrated Maritime Policy (Number of projects)’,

read: ‘Union priority 6 — Fostering the implementation of the Integrated Maritime Policy (Number of operations)’. 
On page 19, in the Annex, in footnote 10:

for: 'Including projects under the relevant EMFF measure that may support the objectives of achieving and maintaining a good environmental status as required by Directive 2008/56/EC.'

read: 'Including operations under the relevant EMFF measure that may support the objectives of achieving and maintaining a good environmental status as required by Directive 2008/56/EC.'
On page 19, in the Annex, in footnote 10:

For: 'Including projects under the relevant EMFF measure that may support the objectives of achieving and maintaining a good environmental status as required by Directive 2008/56/EC.',

Read: 'Including operations under the relevant EMFF measure that may support the objectives of achieving and maintaining a good environmental status as required by Directive 2008/56/EC.'
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 1046/2014

of 28 July 2014

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions

THE EUROPEAN COMMISSION,

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


Whereas:

(1) Under Chapter V of Regulation (EU) No 508/2014, the European Maritime and Fisheries Fund (EMFF) may support the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions referred to in Article 349 of the Treaty,

(2) In order to maintain the competitiveness of certain fishery and aquaculture products from the Union's outermost regions compared with that of similar products from other Union's regions, the Union introduced measures in 1992 to compensate for the related additional costs in the fisheries and aquaculture sectors. The compensation measures for the period 2007-2013 were laid down in Council Regulation (EC) No 791/2007 (2). Due to the Union's outermost regions' structural, social and economic situation, compounded by their remoteness, insularity, small size, difficult topography, economic dependence on a few products, and special climatic conditions, it is necessary to continue to providing support to offset additional costs for the fishing, farming, processing and marketing of certain fishery and aquaculture products as of 1 January 2014. Indeed, the compensation for additional costs incurred helps operators from those regions to remain economically viable.

(3) Those additional costs should be laid out in a compensation plan as referred to in Article 72 of Regulation (EU) No 508/2014.

(4) In order to provide for a harmonised and equal treatment of all regions concerned, through a better comparability between regions and from one year to the next, and in particular in order to avoid overcompensation of additional costs, it is necessary to lay down the criteria for the calculation of the additional costs resulting from the specific handicaps of the Union's outermost regions. The common criteria to be used will ensure that a homogeneous method of calculation of the additional costs is applied to all regions concerned.

(5) Reference costs for products or categories of products incurred by operators in the continental part of the Member State or of the Union territory on the basis of which additional costs are determined should be estimated with particular care to avoid overcompensation.

(2) Council Regulation (EC) No 791/2007 of 21 May 2007 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the outermost regions the Azores, Madeira, the Canary Islands, French Guiana and Réunion (OJ L 176, 6.7.2007, p. 1).
There are products or categories of products for which there are no comparison criteria or measuring units in the continental part of the Member State territory concerned. In such cases, the reference for calculating the additional cost shall be fixed in comparison with the costs for equivalent product or categories of products incurred by operators from the continental part of the territory of the Union.

In view of the different marketing conditions in the outermost regions, the fluctuations in captures and stocks and in market demands, it should be left to the Member States concerned to determine the fishery and aquaculture products or categories of products eligible for compensation, their respective maximum quantities and the levels of the compensation amounts within the overall allocation per Member State.

Member States should set the compensation amounts at a level which allows appropriate off-setting of additional costs arising from the specific handicaps of the outermost regions and avoids overcompensation. To that end, the compensation amount should also take into account other types of public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 73 of Regulation (EU) No 508/2014, having an impact on the level of additional costs.

In order to provide for a harmonised presentation of additional costs, it is necessary to express additional costs on the basis of tons of live weight, defined by Council Regulation (EC) No 1224/2009 and Commission Regulation (EC) No 409/2009 which establishes fresh and fresh salted European Union conversion factors and presentation codes for processed fish, to convert stored or processed fish weight into fish live weight for the purpose of monitoring catches.

In order to demonstrate that there is no overcompensation, Member States should include relevant information on the implementation of the compensation mechanism in the annual implementation report, as set out in Article 114(2) of Regulation (EU) No 508/2014.

In order to allow for the prompt application of the measures provided for in this Regulation, given that expenditure is already eligible for the European Maritime and Fisheries Fund since 1 January 2014 in line with Article 65(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council, 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

This Regulation lays down the criteria for the calculation of the additional costs incurred during the eligibility period defined in Article 65(2) of Regulation (EU) No 1303/2013 by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions referred to in Article 349 of the Treaty due to the specific handicaps of those outermost regions.

Article 2

1. Additional costs referred to in Article 1 shall be calculated separately for each of the following activities:

(a) fishing;

(b) farming;

(c) processing;

(d) marketing.


2. Within each activity referred to in paragraph 1, additional costs shall be calculated by items of expenditure, as listed in the compensation plans referred to in Article 72 of Regulation (EU) No 508/2014 for each product or category of products identified by the Member State as eligible for compensation.

3. Additional costs shall be determined for any given item of expenditure as the difference between the costs incurred by operators in the outermost regions concerned, reduced by any type of public intervention affecting the level of additional costs, and the comparable costs incurred by continental operators of the Member State concerned.

4. By derogation to paragraph 3, for items of expenditure specific to products or categories of products for which there are no comparison criteria or measuring units in the continental part of the Member State territory, the additional cost shall be determined in comparison with the comparable costs for equivalent products or categories of products incurred by operators from the continental part of the territory of the Union.

5. The calculation of additional costs shall take into account any public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 73 of Regulation (EU) No 508/2014.

Article 3

1. The calculation of additional costs shall be based only on costs resulting from the specific handicaps of the outermost regions.

2. The calculation of additional costs shall be based on an annual average of recorded prices.

3. Additional costs shall be expressed in euros per ton of live weight and where necessary, all cost components of the total additional cost shall be converted into euros per ton of live weight.

Article 4

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, 28 July 2014.

For the Commission
The President
José Manuel BARROSO
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/531
of 24 November 2014

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels

THE EUROPEAN COMMISSION,

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


Whereas:

(1) In accordance with Regulation (EU) No 508/2014, the Commission is empowered to lay down specific rules on eligibility of costs relating to operations for the protection and restoration of marine biodiversity and ecosystems in the framework of sustainable fishing activities; on eligibility of costs for operations aimed at mitigating climate change and at improving energy efficiency of fishing vessels, and on eligibility of operations aimed at improving the hygiene, health, safety and working conditions for fishermen.

(2) All the provisions of this Regulation deal with aspects related to the eligibility of costs or operations, and two of them relate to operations involving investments on board vessels. Furthermore, all these measures have an impact on the form in which the fishing activity is carried out. Therefore, these provisions are closely linked. In order to ensure consistency between those provisions, and to facilitate a comprehensive view and a compact access to them by all Union residents, those provisions should be adopted within the same act.

(3) The fishing activity is still one of the most dangerous occupations in the Union, with a significant number of accidents occurring on small scale fishing vessels. Accordingly, Council Directives 93/103/EC (2) and 92/29/EEC (3) set out minimum requirements for health and safety applicable to work on board fishing vessels, which should be implemented into national legislation. Regulation (EU) No 508/2014 provides for financing of certain investments in order to improve hygiene, health, safety and working conditions for fishermen, provided that they go beyond the requirements set out in Union and national legislation. It is therefore necessary to specify which costs related to such specific investments including training on health and information campaigns, can be funded under Regulation (EU) No 508/2014.

(4) The purchase and installation on board vessels of equipment aimed at reducing the emission of pollutants or green-house gases and increasing energy efficiency of fishing vessels can make a contribution to climate change

objectives. The efficient operation of vessels can also result in a significant reduction of energy consumption.

Article 41(1)(a) of Regulation (EU) No 508/2014 provides for the financing of investments in equipment or on board aimed at reducing the emission of pollutants or greenhouse gases and increasing the energy efficiency of fishing vessels, as well as investments in fishing gear provided that they do not undermine the selectivity of that fishing gear and energy efficiency audits and schemes. It is therefore necessary to further specify the costs that can be funded under the EMFF to promote those objectives.

(5) Costs relating to operations contributing to the protection and restoration of marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities should also be specified. These operations should encompass the basic principles underlying Green Infrastructure, as defined in the Commission Communication (1) on Green Infrastructure (2), which can make a significant contribution to the effective implementation of policies that seek to achieve their objectives in whole or in part through nature-based solutions.

(6) Eligible costs relating to operations referred to in Article 32, Article 40(1) and Article 41(1)(a) of Regulation (EU) No 508/2014 have to comply with the conditions defined in its Article 11 which provides that operations increasing the fishing capacity of the vessel or equipment increasing the ability of a vessel to find the fish are ineligible for support under the EMFF. In order to preserve the incentive effect of the investments eligible under this regulation, costs relating to scheduled or preventive maintenance of any part of equipment which keep a device in working order should be excluded from funding under the EMFF.

(7) As the period of eligibility for operations to be funded under the EMFF started on 1 January 2014, in order to allow for the prompt application of the measures provided for in this Regulation, in particular with regard to eligibility of costs, and to allow Member States to prepare and implement their operational programme under the EMFF, 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:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation identifies:

(a) the types of operations eligible for support from the EMFF in order to improve hygiene, health, safety and working conditions for fishermen;

(b) the costs eligible for support from the EMFF in order to protect and restore marine biodiversity and ecosystems and compensation regimes in the framework of sustainable fishing activities;

(c) the costs eligible for support from the EMFF in order to improve the energy efficiency of fishing vessels and the mitigate the effects of climate change.

CHAPTER II
COMMON PROVISIONS

Article 2
Excluded costs

1. Scheduled or preventive maintenance costs of any part of equipment which keep a device in working order shall not be eligible for support under the EMFF on the basis of this Regulation.


(2) Green Infrastructure is a strategically planned network of natural and semi-natural areas with other environmental features designed and managed to deliver a wide range of ecosystem services. It incorporates green spaces (or blue if aquatic ecosystems are concerned) and other physical features in terrestrial (including coastal) and marine areas.
2. Only those costs necessary for and directly related to the installation of items as provided for under this Regulation shall be eligible for support under the EMFF.

CHAPTER III
COSTS RELATING TO THE IMPROVEMENT OF HYGIENE, HEALTH, SAFETY AND WORKING CONDITIONS FOR FISHERMEN

Article 3
Eligible operations on safety

For operations that are aimed at improving safety for fishermen on board fishing vessels in accordance with Article 32 of Regulation (EU) No 508/2014, the purchase and, if applicable, the installation of the following items are eligible for support under the EMFF:

(a) life-rafts;
(b) hydrostatic release units for life-rafts;
(c) personal locator beacons such as Emergency Position Indicating Radio Beacon ('EPIRB') devices, which may be integrated into lifejackets and working clothes of fishermen;
(d) Personal Flotation Devices ('PFD'), in particular immersion or survival suits, life buoys and jackets;
(e) distress flares;
(f) line throwing appliances;
(g) man-overboard (MOB) recovery systems;
(h) fire-fighting apparatus, such as fire extinguishers, fire blankets, fire and smoke detectors, breathing apparatus;
(i) fire protection doors;
(j) fuel tank shut-off valves;
(k) gas detectors and gas alarm systems;
(l) bilge pumps and alarms;
(m) equipment for radio and satellite communications;
(n) watertight hatches and doors;
(o) guards on machinery, such as winches or net drums;
(p) gangways and access ladders;
(q) search, deck or emergency lighting;
(r) safety release mechanisms for cases where fishing gear catches an underwater obstruction;
(s) safety cameras and monitors;
(t) equipment and elements necessary to improve deck safety.

Article 4
Eligible operations on health

For operations or the provision of equipment that are aimed at the improvement of the health conditions for fishermen on board fishing vessels in accordance with Article 32 of Regulation (EU) No 508/2014, the following actions are eligible for funding:

(a) the purchase and installation of first aid kits;
(b) the purchase of medicines and devices for urgent treatment on board;
(c) the provision of telemedicine including e-technologies, equipment and medical imagery applied to distance consultation from the vessels;
(d) the provision of guides and manuals to improve health on-board;
(e) information campaigns to improve health on-board.
Article 5

**Eligible operations on hygiene**

For operations or the provision of equipment that are aimed at the improvement of hygiene conditions for fishermen on board fishing vessels in accordance with Article 32 of Regulation (EU) No 508/2014, the purchase and, if applicable, the installation of the following items are eligible for support:

(a) sanitary facilities, such as toilet and washing facilities;
(b) kitchen facilities and equipment for food supplies storage;
(c) water purification devices for potable water;
(d) cleaning equipment to keep sanitary conditions on board;
(e) guides and manuals on the improvement of hygiene on board, including software tools.

Article 6

**Eligible operations on working conditions**

For operations or the provision of equipment that are aimed at the improvement of working conditions on board fishing vessels in accordance with Article 32 of Regulation (EU) No 508/2014, the purchase and, if applicable, the installation of the following items are eligible for support:

(a) deck railings;
(b) shelter deck structures and the modernisation of cabins with a view of providing protection from adverse weather conditions;
(c) items relating to the improvement of cabin safety and to the provision of common areas for the crew;
(d) equipment to reduce heavy manual lifting, excluding machines directly related to the fishing operations such as winches;
(e) anti-slipping paint and rubber mats;
(f) insulation equipment against noise, heat or cold, and equipment to improve ventilation;
(g) working clothes and safety equipment such as waterproof safety boots, eyes and breathing protection, protective gloves and helmets, or protective equipment against falls;
(h) emergency and safety warning signs;
(i) risk analysis and assessments to identify the risks for fishermen both in port or in navigation in order to take measures to prevent or reduce risks;
(j) guides and manuals on the improvement of working conditions on board.

CHAPTER IV

COSTS RELATING TO THE PROTECTION AND RESTORATION OF MARINE BIODIVERSITY AND ECOSYSTEMS IN THE FRAMEWORK OF SUSTAINABLE FISHING ACTIVITIES

Article 7

**Eligible costs for the collection of waste by fishermen**

For operations relating to the collection of waste by fishermen from the sea, as referred to in Article 40(1)(a) of Regulation (EU) No 508/2014, costs relating to the following actions are eligible for support:

(a) the removal of lost fishing gear from the sea, in particular in order to combat ghost fishing;
(b) the purchase and, if applicable, the installation of equipment on board for the collection and storage of litter;
(c) the creation of schemes of waste collection for participating fishermen, including financial incentives;
(d) the purchase and, if applicable, the installation of equipment based in fishing port facilities for the storage and recycling of litter.
(e) communication, information, awareness raising campaigns, to encourage fishermen and other stakeholders to participate in projects to remove lost fishing gear;

(f) training for fishermen and port agents.

Article 8

Eligible costs for facilities intended to protect and enhance marine fauna and flora

1. For operations relating to the construction, installation or modernisation of static or movable facilities in accordance with Article 40(1)(b) of Regulation (EU) No 508/2014, costs relating to the following actions are eligible for support:

(a) the purchase and, if applicable, the installation of facilities to protect marine areas from trawling;

(b) the purchase and, if applicable, the installation of facilities to restore degraded marine ecosystems;

(c) costs relating to preliminary work such as prospecting, scientific studies or evaluations;

(d) costs, in the outermost regions, relating to the purchase and, if applicable, the installation of anchored fish aggregating devices which contribute to sustainable and selective fishing, in accordance with Article 38(2) of Regulation (EU) No 508/2014.

2. For operations referred to in paragraph 1, the following costs shall not be eligible:

(a) acquisition of a vessel to be submerged and used as an artificial reef;

(b) costs relating to the construction and maintenance of fish aggregating devices, except for costs provided for in paragraph 1(d).

Article 9

Eligible costs for the contribution to better management or conservation of marine biological resources

1. For operations that are aimed at a better management or conservation of marine biological resources as referred to in Article 40(1)(c) of Regulation (EU) No 508/2014 and that comply with Article 38 of that Regulation costs relating to the purchase or, if applicable, the installation of the following items are eligible for support:

(a) circular hooks;

(b) acoustic deterrent devices on nets;

(c) turtle excluder devices (‘TEDs’);

(d) streamer lines;

(e) other tools or devices proven efficient in preventing accidental catches of protected species;

2. In addition, costs relating to the following actions and projects are eligible for support:

(a) training for fishermen on better management or conservation of marine biological resources;

(b) projects focussing on coastal habitats of importance for fish, birds and other organisms;

(c) projects focusing on areas of importance for fish reproduction, such as coastal wetlands, may also be eligible.

3. For the replacement of existing fishing gear with low impact fishing gear, costs related to fish pots and traps, jigging and hand-lining may be eligible for support.

Article 10

Eligible costs for the preparation of protection and management plans for fishery-related activities

For operations consisting in the preparation of protection and management plans for fishery-related activities, as referred to in Article 40(1)(d) of Regulation (EU) No 508/2014, costs relating to the following actions are eligible for support:

(a) carrying out studies, in particular for the monitoring and surveillance of species and habitats including mapping, and risk management;
(b) mapping fishing activity and intensity and interactions with protected species and habitats;
(c) consulting stakeholders during the preparation of management plans;
(d) developing and applying indicators for pressures and for impacts and performing conservation status assessments;
(e) training for fishermen and other persons working for or on behalf of the bodies responsible for the management of marine protected areas (MPAs) relevant for the preparation of protection and management plans for fishery-related activities;
(f) demarcation of MPAs;
(g) surveillance including salaries of personnel involved in surveillance activities;
(h) carrying out publicity and awareness raising measures in relation to MPAs;
(i) assessing the impacts of the management plans on Natura 2000 areas and on the fisheries areas affected by the management plans.

Article 11

Eligible costs for the management, restoration and monitoring of Natura 2000 sites and Marine Protected Areas

For operations relating to the management, restoration and monitoring of Natura 2000 sites and Marine Protected Areas and to increasing environmental awareness, as referred to in Article 40(1)(e), (f) and (g) of Regulation (EU) No 508/2014, costs related to the following actions are eligible for support:

(a) consultation of stakeholders during the preparation of management plans;
(b) development and application of indicators for pressures/impacts and conservation status assessments;
(c) surveillance of Natura 2000 sites and MPAs;
(d) training for persons working for or on behalf of the bodies responsible for the management of Natura 2000 sites and MPAs;
(e) training of fishermen on conservation and restoration of marine ecosystems and related alternative activities such as eco-tourism in Natura 2000 sites and MPAs;
(f) mapping fishing activity and monitoring its intensity and recording fishery interactions with protected species such as seals, sea turtles, dolphins, seabirds;
(g) supporting the development of fisheries management measures in Natura 2000 sites and MPAs, such as IA studies and risk assessment, including actions fostering the improvement of their coherence;
(h) support to measures increasing environmental awareness, involving fishermen, with regard to the protection and restoration of marine biodiversity;
(i) cooperation and networking of managers of Natura 2000 sites and MPAs.

Article 12

Eligible costs for the participation in other actions aimed at maintaining and enhancing biodiversity and ecosystem services

1. For operations relating to the participation in other actions aimed at maintaining and enhancing biodiversity and ecosystem services as referred to in Article 40(1)(i) of Regulation (EU) No 508/2014, costs related to the following actions are eligible for support:

(a) costs relating to schemes to test novel monitoring techniques, and in particular:
   (i) remote electronic monitoring systems, such as CCTV, for the monitoring and recording of incidental catches of protected species;
(ii) the recording of oceanographic data such as temperature, salinity, plankton, algae blooms or turbidity;

(iii) the mapping of invasive alien species (IAS);

(iv) actions, including studies, to prevent and control the expansion of IAS;

(b) financial incentives for the installation on board of automatic recording devices for monitoring and recording oceanographic data such as temperature, salinity, plankton, algae blooms or turbidity;

(c) costs for chartering of commercial fishing vessels for environmental observation at a rate proportional to the activity;

(d) costs for other scientific actions related to the mapping and assessment of marine and coastal ecosystems and their services.

2. For operations aiming at restoring specific marine and coastal habitats in support of sustainable fish stocks, as referred to in Article 40(1)(i) of Regulation (EU) No 508/2014, the following actions are eligible for support:

(a) actions reducing physical and chemical pollution;

(b) actions reducing other physical pressures, including anthropogenic underwater noise that negatively affect biodiversity;

(c) positive conservation measures to protect and conserve flora and fauna, including the reintroduction of or stocking with native species, and applying Green Infrastructure principles referred to in the Commission Communication on Green Infrastructure (1);

(d) actions to prevent, control or eliminate IAS.

CHAPTER V

COSTS RELATING TO THE PROMOTION OF ENERGY EFFICIENCY AND THE MITIGATION OF CLIMATE CHANGE

Article 13

Eligible costs related to the hydrodynamic of the hull of the vessel

1. For operations that are aimed at improving the hydrodynamics of the hull of the vessel in accordance with Article 41(1)(a) of Regulation (EU) No 508/2014, costs related to the following actions are eligible for support:

(a) investments on stability mechanisms such as bilge keels and bulbous bows that contribute to improving sea-keeping and stability;

(b) costs related to the use of non-toxic antifouling such as copper coating in order to reduce friction;

(c) costs relative to the steering gear, such as steering gear control systems and multiple rudders to reduce rudder activity depending on weather and sea-state conditions;

(d) tank testing in order to provide a basis for improving hydrodynamics.

2. Costs relating to basic hull maintenance shall not be eligible for funding under this Article.

Article 14

Eligible costs related to the improvement of the propulsion system of the vessel

For operations that are aimed at improving the propulsion system of the vessel in accordance with Article 41(1)(a) of Regulation (EU) No 508/2014, costs related to the purchase and, if necessary, the installation of the following items are eligible for support:

(a) energy efficient propellers including drive shafts;

(b) catalysers;

(c) energy efficient generators such as those using hydrogen, or natural gas;

(d) renewable energy propulsion elements such as sails, kites, windmills, turbines, or solar panels;

(e) bow thrusters;
(f) conversion of engines to run on biofuels;
(g) econometers, fuel management systems and monitoring systems;
(h) investments in nozzles that improve the propulsion system.

**Article 15**

**Eligible costs related to investments in fishing gear and equipment**

For investments in fishing gear and fishing equipment as referred to in Article 41(1)(a) of Regulation (EU) No 508/2014, costs relating to the following actions are eligible for support:

(a) change from towed gear to alternative gear;
(b) towed gear modifications;
(c) investments in towed gear monitoring equipment.

**Article 16**

**Eligible costs related to investments aimed at the reduction of electricity or thermal energy consumption**

For investments that are aimed at the reduction of electricity or thermal energy consumption in accordance with Article 41(1)(a) of Regulation (EU) No 508/2014, the following costs are eligible for support:

(a) investments to improve the refrigeration, freezing, or insulation systems for vessels under 18 m;
(b) investments to encourage the recycling of heat within the vessel involving the heat being recovered and reused for other auxiliary operations within the vessel.

**CHAPTER VI**

**FINAL PROVISIONS**

**Article 17**

**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, 24 November 2014.

*For the Commission*

*The President*

Jean-Claude JUNCKER
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/288

of 17 December 2014


THE EUROPEAN COMMISSION,

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


Whereas:

(1) The achievement of the objectives of the Common Fisheries Policy (CFP) should not be undermined by operators violating CFP rules. Pursuant to Article 42(1) 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 by operators with CFP rules.

(2) According to Article 42(2) of Regulation (EU) No 1380/2013, serious infringements by operators of the CFP rules are to result in temporary or permanent bans on access to Union financial assistance. Such measures are to be dissuasive, effective, and proportionate.

(3) In order to safeguard the financial interest of the Union and its taxpayers, operators that, within a particular time before submitting an application for financial assistance, committed serious infringements, offence or fraud as set out in Article 10 of Regulation (EU) No 508/2014 should not benefit from financial assistance from the EMFF.

(4) Operators applying for EMFF support should be clearly identifiable in order to verify the admissibility of their applications. In order to attain the objectives of the conditionality of EMFF support, it is appropriate to lay down the necessary provisions ensuring that such operators comply with the conditions of admissibility for EMFF support in relation to all fishing vessels under their effective control.

(5) In accordance with Article 10(4) of Regulation (EU) No 508/2014, the duration of the inadmissibility period shall be proportionate to the nature, gravity, duration and repetition of the serious infringement, offence or fraud. It is therefore necessary to lay down rules for calculation of the duration of inadmissibility and to identify the relevant starting and ending dates of the inadmissibility period.

(6) In accordance with Article 42(3) of Regulation (EU) No 1380/2013 and Article 10(4)(a) of Regulation (EU) No 508/2014, where the competent authority has determined that an operator has committed a serious

infringement, an application from that operator is to be inadmissible for EMFF support for a period of at least 12 months. As Regulation (EU) No 508/2014 applies as from 1 January 2014, in order to ensure proportionality and legal certainty only serious infringements determined by a decision taken as from 1 January 2013 should be taken into account for the calculation of the inadmissibility period.

(7) Nevertheless, an immediate and automatic trigger of inadmissibility for EMFF support would be disproportionate in infringement cases which, while maintaining their serious character as determined by the competent authorities, do not necessarily directly cause a serious prejudice to the fishing resources and the marine environment referred to in Article 90(4) of Council Regulation (EC) No 1224/2009 (1). Such cases would include, for instance, minor instances of misreporting of catches which should not result as such in the immediate inadmissibility of applications for EMFF support.

(8) Serious infringements related to the taking on board, transshipping or landing of undersized fish should be appraised in relation to the gradual entry into force of the elimination of discards as envisaged by the CFP. It appears unnecessary and inappropriate to immediately render inadmissible applications for EMFF support by operators having committed such infringements.

(9) In those exceptional cases referred to in recitals (7) and (8), in order to ensure that the inadmissibility of applications by operators for EMFF support complies with the principle of proportionality, it is appropriate to base the calculation of the period of inadmissibility on the already established system of points assigned for certain serious infringements as laid down in Article 92 of Regulation (EC) No 1224/2009, and Article 126 and Annex XXX of Commission Implementing Regulation (EU) No 404/2011 (2). In those exceptional cases listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011, the starting date of the application and calculation of inadmissibility period should be defined with regard to Article 126(4) of Implementing Regulation (EU) No 404/2011.

(10) In accordance with Article 92(4) of Regulation (EC) No 1224/2009, if the holder of a fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on its fishing licence should be deleted. As a consequence, points on a fishing licence remain valid at least three years. As the provisions of the EMFF apply as from 1 January 2014, in order to ensure proportionality and legal certainty, points for serious infringements listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 should be taken into account for the calculation of the inadmissibility period, only if assigned as from 1 January 2013.

(11) Illegal, unreported and unregulated (IUU) fishing constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and fundamentally undermines the achievement of the CFP objectives. It is therefore appropriate to lay down rules on inadmissibility of applications for EMFF support from operators of fishing vessels flagged to countries included in the Union list of vessels engaged in IUU fishing or of vessels flagged to countries identified as non-cooperating third countries.

(12) Article 10(3) of Regulation (EU) No 508/2014 provides that applications submitted by operators who have committed a fraud in the context of the European Fisheries Fund (EFF) or the EMFF will be inadmissible for a certain period of time. As fraud constitutes one of the biggest threats to the financial interests of the Union and of its taxpayers, and in order to provide for a harmonised and equal treatment of operators in all Member States, rules appropriate to the gravity of such threat should be defined as regards the period during which applications submitted by operators who committed such fraud will be inadmissible.

(13) In order to ensure proportionate and effective application of rules on inadmissibility of applications by operators for EMFF support, it is appropriate to lay down rules for calculation of the inadmissibility periods in cases where a single operator owns more than one fishing vessel. These rules should ensure that EMFF support does not benefit fishing vessels that were used to commit serious infringements resulting in the inadmissibility of applications by those operators. It is also appropriate to lay down rules for revision of the inadmissibility period where further serious infringements are committed by an operator during the inadmissibility period.


(14) Rules should be laid down to ensure fair treatment of operators who become new owners of fishing vessels following a sale or other type of transfer of ownership while at the same time not undermining the Union system for control, inspection and enforcement laid down in Regulation (EC) No 1224/2009 which is necessary to achieve the objectives of the CFP.

(15) Should an operator’s fishing license be permanently withdrawn due to the high frequency and gravity of the infringements committed, the introduction of a ban on access to EMFF support until the end of the eligibility period laid down in Article 65(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (¹) is justified by the need to safeguard the financial interests of the Union and of its taxpayers. The ban would be justified even if according to the calculation method laid down in this Regulation the inadmissibility period ends before the end of the eligibility period.

(16) In accordance with Article 10(5) of Regulation (EU) No 508/2014, Member States are to require operators submitting an application under the EMFF to provide to the managing authority a signed statement confirming that they comply with criteria laid down in Article 10(1) of Regulation (EU) No 508/2014 and have not committed a fraud under the EF and the EMFF as referred to in Article 10(3) of that Regulation. Member States are also to verify the veracity of that statement. Member States should ensure that the application of national rules concerning the suspensory effects of review proceedings do not render the rules on determination of inadmissibility period ineffective.

(17) Concerning cases of serious infringements and offences referred to in Article 10(1)(c) and (d) of Regulation (EU) No 508/2014, those cases will need to be further assessed and analysed to ensure that the duration of the inadmissibility period is proportionate to the nature, gravity, duration and repetition of those serious infringements and offences. Following that analysis, this Regulation should be amended.

(18) In order to allow for the prompt application of the measures provided for in this Regulation and given the importance of ensuring a harmonised and equal treatment of operators in all Member States from the start of the programming period, this Regulation should enter into force on the day following that of its publication and apply from the first day of the eligibility period of the EMFF, namely 1 January 2014.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation applies to applications for support from the EMFF and identifies the period during which such applications submitted by operators who have carried out actions referred to in Article 10(1)(a) and (b) of Regulation (EU) No 508/2014, or in Article 10(3) of that Regulation, shall be inadmissible (the inadmissibility period).

Article 2

Definitions

For the purposes of this Regulation:

1. ‘infringement points’ means points assigned to the operator for a fishing vessel in the context of the point system for serious infringements set out in Article 92 of Regulation (EC) No 1224/2009.

2. ‘operator’ means an operator as defined in Article 4(30) of Regulation (EU) No 1380/2013 who submits an application for EMFF support.

CHAPTER II

DURATION AND STARTING DATE OF INADMISSIBILITY PERIOD

Article 3

Inadmissibility of applications by operators who have committed serious infringements under Article 42(1) of Council Regulation (EC) No 1005/2008 (1) or Article 90(1) of Regulation (EC) No 1224/2009

1. Where a competent authority has determined that an operator has committed a serious infringement under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009, applications for EMFF support by that operator shall be inadmissible for a period of 12 months.

2. By way of derogation from paragraph 1, where a Member State pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 assigns infringement points for serious infringements listed in points 1, 2, and 5 of Annex XXX to Regulation (EU) No 404/2011, the following rules shall apply:

(a) if the infringement points accumulated by an operator in respect of a fishing vessel remain below 9, applications for EMFF support by that operator shall be admissible;

(b) if the number of infringement points accumulated by an operator in respect of a fishing vessel is 9 points, the inadmissibility period shall be 12 months;

(c) each infringement point assigned in addition to the points accumulated by an operator in respect of a fishing vessel in point (b) shall result in an additional period of inadmissibility of 1 month.

3. The starting date of the inadmissibility period shall be the date of the first official decision by a competent authority determining that a serious infringement within the meaning of Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009 was committed.

For the purposes of calculating the inadmissibility period, only serious infringements committed as from 1 January 2013 and for which a decision within the meaning of the above subparagraph was taken as from that date shall be taken into account.

4. However, for the specific purposes of paragraph 2, the starting date of the inadmissibility period shall be the date of the first official decision by a competent authority assigning infringement points to an operator pursuant to Article 126(4) of Implementing Regulation (EU) No 404/2011 and resulting in that operator being assigned a total of 9 or more infringement points in respect of a fishing vessel.

For the purposes of calculating the inadmissibility period, only points for infringements committed as from 1 January 2013 and assigned by an official decision taken as from that date shall be taken into account.

Article 4

Inadmissibility of applications by operators included in the Union IUU vessel list or whose vessel is flagged to a non-cooperating third country

1. The period of inadmissibility for an operator whose fishing vessel is included in the Union list of fishing vessels engaged in illegal, unreported and unregulated (IUU) fishing as referred to in Article 27 of Regulation (EC) No 1005/2008 shall be the whole period during which the fishing vessel is included in that list and, in any event, not less than 24 months from the date of its listing.

2. Operators whose fishing vessel is flagged to a country identified as a non-cooperating third country as provided for in Article 33 of Regulation (EC) No 1005/2008 shall be inadmissible during the whole period while that country is listed and, in any event, for a minimum period of 12 months.

3. The starting date of the inadmissibility period shall be the date of entry into force of the Commission Regulation (EU) No 468/2010 (1) establishing the Union IUU vessel list or of the Council Implementing Decision 2014/170/EU (2) establishing the list of non-cooperating third countries or the date of an amendment to such a Regulation or a Decision whereby a fishing vessel or a country would be added to such a list.

Article 5

Inadmissibility of applications by operators that have committed fraud in the context of the EFF or the EMFF

1. Where it is determined by a competent authority that an operator committed a fraud in the context of the EFF or EMFF, all applications for EMFF support by that operator shall be inadmissible from the date of the first official decision establishing the fraud as defined in Article 1 of the Convention on the protection of the European Communities’ financial interests (3).

2. The inadmissibility period shall last until the end of the eligibility period of the EMFF as set out in Article 65(2) of Regulation (EU) No 1303/2013.

CHAPTER III

COMMON PROVISIONS

Article 6

Calculation of the inadmissibility period where the operator owns more than one fishing vessel

1. Where an operator owns or controls more than one fishing vessel, the inadmissibility period of an application by that operator shall be determined separately in relation to each individual fishing vessel, in accordance with Article 3 or Article 4.

2. However, applications for EMFF support by that operator shall also be inadmissible:

(a) if applications in relation to more than half of fishing vessels owned or controlled by that operator are inadmissible for EMFF support pursuant to Article 3 and Article 4, or

(b) if, in the case of serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011, the average number of assigned infringement points per fishing vessel owned or controlled by the operator is 7 or more.

3. By way of derogation from paragraphs 1 and 2, where a serious infringement committed by an operator is not related to any fishing vessel owned or controlled by that operator, all applications for EMFF support by that operator shall be inadmissible.

Article 7

Transfer of ownership

1. In the case of a sale or other type of transfer of ownership of a fishing vessel, the inadmissibility period concerning the operator transferring the fishing vessel and resulting from serious infringements committed prior to the change of ownership shall not be transferred to the new operator. The inadmissibility of applications by the new operator can only result from new serious infringements committed by that new operator.

2. However, where infringement points are assigned for serious infringements within the meaning of Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 committed prior to the change of ownership of the fishing vessel, those points shall be taken into account


for the purposes of calculating the inadmissibility period of the new operator pursuant to Article 3(2) and Article 6(2)(b) if that operator commits a new serious infringement under Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011.

**Article 8**

**Permanent withdrawal of the fishing licence**

By way of derogation from Article 6, where the fishing licence of an operator has been permanently withdrawn for any of the fishing vessels owned or controlled by that operator:

(a) in accordance with Article 129(2) of Implementing Regulation (EU) No 404/2011; or, where applicable,
(b) as a result of sanctions for serious infringements imposed by the Member States in accordance with Article 45 of Regulation (EC) No 1005/2008,

all applications by that operator shall be inadmissible for support from the EMFF from the date of the withdrawal until the end of the eligibility period as set out in Article 65(2) of Regulation (EU) No 1303/2013.

**Article 9**

**Revision of inadmissibility period**

Provided it lasts at least 12 months in total, the inadmissibility period:

(a) shall be reduced in the case of serious infringements pursuant to Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in points 1, 2, and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011 by 2 months if 2 infringement points are deleted in accordance with Article 133(3) of Implementing Regulation (EU) No 404/2011 for such serious infringements;

(b) shall be extended by 12 months for each additional serious infringement committed by the operator during the inadmissibility period under Article 42(1) of Regulation (EC) No 1005/2008 or Article 90(1) of Regulation (EC) No 1224/2009; or

(c) by way of derogation from paragraph (b), shall be extended in accordance with the rules set out in Article 3(2)(c) for each additional serious infringement committed by the operator during the inadmissibility period under Article 42(1)(a) of Regulation (EC) No 1005/2008 listed in items 1, 2 and 5 of Annex XXX to Implementing Regulation (EU) No 404/2011;

**CHAPTER IV**

**FINAL PROVISIONS**

**Article 10**

**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**.

It shall apply from 1 January 2014.

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

Done at Brussels, 17 December 2014.

For the Commission

The President

Jean-Claude JUNCKER
REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/2252
of 30 September 2015
amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund

THE EUROPEAN COMMISSION,

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


Whereas:

(1) In order to achieve the objectives of the Common Fisheries Policy (CFP) and to safeguard the financial interest of the Union and its taxpayers, operators that, within a particular time before submitting an application for financial assistance, committed serious infringements, offence or fraud as set out in Article 10 of Regulation (EU) No 508/2014 should not benefit from financial assistance from the European Maritime and Fisheries Fund (EMFF).

(2) Under Article 10(1) and (3) of Regulation (EU) No 508/2014, certain applications submitted by operators for support from the EMFF are to be inadmissible for a specific period of time. Such applications are, inter alia, inadmissible where the application has been made for support under Chapter II of Title V of that Regulation as regards the sustainable development of aquaculture and it has been determined by the competent authorities that the operator concerned has committed any of the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC of the European Parliament and of the Council (2). Under Article 10(4)(a) and (b) of Regulation (EU) No 508/2014, the period during which applications are inadmissible and the starting or ending dates of that period are to be identified by the Commission in a delegated act.

(3) Commission Delegated Regulation (EU) 2015/288 (3) identifies the inadmissibility period as well as the relevant starting or ending dates of that period for applications by operators who have carried out one or more of the actions referred to in Article 10(1)(a) and (b) of Regulation (EU) No 508/2014.

In accordance with Article 10(1)(d) of Regulation (EU) No 508/2014, it is also necessary to establish rules for calculating the duration of the inadmissibility period and the relevant starting or ending dates for applications for support under Chapter II of Title V of that Regulation. The inadmissibility of those applications should help ensure increased compliance with existing laws for the protection of the environment.

(4) Directive 2008/99/EC establishes measures relating to criminal law in order to protect the environment more effectively. Article 3 of that Directive lists those conducts which are to be punishable as criminal offences, when they are unlawful within the meaning of that Directive and committed intentionally or with at least serious negligence. Under Article 4 of that Directive, Member States are to ensure that inciting, aiding, and abetting the intentional conduct of the offences referred to in Article 3 are punishable as a criminal offence.

In order to ensure proportionality, cases in which an operator committed an offence with serious negligence and in which an operator committed an offence intentionally should therefore result in inadmissibility periods of different lengths. For the same reason, it is also appropriate to establish rules that take aggravating and mitigating factors into account when calculating the inadmissibility period.

In order to ensure proportionality, offences that are carried out over a period of more than 1 year should result in longer inadmissibility periods.

In accordance with Article 10(1)(d) of Regulation (EU) No 508/2014, where the competent authority has determined that an operator committed any of the offences set out in Articles 3 and 4 of Directive 2008/99/EC, an application from the operator for support from the EMFF under Chapter II of Title V of this Regulation is to be inadmissible for a period of at least 1 year. As Regulation (EU) No 508/2014 applies as from 1 January 2014, only offences committed as from 1 January 2013 should be taken into account for the calculation of the inadmissibility period.

In order to ensure effective protection of the environment, where an application of an operator is inadmissible due to the environmental offences set out in Articles 3 and 4 of Directive 2008/99/EC, all applications of that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 should be inadmissible. In order to ensure proportionality it is appropriate to lay down rules for the revision of the inadmissibility period where additional offences are committed by an operator during that period. For the same reason, it is also appropriate that a repetition of an offence results in longer inadmissibility periods.

Delegated Regulation (EU) 2015/288 should therefore be amended accordingly.

In order to allow for the prompt application of the measures provided for in this Regulation and given the importance of ensuring a harmonised and equal treatment of operators in all Member States from the start of the programming period, this Regulation should enter into force on the day following that of its publication and apply from the first day of the eligibility period for support from the EMFF, namely 1 January 2014.

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/288 is amended as follows:

(1) Article 1 is replaced by the following:

‘Article 1

Subject matter and scope

This Regulation applies to applications for support from the European Maritime and Fisheries Fund (EMFF) and identifies the period during which such applications submitted by operators who have carried out any of the actions referred to in Article 10(1)(a), (b) and (d) of Regulation (EU) No 508/2014, or in Article 10(3) of that Regulation, shall be inadmissible (the inadmissibility period).’:

(2) the following Article 4a is inserted:

‘Article 4a

Inadmissibility of applications by operators who have committed environmental offences

1. Where a competent authority has determined in a first official decision that an operator has committed one of the offences set out in Article 3 of Directive 2008/99/EC of the European Parliament and of the Council (*), applications for support from the EMFF made by that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible:

(a) for a period of 12 months, if the offence was committed with serious negligence; or
(b) for a period of 24 months, if the offence was committed intentionally.

2. Where a competent authority has determined in a first official decision that an operator has committed one of the offences set out in Article 4 of Directive 2008/99/EC, applications for support from the EMFF made by that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible for a period of 24 months.

3. The inadmissibility period shall be increased by 6 months where in the decision referred to in paragraph 1 or 2 the competent authority has:

(a) explicitly referred to the presence of aggravating circumstances; or

(b) determined that an offence committed by the operator was carried out over a period of more than 1 year.

4. Provided that it lasts at least 12 months in total, the inadmissibility period shall be reduced by 6 months if the competent authority has explicitly referred to the presence of mitigating circumstances in its decision referred to in paragraph 1 or 2.

5. The starting date of the inadmissibility period shall be the date of the first official decision by a competent authority determining that one or more of the offences set out in Articles 3 and 4 of Directive 2008/99/EC were committed.

6. For the purposes of calculating the inadmissibility period, only decisions referring to offences committed as from 1 January 2013 and for which a decision within the meaning of the above subparagraph was taken as from that date shall be taken into account.

7. Where an application of an operator is inadmissible under paragraphs 1 and 2, all applications of that operator pursuant to Chapter II of Title V of Regulation (EU) No 508/2014 shall be inadmissible.


(3) Article 9 is amended as follows:

(a) the following points (d) and (e) are added:

‘(d) shall be extended by the following periods for each additional offence set out in Article 3 of Directive 2008/99/EC committed by the operator during the inadmissibility period:

(i) 12 months, if the additional offence has been committed with serious negligence;

(ii) 24 months if the additional offence has been committed intentionally;

(e) shall be extended by 24 months for each additional offence set out in Article 4 of Directive 2008/99/EC committed by the operator during the inadmissibility period’;

(b) the following paragraph is added:

‘If an additional offence referred to in point (d) or (e) of the first paragraph is of the same type of environmental offences as the one which has caused the inadmissibility period or which has already led to its revision, the extension of the inadmissibility period due to that offence as provided for in points (d) and (e) shall be increased by an additional 6 months.’

Article 2

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.

It shall apply from 1 January 2014.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 September 2015.

For the Commission
The President
Jean-Claude JUNCKER
COMMISSION DELEGATED REGULATION (EU) 2015/852
of 27 March 2015

supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the 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 the European Maritime and Fisheries Fund

THE EUROPEAN COMMISSION,

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


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 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. Non-compliance by Member States with the CFP rules may 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 83(1) and 142(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (3) 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 EMFF may lay down specific bases for interruption and suspension linked to non-compliance with rules applicable under the CFP.

(3) In order to safeguard the financial interests of the Union and its taxpayers, where a Member State has failed to comply with its obligations under the CFP, or where the Commission has evidence that suggests such a lack of compliance, the Commission is allowed, as a precautionary measure, to interrupt payment deadlines pursuant to Article 100 of Regulation (EU) No 508/2014.

(4) In addition to the interruption of the payment deadline, and in order to avoid the risk of paying out ineligible expenditure, the Commission is allowed, pursuant to Article 101 of Regulation (EU) No 508/2014, to suspend payments in cases of serious non-compliance with the CFP rules.

(5) Financial consequences imposed on Member States if they do not comply with CFP rules should be proportionate to the nature, gravity, duration and repetition of the non-compliance.

(6) In order to provide legal certainty for Member States implementing operational programmes under the EMFF, it is necessary to define the cases of non-compliance with CFP rules essential to the conservation of marine biological resources that may trigger interruption of the payment deadline or suspension of payments in line with Regulation (EU) No 508/2014. Those cases will serve the purposes of Regulation (EU) No 508/2014 and implement Article 41 of Regulation (EU) No 1380/2013 without prejudice to any other sanctions imposed by CFP rules.

(7) Cases of non-compliance with CFP rules that are essential to the conservation of marine biological resources should be considered as serious, if the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption of the payment deadline.

Prior to the interruption or suspension of payments, the Commission has to adopt implementing acts pursuant to Articles 100(2) and 101(2) of Regulation (EU) No 508/2014 that will further specify the non-compliance of the Member State with its obligations under the CFP rules that is liable to affect the expenditure for which the interim payment is requested.

Given the importance of ensuring that there is a harmonised and equal treatment of operators in all 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 <i>Official Journal of the European Union</i>,

HAS ADOPTED THIS REGULATION:

**Article 1**

**Cases of non-compliance**

The cases of non-compliance by a Member State with its obligations under the Common Fisheries Policy (CFP), that may trigger the interruption of the payment deadline for an interim payment claim pursuant to Article 100 of Regulation (EU) No 508/2014, 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 its obligations under the CFP, that may trigger a suspension of payments pursuant to Article 101 of Regulation (EU) No 508/2014, shall be those listed in the Annex to this Regulation if, in addition:

(a) they give rise to an interruption of the payment deadline for an interim payment claim pursuant to Article 100 of Regulation (EU) No 508/2014; and

(b) the Member State has failed to take the necessary action to remedy the situation within the period of interruption of the payment deadline in relation to those cases.

**Article 3**

**Entry into force**

This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i>.

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

Done at Brussels, 27 March 2015.

For the Commission
The President
Jean-Claude JUNCKER
ANNEX

**Category 1: Failure to contribute to the objectives of the Common Fisheries Policy as set out in Article 2(2) of Regulation (EU) No 1380/2013 that are essential to the conservation of marine biological resources**

1.1. Failure to ensure that fishing opportunities allocated to the Member State pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 are respected;

1.2. Failure to meet requirements set out in different types of conservation measures listed in Article 7 of Regulation (EU) No 1380/2013.

**Category 2: Failure to meet international obligations on conservation**

2.1. Failure to meet obligations deriving from Article 28 of Regulation (EU) No 1380/2013.

**Category 3: Failure to ensure that the fleet is in balance with the natural resources**

3.1. Failure to submit the report on the balance between the fishing capacity of the fleet and the fishing opportunities that complies with all the requirements of Article 22(2) of Regulation (EU) No 1380/2013;

3.2. Failure to implement the action plan pursuant to Article 22(4) of Regulation (EU) No 1380/2013, if such a plan is included into the report submitted annually;

3.3. Failure to ensure that in case of fishing capacity withdrawn by public finances, respective fishing licences and authorisations are withdrawn in advance and the capacity is not replaced as referred to in Article 22(5) and (6) of Regulation (EU) No 1380/2013;

3.4. Failure to ensure that the fishing capacity does not exceed at any time the ceilings set out in Article 22(7) and Annex II to Regulation (EU) No 1380/2013;

3.5. Failure to implement the entry/exit scheme pursuant to the requirements of Article 23 of Regulation (EU) No 1380/2013;


**Category 4: Failure to implement the Community framework for the collection, management and use of data in line with Article 25 of Regulation (EU) No 1380/2013 as further specified in Council Regulation (EC) No 199/2008 (2) that result in a lack of information on natural resources**

4.1. Failure to collect and manage biological, environmental, technical and socioeconomic data necessary for fisheries management as set out in Articles 4, 13 and 17 of Regulation (EC) No 199/2008;

4.2. Failure to submit annually a report on execution of national data collection programmes and to make this report publicly available as set out in Article 7 of Regulation (EC) No 199/2008;

4.3. Failure to ensure a national coordination of the collection and management of scientific data for fisheries management as set out in Article 4 of Regulation (EC) No 199/2008;

4.4. Failure to coordinate data collection activities with other Member States in the same region as set out in Article 5 of Regulation (EC) No 199/2008;

---


4.5. Failure to provide data in a timely manner to end-users in accordance with Articles 18 to 20 of Regulation (EC) No 199/2008.

Category 5: Failure to operate an effective control and enforcement system

5.1. Failure to respect the general principles of control and enforcement in accordance with Title II of Council Regulation (EC) No 1224/2009 (1);

5.2. Failure to ensure that the general conditions for access to waters and resources in accordance with Title III of Regulation (EC) No 1224/2009 are respected;

5.3. Failure to control the marketing in order to ensure effective traceability of fisheries and aquaculture products, in accordance with Title V of Regulation (EC) No 1224/2009;

5.4. Failure to carry-out effective surveillance and inspections, and to ensure systematic and adequate enforcement action in respect of any breaches of the rules of the CFP, in accordance with Titles VI, VII and VIII of Regulation (EC) No 1224/2009;

5.5. Failure to establish and implement National Control Action Programmes according to Article 46 of Regulation (EC) No 1224/2009 and, when relevant, to carry out specific control and inspection programmes established by the Commission in accordance with Title IX of that Regulation;

5.6. 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 in accordance with Title X of Regulation (EC) No 1224/2009;

5.7. Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives, such as action plans and any other measures in accordance with Title XI of Regulation (EC) No 1224/2009;

5.8. Failure to meet the requirements as regards analysis, validation, access and exchange of data and information, in accordance with Title XII of Regulation (EC) No 1224/2009;

5.9. Failure to control the implementation of an effective catch certificate scheme also provided for in Chapter III of Council Regulation (EC) No 1005/2008 (2);

5.10. Failure to act on alleged or reported illegal, unreported and unregulated (IUU) fishing activities pursuant to Article 26(3) and Articles 39 and 40 of Regulation (EC) No 1005/2008.

Category 6: Failure to establish and operate a functioning system of effective, proportionate and dissuasive penalties

6.1. In the event of an infringement, failure to notify the flag Member State, the Member State of which the offender holds the citizenship and any other Member State interested in the follow-up of the measures taken to ensure compliance in accordance with Article 89(4) of Regulation (EC) No 1224/2009;

6.2. Failure to take immediate measures in accordance with Article 91 of Regulation (EC) No 1224/2009 to prevent masters of fishing vessels or other legal or natural persons who had been caught in committing serious infringement, from continuing to do so;

6.3. Failure to establish the criteria to determine the serious character of the infringement of the CFP rules under Article 42 of Regulation (EC) No 1005/2008;


6.4. Failure to ensure that effective sanctions are applied systematically for breaches of CFP rules and that the level of those sanctions is of adequate in severity and proportionate to the seriousness of such infringements, so as to ensure deterrence and, as a minimum, effectively deprive perpetrators of the economic benefit derived from their infringement in accordance with Title VIII of Regulation (EC) No 1224/2009;

6.5. Failure to apply the point system for serious infringements for holders of fishing licences as well as for masters in accordance with Article 92 of Regulation (EC) No 1224/2009;

6.6. Failure to establish and adequately manage the national register of infringements in accordance with Article 93 of Regulation (EC) No 1224/2009.
REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/1930

of 28 July 2015


THE EUROPEAN COMMISSION,

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


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 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.

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.

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.

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.

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.

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 (1). As a consequence, that Article should be deleted.

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 (2).

Article 8 of Council Regulation (EC) No 199/2008 (3) 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 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.

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.

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
## ANNEX

### Cases of non-compliance (1)

<table>
<thead>
<tr>
<th>Category 1: Failure to contribute to the objectives of the common fisheries policy as set out in Article 2(2) of the Regulation (EU) No 1380/2013 that are essential to the conservation of marine biological resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Failure to ensure that fishing opportunities allocated to the Member State pursuant to Articles 16-17 of Regulation (EU) No 1380/2013 are respected</td>
</tr>
<tr>
<td>1.2 Failure to meet requirements set out in different types of conservation measures as listed in Article 7 of the Regulation (EU) No 1380/2013</td>
</tr>
</tbody>
</table>

### Category 2: Failure to meet international obligations on conservation

| 2.1 Failure to meet obligations deriving from Article 28 of Regulation (EU) No 1380/2013 | 10-100 % |

### Category 3: Failure to ensure that the fleet is in balance with the natural resources

| 3.1 Failure to submit the report on the balance between the fishing capacity of the fleet and the fishing opportunities that complies with all the requirements of Article 22(2) of Regulation (EU) No 1380/2013; | 2-25 % |
| 3.2 Failure to implement the action plan pursuant to Article 22(4) of Regulation (EU) No 1380/2013, if such a plan is included into the report submitted annually; | 5-25 % |
| 3.3 Failure to ensure that in case of fishing capacity withdrawn by public finances, respective fishing licences and authorisations are withdrawn in advance and the capacity is not replaced as referred to in Articles 22(5) and 22(6) of Regulation (EU) No 1380/2013; | 10-50 % |
| 3.4 Failure to ensure that the fishing capacity does not exceed at any time the ceilings set out in Article 22(7) and Annex II to Regulation (EU) No 1380/2013; | 10-50 % |
| 3.5 Failure to implement the entry/exit scheme pursuant to the requirements of Article 23 of Regulation (EU) No 1380/2013; | 10-25 % |
| 3.6 Failure to manage the fishing fleet register in compliance with Article 24 of Regulation (EU) No 1380/2013 and Commission Regulation (EC) No 26/2004 (2); | 10-50 % |

### Category 4: Failure to implement the Community framework for the collection, management and use of data in line with Article 25 of Regulation (EU) No 1380/2013 as further specified in Regulation (EC) No 199/2008 that result in a lack of information on natural resources

<p>| 4.1 Failure to collect and manage biological, environmental, technical and socioeconomic data necessary for fisheries management as set out in Articles 4, 13 and 17 of Regulation (EC) No 199/2008; | 2-25 % |
| 4.2 Failure to submit annually a report on execution of national data collection programmes and to make this report publicly available as set out in Article 7 of Regulation (EC) No 199/2008; | 2-10 % |
| 4.3 Failure to ensure a national coordination of the collection and management of scientific data for fisheries management as set out in Article 4 of Regulation (EC) No 199/2008; | 2-5 % |</p>
<table>
<thead>
<tr>
<th>Cases of non-compliance (i)</th>
<th>Range of flat rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4 Failure to coordinate data collection activities with other Member States in the same region as set out in Article 5 of Regulation (EC) No 199/2008;</td>
<td>2-25 %</td>
</tr>
<tr>
<td>4.5 Failure to provide data in a timely manner to end-users in accordance with Articles 18 to 20 of Regulation (EC) No 199/2008;</td>
<td>2-25 %</td>
</tr>
</tbody>
</table>

**Category 5: Failure to operate an effective control and enforcement system**

<table>
<thead>
<tr>
<th></th>
<th>Range of flat rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Failure to respect the general principles of control and enforcement in accordance with Title II of Council Regulation (EC) No 1224/2009 (i);</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.2 Failure to ensure that the general conditions for access to waters and resources in accordance with Title III of Regulation (EC) No 1224/2009 are respected;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.3 Failure to control the marketing in order to ensure effective traceability of fisheries and aquaculture products, in accordance with Title V of Regulation (EC) No 1224/2009;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.4 Failure to carry out effective surveillance and inspections, and to ensure systematic and adequate enforcement action in respect of any breaches of the rules of the CFP, in accordance with Titles VI, VII and VIII of Regulation (EC) No 1224/2009;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.5 Failure to establish and implement national control action programmes according to Article 46 of Regulation (EC) No 1224/2009 and, when relevant, to carry out specific control and inspection programmes established by the Commission in accordance with Title IX of that Regulation;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.6 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 in accordance with Title X of Regulation (EC) No 1224/2009;</td>
<td>2-50 %</td>
</tr>
<tr>
<td>5.7 Failure to implement the measures decided by the Commission to ensure compliance by Member States with CFP objectives, such as action plans and any other measures in accordance with Title XI of Regulation (EC) No 1224/2009;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.8 Failure to meet the requirements as regards analysis, validation, access and exchange of data and information, in accordance with Title XII of Regulation (EC) No 1224/2009;</td>
<td>2-25 %</td>
</tr>
<tr>
<td>5.9 Failure to control the implementation of an effective catch certificate scheme also provided for in Chapter III of Council Regulation (EC) No 1005/2008 (i);</td>
<td>10-50 %</td>
</tr>
<tr>
<td>5.10 Failure to act on alleged or reported illegal, unreported and unregulated (IUU) fishing activities pursuant to Articles 26(3), 39 and 40 of Regulation (EC) No 1005/2008.</td>
<td>5-50 %</td>
</tr>
</tbody>
</table>

**Category 6: Failure to establish and operate a functioning system of effective, proportionate and dissuasive penalties**

<table>
<thead>
<tr>
<th></th>
<th>Range of flat rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 In the event of an infringement, failure to notify the flag Member State, the Member State of which the offender holds the citizenship and any other Member State interested in the follow-up of the measures taken to ensure compliance in accordance with Article 89(4) of Regulation (EC) No 1224/2009;</td>
<td>2-10 %</td>
</tr>
<tr>
<td>Cases of non-compliance (1)</td>
<td>Range of flat rates</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>6.2 Failure to take immediate measures in accordance with Article 91 of Regulation (EC) No 1224/2009 to prevent masters of fishing vessels or other legal or natural persons who had been caught in committing serious infringement, from continuing to do so;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>6.3 Failure to establish the criteria to determine the serious character of the infringement of the CFP rules under Article 42 of Regulation (EC) No 1005/2008;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>6.4 Failure to ensure that effective sanctions are applied systematically for breaches of CFP rules and that the level of those sanctions is of adequate in severity and proportionate to the seriousness of such infringements, so as to ensure deterrence and, as a minimum, effectively deprive perpetrators of the economic benefit derived from their infringement in accordance with Title VIII of Regulation (EC) No 1224/2009;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>6.5 Failure to apply the point system for serious infringements for holders of fishing licences as well as for masters in accordance with Article 92 of Regulation (EC) No 1224/2009;</td>
<td>10-50 %</td>
</tr>
<tr>
<td>6.6 Failure to establish and adequately manage the national register of infringements in accordance with Article 93 of Regulation (EC) No 1224/2009.</td>
<td>10-50 %</td>
</tr>
</tbody>
</table>


II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/895

of 2 February 2015


THE EUROPEAN COMMISSION,

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


Whereas:

(1) Article 129 of Regulation (EU) No 508/2014 provides for the possibility to establish the conditions under which support approved by the Commission under Council Regulations (EC) No 861/2006 (2), (EC) No 1198/2006 (3) and (EC) No 791/2007 (4) and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (5), may be integrated into support provided for under Regulation (EU) No 508/2014, including for technical assistance and for the ex post evaluations.

(2) Provisions for the transition from support under Regulation (EC) No 1198/2006 to support under Regulation (EU) No 508/2014 should be adopted. The ex post evaluation of the programmes funded under the European Fisheries Fund (EFF) will provide key information to support the strategic report for the coming programming period, as referred to in Article 53(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (6). This information will also feed into the impact assessment which will help prepare the new regulatory framework for the ESI Funds in the post-2020 period.

(3) In light of the above, this Regulation should adjust the dates for the completion of the ex post evaluation of the programmes to take account of the fact that the deadline set in Article 50(3) of Regulation (EC) No 1198/2006 is not compatible with a comprehensive ex post evaluation exercise, since it will not be possible for an evaluator to examine the impact of the programmes in relation to the objectives when commitments and payments are still ongoing. Indeed, in accordance with Article 55(1) of Regulation (EC) No 1198/2006, the period of eligibility of expenditure under the EFF lasts until 31 December 2013, and therefore payments by and to beneficiaries in accordance with Article 55(1) and (7) of that Regulation can be made until that date. Furthermore, the last

application for payment can be sent by the Member States to the Commission until 31 March 2017, in accordance with Article 86(1)(a) of Regulation (EC) No 1198/2006.

(4) This Regulation should also clarify that it is not necessary for Member States to provide to the Commission the annual report referred to in Article 67 of Regulation (EC) No 1198/2006 by 30 June 2016 since the information contained in that report will not arrive in time for its inclusion in the ex post evaluation report referred to in Article 50(3) of Regulation (EC) No 1198/2006. Once sent to the Commission by Member States in June 2016, that report will need to be approved before being examined and integrated in the ex post evaluation by 31 December 2016. Furthermore, that information will be included in the final report referred to in that Article,

HAS ADOPTED THIS REGULATION:

Article 1
Scope
This Regulation shall apply to the ex post evaluation of operational programmes and to the annual report to be sent by Member States as provided for in Regulation (EC) No 1198/2006.

Article 2
Ex post evaluation
The ex post evaluation referred to in Article 50(3) of Regulation (EC) No 1198/2006 shall be completed by the Commission by 31 December 2016.

Article 3
Annual implementation report
In the year 2016 the Member States shall not be required to send the annual report on the implementation of the operational programme provided for in Article 67(1) of Regulation (EC) No 1198/2006.

Article 4
Entry into force
This Regulation shall enter into force on the twentieth 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, 2 February 2015.

For the Commission
The President
Jean-Claude JUNCKER
COMMISSION DELEGATED REGULATIONS DERIVED FROM THE CPR
II
(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 240/2014
of 7 January 2014
on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular Article 5(3) thereof,

Whereas:

(1) The aim of this Regulation is to provide for a European code of conduct in order to support and facilitate Member States in the organisation of partnerships for Partnership Agreements and programmes supported by the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). These funds now operate under a common framework and are referred to as the 'European Structural and Investment Funds (hereinafter ‘the ESI Funds').

(2) Working in partnership is a long-established principle in the implementation of the ESI Funds. Partnership implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.

(3) The partners selected should be the most representative of the relevant stakeholders. Selection procedures should be transparent and take into account the different institutional and legal frameworks of the Member States and their national and regional competences.

(4) The partners should include public authorities, economic and social partners and bodies representing civil society, including environmental partners, community-based and voluntary organisations, which can significantly influence or be significantly affected by implementation of the Partnership Agreement and programmes. Specific attention should be paid to including groups who may be affected by programmes but who find it difficult to influence them, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, in particular persons with disabilities, migrants and Roma people.

(5) For the selection of partners, it is necessary to take into account the differences between Partnership Agreements and programmes. Partnership Agreements cover all the ESI Funds providing support to each Member State, while programmes refer only to the ESI Funds contributing to them. The partners for Partnership Agreements should be those relevant in view of the planned use of all the ESI Funds, while for programmes it is sufficient that the partners are those relevant in view of the planned use of the ESI Funds contributing to the programme.

(6) The partners should be involved in preparing and implementing Partnership Agreements and programmes. For this purpose, it is necessary to establish main principles and good practices concerning timely, meaningful and transparent consultation of the partners on the analysis of challenges and needs to be tackled, the selection of objectives and priorities to address them, and the coordination structures and multi-level governance agreements necessary for effective policy delivery.

The partners should be represented on the monitoring committees of programmes. The rules governing membership and committee procedures should promote continuity and ownership of programming and implementation, and working arrangements that are clear and transparent, as well as timeliness and non-discrimination.

Through their active participation in the monitoring committees, the partners should be involved in assessing performance on the different priorities, the relevant reports on the programmes and, where appropriate, calls for proposals.

Effective partnership should be facilitated by helping the relevant partners to strengthen their institutional capacity in view of the preparation and implementation of programmes.

The Commission should facilitate the exchange of good practice, strengthening institutional capacity and the dissemination of relevant outcomes among Member States, managing authorities and representatives of the partners by setting up a Community of Practice on Partnership covering all the ESI Funds.

The role of the partners in implementing the Partnership Agreements and the performance and effectiveness of the partnership in the programming period should be subject to assessment by the Member States.

In order to support and facilitate Member States in the organisation of the partnership, the Commission should make available examples of best practices existing in Member States.

HAS ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter and scope
This Regulation establishes the European code of conduct on partnership for Partnership Agreements and programmes supported by the European Structural and Investment Funds.

CHAPTER II
MAIN PRINCIPLES CONCERNING TRANSPARENT PROCEDURES FOR IDENTIFICATION OF RELEVANT PARTNERS

Article 2
Representativeness of partners
Member States shall ensure that the partners referred to in Article 5(1) of Regulation (EU) No 1303/2013 are the most representative of the relevant stakeholders and are nominated as duly mandated representatives, taking into consideration their competence, capacity to participate actively and appropriate level of representation.

Article 3
Identification of relevant partners for the Partnership Agreement
1. For the Partnership Agreement, Member States shall identify the relevant partners among at least the following:

(a) competent regional, local, urban and other public authorities, including:

(i) regional authorities, national representatives of local authorities and local authorities representing the largest cities and urban areas, whose competences are related to the planned use of the ESI Funds;

(ii) national representatives of higher educational institutions, educational and training providers and research centres in view of the planned use of the ESI Funds;

(iii) other national public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds; and in particular the bodies for the promotion of equal treatment established in accordance with Council Directive 2000/43/EC (1), Council Directive 2004/113/EC (2) and Directive 2006/54/EC of the European Parliament and of the Council (3);

(b) economic and social partners, including:

(i) nationally recognised social partners' organisations, in particular general cross-industry organisations and sectoral organisations, whose sectors are related to the planned use of the ESI Funds;

(ii) national chambers of commerce and business associations representing the general interest of industries and branches, in view of the planned use of the ESI Funds and with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;


(c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:

(i) bodies working in the areas related to the planned use of the ESI Funds and to the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;

(ii) other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds, in particular groups considered to be at risk of discrimination and social exclusion.

2. Where public authorities, economic and social partners, and bodies representing civil society have established an organisation regrouping their interests to facilitate their involvement in the partnership (umbrella organisation), they may nominate a single representative to present the views of the umbrella organisation in the partnership.

Article 4

Identification of relevant partners for programmes

1. For each programme, Member States shall identify the relevant partners among at least the following:

(a) competent regional, local, urban and other public authorities, including:

(i) regional authorities, national representatives of local authorities and local authorities representing the largest cities and urban areas, whose competences are related to the planned use of the ESI Funds contributing to the programme;

(ii) national or regional representatives of higher educational institutions, education, training and advisory services providers and research centres, in view of the planned use of the ESI Funds contributing to the programme;

(iii) other public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds contributing to the programme, and in particular the bodies for the promotion of equal treatment established in accordance with Directive 2000/43/EC, Directive 2004/113/EC and Directive 2006/54/EC;

(b) economic and social partners, including:

(i) nationally or regionally recognised social partners' organisations, in particular general cross-industry organisations and sectoral organisations whose sectors are related to the planned use of the ESI Funds contributing to the programme;

(ii) national or regional chambers of commerce and business associations representing the general interest of industries or branches, with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;

(iii) other similar bodies organised at national or regional level;

(c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:

(iv) other bodies organised at national, regional or local level and authorities representing the areas where integrated territorial investments and local development strategies funded by the programme are carried out;

2. As regards European territorial cooperation programmes, Member States may involve in the partnership:

(i) European groupings of territorial cooperation operating in the respective cross-border or transnational programme area;

(ii) authorities or bodies that are involved in the development or implementation of a macro-regional or sea-basin strategy in the programme area, including priority area coordinators for macro-regional strategies.
3. Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

CHAPTER III

MAIN PRINCIPLES AND GOOD PRACTICES CONCERNING THE INVOLVEMENT OF RELEVANT PARTNERS IN THE PREPARATION OF THE PARTNERSHIP AGREEMENT AND PROGRAMMES

Article 5

Consultation of relevant partners in the preparation of the Partnership Agreement and programmes

1. In order to ensure transparent and effective involvement of relevant partners, Member States and managing authorities shall consult them on the process and timetable of the preparation of the Partnership Agreement and programmes. In doing so, they shall keep them fully informed of their content and any changes thereof.

2. As regards the consultation of relevant partners, Member States shall take account of the need for:

(a) timely disclosure of and easy access to relevant information;

(b) sufficient time for partners to analyse and comment on key preparatory documents and on the draft Partnership Agreement and draft programmes;

(c) available channels through which partners may ask questions, may provide contributions and will be informed of the way in which their proposals have been taken into consideration;

(d) the dissemination of the outcome of the consultation.

3. As regards the rural development programmes, Member States shall take account of the role that the national rural networks established in accordance with Article 54 of the Regulation (EU) No 1305/2013 of the European Parliament and of the Council (1) can play involving relevant partners.

4. Where formal agreements have been established between the different tiers of government below national level, the Member State shall take account of these multi-level governance agreements in accordance with its institutional and legal framework.

Article 6

Preparation of the Partnership Agreement

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of the Partnership Agreement, and in particular concerning:

(a) the analysis of disparities, development needs and growth potential with reference to the thematic objectives, including those addressed by the relevant country-specific recommendations;

(b) summaries of the ex ante conditionalities of the programmes and key findings of any ex ante evaluations of the Partnership Agreement undertaken at the Member State’s initiative;

(c) the selection of the thematic objectives, the indicative allocations of the ESI Funds and their main expected results;

(d) the list of programmes and the mechanisms at national and regional level to ensure coordination of the ESI Funds with one another and with other Union and national funding instruments and with the European Investment Bank;

(e) the arrangements for ensuring an integrated approach to the use of ESI Funds for the territorial development of urban, rural, coastal and fisheries areas and areas with particular territorial features;

(f) the arrangements for ensuring an integrated approach to addressing the specific needs of geographical areas most affected by poverty and of target groups at the highest risk of discrimination or exclusion, with special regard to marginalised communities;

(g) the implementation of the horizontal principles referred to in Articles 5, 7 and 8 of Regulation (EU) No 1303/2013.

Article 7

Information on the involvement of relevant partners in the Partnership Agreement

Member States shall provide for the Partnership Agreement at least the following information:

(a) the list of partners involved in the preparation of the Partnership Agreement;

(b) the actions taken to ensure the active participation of the partners, including actions taken in terms of accessibility, in particular for persons with disabilities;

(c) the role of the partners in the preparation of the Partnership Agreement;

(d) the results of the consultation with partners and a description of its added value in the preparation of the Partnership Agreement.

Article 8

Preparation of programmes

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of programmes, and in particular concerning:

(a) the analysis and identification of needs;

(b) the definition or selection of priorities and related specific objectives;

(c) the allocation of funding;

(d) the definition of programmes' specific indicators;

(e) the implementation of the horizontal principles as defined in Articles 7 and 8 of Regulation (EU) No 1303/2013;

(f) the composition of the monitoring committee.

Article 9

Information on the involvement of relevant partners in programmes

Member States shall provide for programmes at least the following information:

(a) the actions taken to involve the relevant partners in the preparation of the programmes and their amendments;

(b) the planned actions to ensure the participation of the partners in the implementation of the programmes.

CHAPTER IV

GOOD PRACTICES CONCERNING THE FORMULATION OF THE RULES OF MEMBERSHIP AND INTERNAL PROCEDURES OF MONITORING COMMITTEES

Article 10

Rules of membership of the monitoring committee

1. When formulating the rules of membership of the monitoring committee, Member States shall take into account the involvement of partners that have been involved in the preparation of the programmes and shall aim to promote equality between men and women and non-discrimination.

2. As regards the monitoring committees of European territorial cooperation programmes, partners may be represented by umbrella organisations at Union or transnational level for inter-regional and transnational cooperation programmes. Member States may involve partners in the preparations of the monitoring committee, in particular through their participation in coordination committees at national level organised in the participating Member States.

Article 11

Rules of procedure of the monitoring committee

When formulating the rules of procedure, monitoring committees shall take into account the following elements:

(a) the members' voting rights;

(b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;

(c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;

(d) the procedure for adoption, publication and accessibility of the minutes;

(e) the arrangements for the establishment and activities of working groups under the monitoring committees;

(f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;

(g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance.

CHAPTER V

MAIN PRINCIPLES AND GOOD PRACTICES CONCERNING THE INVOLVEMENT OF RELEVANT PARTNERS IN THE PREPARATION OF CALLS OF PROPOSALS, PROGRESS REPORTS AND IN RELATION TO MONITORING AND EVALUATION OF PROGRAMMES

Article 12

Obligations relating to data protection, confidentiality and conflict of interest

Member States shall ensure that partners involved in the preparation of calls of proposals, progress reports and in monitoring and evaluation of programmes are aware of their obligations related to data protection, confidentiality and conflict of interest.

Article 13

Involvement of relevant partners in the preparation of calls for proposals

Managing authorities shall take appropriate measures to avoid potential conflict of interest where involving relevant partners in the preparation of calls for proposals or in their assessment.
Article 14  
**Involvement of relevant partners in the preparation of progress reports**

Member States shall involve relevant partners in the preparation of the progress reports on implementation of the Partnership Agreement referred to in Article 52 of Regulation (EU) No 1303/2013, in particular concerning the assessment of the role of partners in the implementation of the Partnership Agreement and the overview of the opinions given by the partners during the consultation, including, where appropriate, the description of the way in which the opinions of partners have been taken into account.

Article 15  
**Involvement of relevant partners in the monitoring of programmes**

Managing authorities shall involve the partners, within the framework of the monitoring committee and their working groups, in assessing performance of the programme, including the conclusions of the performance review, and in the preparation of the annual implementation reports on the programmes.

Article 16  
**Involvement of partners in the evaluation of programmes**

1. Managing authorities shall involve the relevant partners in the evaluation of programmes within the framework of the monitoring committees and, where appropriate, specific working groups established by the monitoring committees for this purpose.

2. Managing authorities for the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund programmes shall consult the partners on the reports summing up the findings of evaluations carried out during the programming period in accordance with Article 114(2) of Regulation (EU) No 1303/2013.

3. For rural development programmes, the support referred to in paragraph 1 may be provided through the national rural network established in accordance with Article 54 of Regulation (EU) No 1305/2013.

4. For ESF programmes, managing authorities in less developed or transition regions or in Member States eligible for Cohesion Fund support shall ensure that, according to need, appropriate ESF resources are allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes.

5. For European territorial cooperation, support under paragraphs 1 and 2 may also cover support for partners to strengthen their institutional capacity for participating in international cooperation activities.

Article 18  
**Role of the Commission in the dissemination of good practices**

1. The Commission shall set up a cooperation mechanism called the European Community of Practice on Partnership, which shall be common to the ESI Funds and open to interested Member States, managing authorities and organisations representing the partners at Union level.

The European Community of Practice on Partnership shall facilitate exchange of experience, capacity building, as well as dissemination of relevant outcomes.

2. The Commission shall make available examples of good practice in organising the partnership.

3. The exchange of experience on the identification, transfer and dissemination of good practice and innovative approaches in relation to the implementation of interregional cooperation programmes and actions under Article 2(3)(c) of Regulation (EU) No 1299/2013 of the European Parliament and of the Council (1) shall include experience of partnership in cooperation programmes.

CHAPTER VII

FINAL PROVISIONS

Article 19

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, 7 January 2014.

*For the Commission*

*The President*

José Manuel BARROSO
COMMISSION DELEGATED REGULATION (EU) No 480/2014

of 3 March 2014

laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund

THE EUROPEAN COMMISSION,

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

laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular Articles 22(7), 37(13), 38(4), 40(4), 41(3), 42(1), 42(6), 61(3), 68(1), 101, 125(8), 125(9), 127(7), 127(8) and 144(6) thereof,

Whereas:

(1) Regulation (EU) No 1303/2013, in Part Two, lays down common provisions applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which now operate under a common framework (the 'European Structural and Investment Funds' or 'ESI Funds'). In addition, Part Three of that Regulation contains general provisions that apply to the ERDF, the ESF and the Cohesion Fund, but do not apply to the EAFRD and the EMFF, and Part Four of that Regulation contains general provisions which apply to the ERDF, the ESF, the Cohesion Fund and the EMFF, but do not apply to the EAFRD. This Regulation therefore lays down provisions which are applicable to all ESI Funds, as well as provisions applicable only to the ERDF and the Cohesion Fund or to the ERDF, the ESF, the Cohesion Fund and the EMFF.

(2) It is necessary to establish detailed rules on criteria for determining the level of financial correction which the Commission may apply under the performance framework for each priority included in the programmes supported by the ESI Funds.

(3) Such financial corrections may be applied only if several conditions are jointly met. The level of financial correction should be set on the basis of flat rates related to a coefficient, calculated with reference to the level of physical completion and financial absorption. External factors contributing to a serious failure to achieve targets set under the performance framework by 2023, other than factors excluding the financial correction, should be considered on a case-by-case basis and could be grounds for a lower rate of correction than would otherwise apply on the basis of the coefficient.

(4) In the provisions on criteria for determining the level of financial corrections to be applied under the performance framework, a special allocation for the Youth Employment Initiative should be treated separately.

(5) Specific rules should clarify the provisions on the purchase of land with support provided by financial instruments.

(6) A coherent framework for combining grants for technical support and a financial instrument in a single operation requires that this is only allowed for the purpose of technical preparation of the prospective investment for the benefit of the final recipient.

(7) To ensure that implementation of financial instruments is entrusted to bodies which have appropriate capacity to implement them in line with the objectives and priorities of the ESI Funds and in the most efficient manner, the criteria for selecting such bodies should be set out together with their role, liability and responsibilities.

(8) To ensure sound financial management of financial instruments providing guarantees, the contributions from programmes should be based on a prudent ex ante risk assessment, taking into account an appropriate multiplier ratio.

(9) To ensure that financial instruments are implemented in compliance with applicable law, specific provisions should be made for their management and control, including audit.

(10) To ensure sound financial management of programme contributions to financial instruments, any withdrawal of such contributions should be appropriately reflected in the relevant payment applications.

(11) To ensure consistent calculation of eligible capitalised interest rate subsidies and guarantee fee subsidies, specific rules for their calculation should be set out.

(12) To promote rapid and efficient deployment of funds to the real economy and sound financial management, while assuring reasonable remuneration for bodies implementing financial instruments, criteria for determining management costs and fees on the basis of performance, applicable thresholds, and rules on reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit should be set out.

(13) In line with the principle of sound financial management, revenues generated by operations should be taken into account when the public contribution is calculated.

(14) It is necessary to determine the method for calculating an operation's discounted net revenue, taking into account the reference periods applicable to the sector of that operation, the profitability normally expected of the type of investment concerned, the application of the polluter pays principle and, if appropriate, considerations of equity linked to the relative prosperity of the Member State or region concerned.

(15) The reference periods applicable to sectors based on historical data recorded and stored for revenue-generating projects of the 2007-2013 programming period should be set out.

(16) It is necessary to define the costs and revenues to be taken into account in the calculation of the discounted net revenues as well as the conditions for the determination of a residual value and the financial discount rate.

(17) The 4 % discount rate proposed as an indicative benchmark should be based on the current long-term rate of return from an international portfolio of investments calculated as a mean return of 3 % from the assets adjusted upwards by 1 %, which is the percentage by which the average long-term government bond yield in the Union area has fallen since the financial discount rate for the 2007-2013 programming period was set.

(18) The polluter-pays principle requires that the environmental costs of pollution and prevention be borne by those who cause pollution and that charging systems reflect the full costs, including capital costs, of environmental services, the environmental costs of pollution and of the preventive measures implemented and the costs linked to the scarcity of the resources used.

(19) To reduce administrative burdens, beneficiaries should be allowed to use existing methods and corresponding rates set out under other Union policies in order to calculate indirect costs, if the operations and beneficiaries are of a similar type.

(20) To ensure that operations supported under the ESI Funds which might use a flat rate for indirect costs set under other Union policies are similar to operations financed under those other policies, it is necessary to define the intervention categories and investment priorities or measures under which they fall.
(21) The methodology to be used for carrying out the quality review of major projects should be established. The quality review by independent experts is a prerequisite for submission of a major project to the Commission by a Member State using the notification procedure provided for in Regulation (EU) No 1303/2013.

(22) If a Member State chooses to use the notification procedure, it should decide whether the major project is to be assessed by independent experts supported by technical assistance of the Commission or, in agreement with the Commission, by other independent experts.

(23) The capacity, competence and impartiality of independent experts carrying out the quality review of major projects are among the main factors determining whether the outcome of the review is of good quality and reliable. Therefore, certain requirements should be set out for independent experts to ensure that their work on the quality review is reliable and of high quality. All independent experts should meet these requirements, regardless if their work is supported by technical assistance at the initiative of the Commission or by a Member State. It should be the responsibility of the Member State to verify that the independent experts meet the requirements before seeking the Commission's agreement with a selection of independent experts.

(24) Since only major projects that have been appraised positively by the independent experts can be selected for submission to the Commission using the notification procedure, it is necessary to set out clear criteria for this purpose. It is also necessary to set out the steps of this review process and the parameters for the appraisal of quality to be used in the review, in order to ensure that the quality review of each major project is based on the same methodological approach and that the quality review is carried out in a manner which contributes to improving the quality of the major projects reviewed.

(25) Regulation (EU) No 1303/2013 requires the managing authority to establish a system to record and store, in computerised form, data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants. It is therefore necessary to set out a list of data to be recorded and stored in that system.

(26) Certain data is relevant for particular types of operations or for some of the ESI Funds only; the applicability of data requirements should therefore be specified. Regulation (EU) No 1303/2013 and Regulation (EU) No 1304/2013 of the European Parliament and of the Council set out specific requirements for the recording and storage of data on individual participants in operations supported by the ESF, which need to be taken into account.

(27) The list of data should take into account the reporting requirements set out under Regulation (EU) No 1303/2013 and the Fund-specific Regulations in order to ensure that the data necessary for financial management and monitoring, including data needed to prepare payment applications, accounts and implementation reports exists for every operation in a form in which it can be easily aggregated and reconciled. The list should take into account that certain basic data on operations in computerised form is necessary for effective financial management of operations and to fulfil the requirement to publish basic information on operations. Certain other data is necessary to effectively plan and carry out verifications and audit work.

(28) The list of data to be recorded and stored should not prejudge the technical characteristics or structure of the computerised systems set up by managing authorities or pre-determine the format of the data recorded and stored, unless these are specifically stated in this Regulation. Nor should it prejudice the means by which data is entered or generated within the system; in some cases, the data included in the list may require the entry of multiple values. Nevertheless, it is necessary to set out certain rules on the nature of this data, to ensure that the managing authority can fulfil its responsibility for monitoring, evaluation, financial management, verification and audit, including where this requires processing of data on individual participants.

(29) In order to ensure that expenditure under operational programmes can be checked and audited, it is necessary to set out the criteria with which an audit trail should comply to be considered adequate.

(30) It is necessary to provide, in relation to the audit work pursuant to Regulation (EU) No 1303/2013, that the Commission and the Member States should prevent any unauthorised disclosure of or access to personal data, and to specify the purposes for which the Commission and the Member States can process such data.

The audit authority is responsible for audits of operations. To ensure that the scope and effectiveness of such audits are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.

It is necessary to set out in detail the sampling basis for operations to be audited, which the audit authority should observe in establishing or approving the sampling method, including the determination of the sampling unit, certain technical criteria to be used for the sample and where necessary factors to be taken into account in taking additional samples.

The audit authority should draw up an audit opinion covering the accounts referred to in Regulation (EU) No 1303/2013. To ensure that the scope and the content of audits on accounts are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.

To ensure legal certainty and equal treatment of all Member States in making financial corrections, consistent with the principle of proportionality, it is necessary to set out the criteria for determining serious deficiencies in the effective functioning of management and control systems, define the main types of such deficiencies and set out the criteria for establishing the level of financial correction to be applied and criteria for applying flat rates or extrapolated financial corrections.

In order to allow for the prompt application of the measures provided for in this Regulation, 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:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the following provisions supplementing Regulation (EU) No 1303/2013:

(a) provisions supplementing Part Two of that Regulation applicable to the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF (hereinafter referred to as the ‘ESI Funds’) as regards the following:

(i) criteria for determining the level of financial correction to be applied under the performance framework;

(ii) rules in relation to financial instruments as regards the following:

— additional specific rules on the purchase of land and on combining technical support with financial instruments,

— additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that may be delivered through financial instruments,

— rules concerning the management and control of certain financial instruments, including controls to be performed by managing and audit authorities, arrangements for keeping supporting documents, elements to be evidenced by supporting documents, and management and control and audit arrangements,

— rules for withdrawal of payments made to financial instruments and consequent adjustments in respect of applications for payment,

— specific rules concerning the establishment of a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies,

— specific rules setting out the criteria for determining management costs and fees on the basis of performance and the applicable thresholds, as well as rules for the reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit;
(iii) the method for calculating the discounted net revenue of operations generating net revenue after completion;

(iv) the flat rate for indirect costs and the related methods applicable in other Union policies;

(b) provisions supplementing Part Three of that Regulation applicable to the ERDF and the Cohesion Fund as regards the methodology to be used in carrying out the quality review of major projects;

(c) provisions supplementing Part Four of that Regulation applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF as regards the following:

(i) rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established by the managing authority;

(ii) detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries;

(iii) the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations;

(iv) detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives;

(v) detailed rules concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

CHAPTER II

PROVISIONS SUPPLEMENTING PART TWO OF REGULATION (EU) No 1303/2013 APPLICABLE TO THE ESI FUNDS

SECTION I

Criteria for determining the level of financial correction to be applied under the performance framework

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

Article 2

Determination of the level of financial correction

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

1. The level of financial correction to be applied by the Commission pursuant to Article 22(7) of Regulation (EU) No 1303/2013 shall be a flat rate determined on the basis of the ratio between the average of the final achievement rates for all output indicators and key implementation steps under a performance framework and the final achievement rate of the financial indicator under that performance framework (the ‘achievement/absorption coefficient’).

2. The achievement/absorption coefficient shall be calculated in the following way:

(a) the final value achieved for each output indicator and key implementation step selected for the performance framework under a given priority shall be divided by the respective target values in order to obtain their final achievement rate expressed as a percentage of the target;

(b) the average of the final achievement rates for all the output indicators and key implementation steps selected for the performance framework under a given priority shall be determined. For that purpose, where a final achievement rate is calculated to be in excess of 100 %, it shall count as 100 %;
(c) the final value achieved for the financial indicator selected for the performance framework under a given priority shall be divided by the respective target value in order to obtain its final achievement rate expressed as a percentage of the target. For that purpose, where a final achievement rate is calculated to be in excess of 100 %, it shall count as 100 %;

(d) the average of the final achievement rates for all the output indicators and key implementation steps selected for the performance framework under a given priority shall be divided by the final achievement rate for the financial indicator selected for the performance framework under a given priority.

3. If a priority relates to more than one ESI Fund or category of region, the achievement/absorption coefficient shall be calculated separately for each ESI Fund and/or category of region.

Article 3

Level of financial correction

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

1. The level of financial correction is fixed as follows:

(a) for an achievement/absorption coefficient below 65 % but not less than 60 %, a flat rate of 5 % shall be applied;

(b) for an achievement/absorption coefficient below 60 % but not less than 50 %, a flat rate of 10 % shall be applied;

(c) for an achievement/absorption coefficient below 50 %, a flat rate of 25 % shall be applied.

2. The flat rate shall be applied to the contribution from the ESI Fund determined on the basis of the expenditure declared by the Member State under the priority that meets the conditions referred to in the first subparagraph of Article 22(7) of Regulation (EU) No 1303/2013, after the application of any other financial corrections. For priorities concerning more than one ESI Fund or category of region, the flat rate shall be applied to each ESI Fund and/or category of region.

3. External factors contributing to a serious failure to achieve the targets, other than those referred to in the third subparagraph of Article 22(7) of Regulation (EU) No 1303/2013, shall be considered on a case-by-case basis. The flat-rate correction set out in paragraph 1 may be reduced by up to 50 %, taking account of the extent to which the serious failure is attributed to these factors.

4. Where the application of the flat rate fixed in accordance with paragraph 1 would be disproportionate, the level of correction shall be reduced.

SECTION II

Financial instruments

Article 4

Specific rules on the purchase of land

(Article 37(13) of Regulation (EU) No 1303/2013)

1. Financial instruments financed by the ERDF, the Cohesion Fund and the EAFRD may support investments that include the purchase of land not built on and land built on for an amount not exceeding 10 % of the programme contribution paid to the final recipient. In the case of guarantees, this percentage shall apply to the amount of the underlying loan or other risk-bearing instruments.

2. Where financial instruments provide support to final recipients in respect of infrastructure investments with the objective of supporting urban development or urban regeneration activities, the limit referred to in paragraph 1 is 20 %.

3. In exceptional and duly justified cases, the managing authority may derogate from the limits in paragraphs 1 and 2 for operations concerning environmental conservation.
Article 5

Combination of technical support with financial instruments

(Article 37(13) of Regulation (EU) No 1303/2013)

Grants for technical support may be combined with financial instruments in a single operation pursuant to Article 37(7) of Regulation (EU) No 1303/2013 only for the purpose of technical preparation of the prospective investment for the benefit of the final recipient to be supported by that operation.

Article 6

Specific rules on the role, liabilities and responsibility of bodies implementing financial instruments

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

1. The bodies implementing financial instruments shall perform their obligations in accordance with applicable law and act with the degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing financial instruments. They shall ensure that:

(a) final recipients receiving support from financial instruments are selected with due account taken of the nature of the financial instrument and the potential economic viability of investment projects to be financed. The selection shall be transparent and justified on objective grounds and shall not give rise to a conflict of interest;

(b) final recipients shall be informed that funding is provided under programmes co-financed by the ESI Funds, in accordance with the requirements laid down in Article 115 of Regulation (EU) No 1303/2013 for the ERDF, the ESF and the Cohesion Fund, in Article 66(1)(c)(i) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council (1) for the EAFRD and in a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020 for the EMFF (the ‘EMFF Regulation’);

(c) financial instruments provide support in a way which is proportionate and has the least distortive effect on competition;

(d) preferential remuneration of private investors or public investors operating under the market economy principle, as referred to in Article 37(2)(c) and Article 44(1)(b) of Regulation (EU) No 1303/2013, is proportionate to the risks taken by these investors and limited to the minimum necessary to attract such investors, which shall be ensured through terms and conditions and procedural safeguards.

2. As direct financial liability of the managing authority towards bodies implementing financial instruments or final recipients as well as its liability as regards any other debt or obligation of the financial instrument may not exceed the amount committed by the managing authority to the financial instrument under the relevant funding agreements, the bodies implementing financial instruments shall ensure that no claims can be made on the managing authority beyond the amount committed by it to the financial instrument.

3. The bodies implementing financial instruments shall be liable for reimbursement of the programme contributions affected by irregularities, together with interest and any other gains generated by these contributions.

Nevertheless the bodies implementing financial instruments shall not be liable for reimbursement of the amounts referred to in the first subparagraph provided that they demonstrate for a given irregularity that the following cumulative conditions are fulfilled:

(a) the irregularity occurred at the level of final recipients or, in the case of a fund of funds, at the level of financial intermediaries or final recipients;

(b) the bodies implementing financial instruments complied with paragraph 1 of this Article in relation to the programme contributions affected by the irregularity;

(c) the amounts affected by the irregularity could not be recovered notwithstanding that the bodies implementing financial instruments pursued all applicable contractual and legal measures with due diligence.

Article 7

Criteria for the selection of bodies implementing financial instruments

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

1. When selecting a body to implement a financial instrument in accordance with Article 38(4)(a) and 38 (4)(b)(ii) and (b)(iii) of Regulation (EU) No 1303/2013, the managing authority shall satisfy itself that this body fulfils the following minimum requirements:

(a) entitlement to carry out relevant implementation tasks under Union and national law;

(b) adequate economic and financial viability;

(c) adequate capacity to implement the financial instrument, including organisational structure and governance framework providing the necessary assurance to the managing authority;

(d) existence of an effective and efficient internal control system;

(e) use of an accounting system providing accurate, complete and reliable information in a timely manner;

(f) agreement to be audited by Member State audit bodies, the Commission and the European Court of Auditors.

2. When selecting a body referred to in paragraph 1, the managing authority shall take due account of the nature of the financial instrument to be implemented, the body's experience with the implementation of similar financial instruments, the expertise and experience of proposed team members, and the body's operational and financial capacity. The selection shall be transparent and justified on objective grounds and shall not give rise to a conflict of interest. At least the following selection criteria shall be used:

(a) robustness and credibility of the methodology for identifying and appraising financial intermediaries or final recipients as applicable;

(b) the level of management costs and fees for the implementation of the financial instrument and the methodology proposed for their calculation;

(c) terms and conditions applied in relation to support provided to final recipients, including pricing;

(d) the ability to raise resources for investments in final recipients additional to programme contributions;

(e) the ability to demonstrate additional activity in comparison to present activity;

(f) in cases where the body implementing the financial instrument allocates its own financial resources to the financial instrument or shares the risk, proposed measures to align interests and to mitigate possible conflicts of interest.

3. Where a body that implements a fund of funds, including the EIB, further entrusts implementation tasks to a financial intermediary, it shall ensure that the requirements and criteria referred to in paragraphs 1 and 2 are met in respect of that financial intermediary.

Article 8

Specific rules on guarantees delivered through financial instruments

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

Where financial instruments provide guarantees, the following requirements shall be fulfilled:

(a) an appropriate multiplier ratio shall be achieved between the amount of the programme contribution set aside to cover expected and unexpected losses from new loans or other risk-sharing instruments to be covered by the guarantees and the value of corresponding disbursed new loans or other risk-sharing instruments;

(b) the multiplier ratio shall be established through a prudent ex ante risk assessment for the specific guarantee product to be offered, taking into account the specific market conditions, the investment strategy of the financial instrument, and the principles of economy and efficiency. The ex ante risk assessment may be reviewed where it is justified by subsequent market conditions;
(c) the programme contribution committed to honour guarantees shall reflect that ex ante risk assessment;

(d) if the financial intermediary or the entity benefiting from the guarantees has not disbursed the planned amount of new loans or other risk-sharing instruments to final recipients, the eligible expenditure shall be reduced proportionally.

Article 9

Management and control of financial instruments set up at national, regional transnational or cross-border level

(Article 40(4) of Regulation (EU) No 1303/2013)

1. For operations involving support from programmes to financial instruments set up at national, regional transnational or cross-border level referred to in Article 38(1)(b) of Regulation (EU) No 1303/2013, the managing authority shall ensure that:

(a) the operation complies with applicable law, the relevant programme and the relevant funding agreement, both during the appraisal and selection process of the operation and during the set-up and implementation of the financial instrument;

(b) funding agreements contain provisions on audit requirements and on the audit trail in accordance with point 1(e) of Annex IV to Regulation (EU) No 1303/2013;

(c) management verifications are carried out throughout the programming period and during the set-up and implementation of the financial instruments in accordance with Article 125(4) of Regulation (EU) No 1303/2013 for the ERDF, the ESF, the Cohesion Fund and the EMFF, and in accordance with Article 58(1) and (2) of Regulation (EU) No 1305/2013 for the EAFRD;

(d) supporting documents for expenditure declared as eligible are:

(i) kept for the operation by the managing authority, the financial intermediary, or the body that implements the fund of funds where the financial instrument is implemented through a fund of funds, in order to provide evidence of the use of the funds for the intended purposes, of compliance with applicable law and of compliance with the criteria and the conditions for funding under the relevant programmes;

(ii) available to allow verification of the legality and regularity of expenditure declared to the Commission;

(e) supporting documents allowing verification of compliance with Union and national law and with the conditions of funding include at least:

(i) documents on the establishment of the financial instrument;

(ii) documents identifying the amounts contributed by each programme and under each priority axis to the financial instrument, the expenditure that is eligible under the programmes and the interest and other gains generated by support from the ESI Funds and re-use of resources attributable to the ESI Funds in accordance with Articles 43 and 44 of Regulation (EU) No 1303/2013;

(iii) documents on the functioning of the financial instrument, including those related to monitoring, reporting and verifications;

(iv) documents demonstrating compliance with Articles 43, 44 and 45 of Regulation (EU) No 1303/2013;

(v) documents concerning exits of programme contributions and the winding-up of the financial instrument;

(vi) documents on the management costs and fees;

(vii) application forms, or equivalent, submitted by final recipients with supporting documents, including business plans and, when relevant, previous annual accounts;

(viii) checklists and reports from the bodies implementing the financial instrument, where available;

(ix) declarations made in connection with de minimis aid, if applicable;

(x) agreements signed in connection with the support provided by the financial instrument, including for equity, loans, guarantees or other forms of investment provided to final recipients;
(xi) evidence that the support provided through the financial instrument was used for its intended purpose;

(xii) records of the financial flows between the managing authority and the financial instrument, and within the financial instrument at all levels, down to the final recipients, and in the case of guarantees proof that underlying loans were disbursed;

(xiii) separate records or accounting codes for programme contribution paid or guarantee committed by the financial instrument for the benefit of the final recipient.

2. For operations involving support from programmes to financial instruments under the ERDF, the ESF, the Cohesion Fund and the EMFF, the audit authorities shall ensure that financial instruments are audited throughout the programming period until closure both in the framework of systems audits and audits of operations in accordance with Article 127(1) of Regulation (EU) No 1303/2013.

For operations involving support from programmes to financial instruments under the EAFRD, the audit bodies shall ensure that financial instruments are audited throughout the programming period until closure in the framework of systems audits and audits of operations in accordance with Article 59 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council (1).

3. Where financial instruments are implemented by the EIB pursuant to Article 38(4)(b)(i) of Regulation (EU) No 1303/2013:

(a) the managing authority shall mandate a firm which shall operate under a common framework established by the Commission to carry out on-the-spot verifications on the operation within the meaning of Article 125(5)(b) of Regulation (EU) No 1303/2013;

(b) the audit authority shall mandate a firm which shall operate under a common framework established by the Commission to carry out audits on the operation.

The audit authority shall base its audit opinion on the basis of the information provided by the firm mandated.

4. In the absence of a common framework established by the Commission as referred to in paragraph 3, the managing authority shall submit a proposed methodology for carrying out on-the-spot verifications and the audit authority shall submit a proposed methodology for audits for agreement by the Commission.

Article 10

Rules for withdrawal of payments to financial instruments and consequent adjustments in respect of applications for payment

(Article 41(3) of Regulation (EU) No 1303/2013)

Member States and managing authorities may withdraw contributions from programmes to the financial instruments referred to in point (a) of Article 38(1) and financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a) and (b) of Article 38(4) of Regulation (EU) No 1303/2013 only if the contributions have not already been included in an application for payment as referred to in Article 41 of that Regulation. However, as regards financial instruments supported by the ERDF, the ESF, the Cohesion Fund and the EMFF, contributions may also be withdrawn if the next payment application is amended to withdraw or replace the corresponding expenditure.

Article 11

System of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies

(Third subparagraph of Article 42(1) of Regulation (EU) No 1303/2013)

1. Capitalised interest rate subsidies and guarantee fee subsidies referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013 shall be calculated at the end of the eligibility period as the total of discounted payment obligations for the purposes and periods laid down in that Article, and in accordance with the relevant funding agreements.

2. Any resources left in the escrow account after the period referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013, or as a result of an unexpected winding-up of the financial instrument before the end of that period, shall be used in accordance with Article 45 of that Regulation.

Article 12

Criteria for determining management costs and fees on the basis of performance

(Article 42(6) of Regulation (EU) No 1303/2013)

1. The managing authority shall calculate management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 on the basis of the following performance based criteria as referred to in Article 42(5) of that Regulation:

(a) the disbursement of contributions provided by the ESI Funds programme;

(b) the resources paid back from investments or from the release of resources committed for guarantee contracts;

(c) the quality of measures accompanying the investment before and after the investment decision to maximise its impact; and

(d) the contribution of the financial instrument to the objectives and outputs of the programme.

2. The managing authority shall inform the monitoring committee set up in accordance with Article 47 of Regulation (EU) No 1303/2013 of the provisions regarding the performance-based calculation of management costs incurred or of the management fees of the financial instrument. The monitoring committee shall receive reports on an annual basis on the management costs and fees effectively paid in the preceding calendar year.

Article 13

Thresholds for management costs and fees

(Article 42(5) and (6) of Regulation (EU) No 1303/2013)

1. For a body that implements a fund of funds, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 shall not exceed the sum of:

(a) 3 % for the first 12 months after the signature of the funding agreement, 1 % for the next 12 months, thereafter 0,5 % per annum, of the programme contributions paid to the fund of funds, calculated pro rata temporis from the date of effective payment to the fund of funds until the end of the eligibility period, repayment to the managing authority or the date of winding up, whichever is earlier; and

(b) 0,5 % per annum of programme contributions paid by the fund of funds to financial intermediaries, calculated pro rata temporis from the moment of effective payment by the fund of funds until repayment to the fund of funds, the end of the eligibility period or the date of winding up, whichever is earlier.

2. For bodies implementing financial instruments providing equity, loans, guarantees, as well as micro-credits, including when combined with grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of that Regulation shall not exceed the sum of:

(a) a base remuneration which shall be calculated as follows:

(i) for a financial instrument providing equity, 2,5 % per annum for the first 24 months after the signature of the funding agreement, thereafter 1 % per annum, of programme contributions committed under the relevant funding agreement to the financial instrument, calculated pro-rata temporis from the date of signature of the relevant funding agreement until the end of the eligibility period, repayment of the contributions to the managing authority or to the fund of funds, or the date of winding up, whichever is earlier;

(ii) for a financial instrument in all other cases, 0,5 % per annum of programme contributions paid to the financial instrument, calculated pro rata temporis from the date of effective payment to the financial instrument until the end of the eligibility period, the repayment to the managing authority, or to the fund of funds, or the date of winding up, whichever is earlier; and
(b) a performance-based remuneration which shall be calculated as follows:

(i) for a financial instrument providing equity, 2.5 % per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of equity, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated pro rata temporis from the date of payment to the final recipient until repayment of the investment, the end of the recovery procedure in the case of write-offs or the end of the eligibility period, whichever is earlier;

(ii) for a financial instrument providing loans, 1 % per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of loans, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated pro rata temporis from the date of payment to the final recipient until repayment of the investment, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;

(iii) for a financial instrument providing guarantees, 1.5 % per annum of the programme contributions committed to outstanding guarantee contracts within the meaning of Article 42(1)(b) of Regulation (EU) No 1303/2013, as well as from re-used resources attributable to programme contributions, calculated pro rata temporis from the date of commitment until maturity of the guarantee contract, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;

(iv) for a financial instrument providing micro-credit, 1.5 % per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of micro-credit, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated pro rata temporis from the date of payment to the final recipient, until repayment of the investment, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;

(v) for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 0.5 % of the grant amount paid within the meaning of Article 42(1)(a) of that Regulation for the benefit of final recipients.

The provisions of this paragraph shall apply to a body implementing a financial instrument providing guarantees notwithstanding that the same body is implementing a fund of funds, subject to the provisions of paragraph 4.

3. The aggregate amount of management costs and fees over the eligibility period laid down in Article 65(2) of Regulation (EU) No 1303/2013 shall not exceed the following limits:

(a) for a fund of funds, 7 % of the total amount of programme contributions paid to the fund of funds;

(b) for a financial instrument providing equity, 20 % of the total amount of programme contributions paid to the financial instrument;

(c) for a financial instrument providing loans, 8 % of the total amount of programme contributions paid to the financial instrument;

(d) for a financial instrument providing guarantees, 10 % of the total amount of programme contributions paid to the financial instrument;

(e) for a financial instrument providing micro-credit, 10 % of the total amount of programme contributions paid to the financial instrument;

(f) for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 6 % of the total amount of programme contributions paid to the financial instrument.
4. Where the same body implements a fund of funds and a financial instrument, neither the amounts of eligible management cost and fees under paragraphs 1 and 2, nor the limits set out in paragraph 3 shall be cumulated for the same programme contributions or the same resources re-invested which are attributable to programme contributions.

5. Where the majority of the capital invested in financial intermediaries providing equity is provided by private investors or public investors operating under the market economy principle and the programme contribution is provided pari passu with the private investors, the management costs and fees shall conform to market terms and shall not exceed those payable by the private investors.

6. The thresholds laid down in paragraphs 1, 2 and 3 may be exceeded where they are charged by a body implementing the financial instrument, including, where applicable, when it implements the fund of funds, which has been selected through a competitive tender in accordance with the applicable rules and the competitive tender proved the need for higher management costs and fees.

**Article 14**

**Reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit**

(Article 42(6) of Regulation (EU) No 1303/2013)

1. Capitalised management costs and fees to be reimbursed as eligible expenditure in accordance with Article 42(2) of Regulation (EU) No 1303/2013 shall be calculated at the end of the eligibility period as the total of discounted management costs and fees to be paid after the eligibility period for the period laid down in Article 42(2) of that Regulation, and in accordance with the relevant funding agreements.

2. Capitalised management costs and fees to be paid after the eligibility period for a financial instrument providing micro-credit shall not exceed 1% per annum of the programme contributions paid to the final recipients within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 in the form of loans, which have yet to be paid back to the financial instrument, calculated pro rata temporis from the end of the eligibility period until repayment of the investment, the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation, whichever is earlier.

3. Capitalised management costs and fees to be paid after the eligibility period for a financial instrument providing equity shall not exceed 1.5% per annum of the programme contributions paid to the final recipients within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 in the form of equity, which have yet to be paid back to the financial instrument, calculated pro rata temporis from the end of the eligibility period until repayment of the investment, the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation, whichever is earlier.

4. Any resources left in the escrow account after the period referred to under Article 42(2) of Regulation (EU) No 1303/2013, or as a result of an unexpected winding-up of the financial instrument before the end of that period, shall be used in accordance with Article 45 of that Regulation.

**SECTION III**

**Method for calculating the discounted net revenue of operations generating net revenue**

**Article 15**

**Method for calculating discounted net revenue**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. For the purposes of the application of the method referred to in point (b) of the first subparagraph of Article 61(3) of Regulation (EU) No 1303/2013, the discounted net revenue of the operation shall be calculated by deducting the discounted costs from the discounted revenue and, where applicable, by adding the residual value of the investment.
2. The discounted net revenue of an operation shall be calculated over a specific reference period applicable to the sector of that operation as set out in Annex I. The reference period shall include the implementation period of the operation.

3. Revenues and costs shall be determined by applying the incremental method based on a comparison of revenue and costs in the scenario of the new investment with the revenues and costs in the scenario without the new investment.

Where an operation consists of a new asset, the revenues and costs shall be those of the new investment.

4. Where value added tax is not an eligible cost according to Article 69(3)(c) of Regulation (EU) No 1303/2013, the calculation of discounted net revenue shall be based on figures excluding value added tax.

**Article 16**

**Determination of revenues**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

For the purposes of the calculation of discounted net revenue, the revenues shall be determined on the following basis:

(a) where applicable, user charges shall be fixed in compliance with the polluter-pays principle, and, if appropriate, shall take into account affordability considerations;

(b) revenue shall not include transfers from national or regional budgets or national public insurance systems;

(c) where an operation adds new assets to complement a pre-existing service or infrastructure, both contributions from new users and additional contributions from existing users of the new or enlarged service or infrastructure shall be taken into account.

**Article 17**

**Determination of costs**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

For the purposes of the calculation of discounted net revenue, the following costs occurring during the reference period referred to in Article 15(2) shall be taken into consideration:

(a) replacement costs of short-life equipment ensuring the technical functioning of the operation;

(b) fixed operating costs, including maintenance costs, such as staff, maintenance and repair, general management and administration, and insurance;

(c) variable operating costs, including maintenance costs, such as consumption of raw materials, energy, other process consumables, and any maintenance and repair needed to extend the lifetime of the operation.

**Article 18**

**Residual value of the investment**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. Where the assets of an operation have design lifetimes in excess of the reference period referred to in article 15(2), their residual value shall be determined by computing the net present value of cash flows in the remaining life years of the operation. Other methods of calculating residual value may be used in duly justified circumstances.

2. The residual value of the investment shall be included in the calculation of discounted net revenue of the operation only if the revenues outweigh the costs referred to in Article 17.
Article 19

Discounting of cash flows

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. Only cash flows to be paid out or received by the operation shall be taken into consideration when calculating costs and revenue. Cash flows shall be established for each year in which they are paid out or received by the operation over the reference period referred to in article 15(2).

2. Non-cash accounting items such as depreciation, any reserves for future replacement costs and contingency reserves shall be excluded from the calculation.

3. Cash flows shall be discounted back to the present using a financial discount rate of 4 % in real terms as an indicative benchmark for public investment operations co-financed by the ESI Funds.

4. Member States may use a financial discount rate other than 4 % if they provide a justification for that benchmark and ensure it is used consistently across similar operations in the same sector.

5. Values other than 4 % may be justified on the grounds of:

(a) the Member State's specific macroeconomic conditions and international macroeconomic trends and conjunctures; or

(b) the nature of the investor or the implementation structure, such as public private partnerships; or

(c) the nature of the sector concerned.

6. In order to establish specific financial discount rates, Member States shall estimate the average long-term return from an alternative, risk-free basket of investments, whether domestic or international, which they deem most relevant. Information on the different financial discount rates shall be made available to beneficiaries.

SECTION IV

Definition of the flat rates for indirect costs and related methods applicable in other Union policies

Article 20

Flat rate financing for indirect costs based on Regulation (EU) No 1290/2013

(Second subparagraph of Article 68(1) of Regulation (EU) No 1303/2013)

Indirect costs may be calculated by applying a flat rate established in accordance with Article 29(1) of Regulation (EU) No 1290/2013 for the following types of operations or projects forming part of operations:

(a) the operations supported by the ERDF under intervention field codes 056, 057 or 060-065 as set out in Table 1 of Annex to Commission Implementing Regulation (EU) No 215/2014 (*) and carried out under one of the investment priorities laid down in Article 5(1)(a) and (b), (2)(b), (3)(a) and (c), and (4)(f) of Regulation (EU) No 1301/2013 of the European Parliament and of the Council (†);

(b) the operations supported by the ESF under intervention field code 04 as set out in Table 6 of Annex to Commission Implementing Regulation (EU) 215/2014 and contributing to strengthening research, technological development and innovation in accordance with Article 3(2)(c) of Regulation (EU) No 1304/2013;


(c) the operations supported by the EAFRD in accordance with Articles 17, 25 or 35 of Regulation (EU) No 1305/2013 which contribute to the Union priority laid down in Article 5(1) of that Regulation. Where the operation is programmed in accordance with Articles 17 and 25 of Regulation (EU) No 1305/2013, only operations implemented by an operational group of the European Innovation Partnership funded under Article 35(1)(c) of that Regulation shall be considered;

(d) the operations supported by the EMFF and programmed in accordance with Articles 28, 37 or 41(5) of the future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020.

Article 21

Flat rate financing for indirect costs based on Regulation (EU, Euratom) No 966/2012

(Second subparagraph of Article 68(1) of Regulation (EU) No 1303/2013)

Indirect costs may be calculated by applying the flat rate established in accordance with Article 124(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (1) for the following types of operations or projects forming part of an operation:

(a) the operations supported by the ERDF under intervention field codes 085, 086 or 087 as set out in Table 1 of Annex to Commission Implementing Regulation (EU) No 215/2014 and carried out under one of the investment priorities laid down in Article 5(5)(a) and (6)(d) of Regulation (EU) No 1301/2013;

(b) the operations supported by the ESF under intervention field code 01 as set out in Table 6 of Annex to Commission Implementing Regulation (EU) No 215/2014 and contributing to supporting the shift towards a low carbon, climate resilient, resource-efficient and environmentally sustainable economy in accordance with Article 3(2)(a) of Regulation (EU) No 1304/2013;

(c) the operations supported by the EAFRD in accordance with Articles 17 and 25 of Regulation (EU) No 1305/2013 which contribute to the Union priority laid down in Article 5(4) or (5) of that Regulation;

(d) the operation supported by the EMFF and programmed in accordance with Articles 36, 38, 39(1), 46(1)(e) and (i), 54, 79c (1)(b) of the future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020.

CHAPTER III

PROVISIONS SUPPLEMENTING PART THREE REGULATION (EU) No 1303/2013 APPLICABLE TO THE ERDF AND THE COHESION FUND AS REGARDS THE METHODOLOGY TO BE USED FOR CARRYING OUT THE QUALITY REVIEW OF MAJOR PROJECTS

Article 22

Requirements for independent experts carrying out the quality review

(Fourth paragraph of Article 101 of Regulation (EU) No 1303/2013)

1. The quality review of major projects referred to in the third paragraph of Article 101 of Regulation (EU) No 1303/2013, shall be carried out by independent experts that have:

(a) significant technical experience of all stages of the project cycle;

(b) broad international experience of the investment sectors concerned;

(c) significant expertise in the analysis and evaluation of socioeconomic benefits;

(d) significant knowledge and experience of relevant Union law, policies and procedures;

(e) independence from all authorities involved directly or indirectly in the approval, implementation, or operation of the major project;

(f) no conflict of interest at any level in relation to the major project;

(g) no commercial interest in relation to the major project;

(h) the necessary linguistic competence.

2. Where a Member State proposes to mandate independent experts other than those supported by technical assistance at the initiative of the Commission in accordance with Article 58 of Regulation (EU) No 1303/2013, it shall in accordance with the third paragraph of Article 101 of that Regulation submit a request for the Commission’s agreement. That agreement shall be based on documents demonstrating compliance of the experts with the requirements laid down in paragraph 1 of this Article.

The Commission shall inform the Member State within three months from the submission of the request whether it agrees with the proposal regarding the independent experts.

Article 23

Quality review of major projects

(Fourth paragraph of Article 101 of Regulation (EU) No 1303/2013)

1. The independent experts shall carry out their assessment on the basis of the information referred to in points (a) to (i) of the first paragraph of Article 101 of Regulation (EU) No 1303/2013. The independent experts may request additional elements relating to this information which they deem necessary for the quality review.

The Member State and the independent experts may agree that this work shall be complemented by site visits.

The independent experts may, in agreement with the Member States, consult the Commission on relevant State aid issues for the purpose of their assessment.

2. The independent experts shall for the purposes of the quality review undertake the following steps:

(a) the independent experts shall verify that the operation is a major project within the meaning of Article 100 of Regulation (EU) No 1303/2013, that the major project is not a completed operation within the meaning of Articles 2(14) and 65(6) of that Regulation, and that the major project is included within the relevant operational programme;

(b) the independent experts shall check the completeness, consistency and accuracy of the information under points (a) to (i) of the first subparagraph of Article 101 of Regulation (EU) No 1303/2013 provided for in the format referred to in the fifth paragraph of Article 101 of Regulation (EU) No 1303/2013;

(c) the independent experts shall appraise the quality of the major project on the basis of the criteria set out in Annex II to this Regulation;

(d) the independent experts shall produce an independent quality review report (hereinafter the 'IQR report') in the format provided for in the third subparagraph of Article 102(1) of Regulation (EU) No 1303/2013. In the IQR report, the independent experts shall formulate and justify their statements in an unambiguous manner for the elements referred to in this paragraph.
3. A major project is appraised positively by the quality review in the meaning of Article 102(1) of Regulation (EU) No 1303/2013 if the independent experts conclude that all the criteria referred to in Annex II of this Regulation have been fulfilled.

CHAPTER IV


SECTION I

Data to be recorded and stored in computerised form

Article 24

Data to be recorded and stored in computerised form

(Article 125(8) of Regulation (EU) No 1303/2013)

1. The information on data to be recorded and stored in computerised form for each operation in the monitoring system set up in accordance with Article 125(2)(d) of Regulation (EU) No 1303/2013 is set out in Annex III to this Regulation.

2. Data shall be recorded and stored for each operation, including data on individual participants, where applicable, in order to allow it to be aggregated where this is necessary for the purposes of monitoring, evaluation, financial management, verification and audit. It shall also allow the aggregation of such data cumulatively for the entire programming period. For the ESF, the data shall be recorded and stored in a way that allows the managing authorities to perform the tasks related to monitoring and evaluation in conformity with the requirements set out in Article 56 of Regulation (EU) No 1303/2013 and Articles 5 and 19 of Regulation (EU) No 1304/2013 and Annexes I and II to that Regulation.

3. Where an operation is supported by more than one operational programme, priority or Fund or under more than one category of region, the information referred to in fields 23-113 of Annex III shall be recorded in a manner that allows the data to be retrieved broken down by operational programme, priority, Fund or category of region. It shall also be possible to retrieve the indicator data referred to in fields 31-40 of Annex III broken down by investment priority and by gender, where applicable.

SECTION II

The audit trail and use of the data collected during audits

Article 25

Detailed minimum requirements for the audit trail

(Article 125(9) of Regulation (EU) No 1303/2013)

1. The detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held shall be the following:

(a) the audit trail shall allow the application of the selection criteria established by the monitoring committee for the operational programme to be verified;

(b) in relation to grants and repayable assistance under Article 67(1)(a) of Regulation (EU) No 1303/2013, the audit trail shall allow the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries as regards operations co-financed under the operational programme;
(c) in relation to grants and repayable assistance under Articles 67(1)(b) and (c) and 109 of Regulation (EU) No 1303/2013 and under Article 14(1) of Regulation (EU) No 1304/2013, the audit trail shall allow the aggregate amounts certified to the Commission to be reconciled with the detailed data relating to outputs or results and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries, including where applicable documents on the method of setting the standard scales for unit costs and the lump sums, as regards operations co-financed under the operational programme;

(d) in relation to costs determined in accordance with Articles 67(1)(d) and 68(1)(a) of Regulation (EU) No 1303/2013, the audit trail shall demonstrate and justify the calculation method, where applicable, and the basis on which the flat rates have been decided, and the eligible direct costs or costs declared under other chosen categories to which the flat rate applies;

(e) in relation to costs determined in accordance with Article 68(1)(b) and (c) of Regulation (EU) No 1303/2013, Article 14(2) of Regulation (EU) No 1304/2013 and Article 20 of Regulation (EU) No 1299/2013, the audit trail shall allow the eligible direct costs to which the flat rate applies to be substantiated;

(f) the audit trail shall allow the payment of the public contribution to the beneficiary to be verified;

(g) for each operation, as appropriate, the audit trail shall include the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, reports by the beneficiary and reports on verifications and audits carried out;

(h) the audit trail shall include information on management verifications and audits carried out on the operation;

(i) without prejudice to Article 19(3) and Annexes I and II to Regulation (EU) No 1304/2013, the audit trail shall allow data in relation to output indicators for the operation to be reconciled with targets and reported data and result for the programme;

(j) for financial instruments, the audit trail shall include the supporting documents referred to in Article 9(1)(e) of this Regulation.

For costs referred to in points (c) and (d), the audit trail shall allow the calculation method used by the managing authority to be verified for compliance with Articles 67(5) and 68(1) of Regulation (EU) No 1303/2013 and Article 14(3) of Regulation (EU) No 1304/2013.

2. The managing authority shall ensure that a record is available of the identity and location of bodies holding all the supporting documents required to ensure an adequate audit trail meeting all the minimum requirements laid down in paragraph 1.

Article 26

Use of the data collected during audits carried out by Commission officials or authorised Commission representatives

(Article 127(8) of Regulation (EU) No 1303/2013)

1. The Commission shall take all necessary measures to prevent any unauthorised disclosure of, or access to, the data collected by the Commission in the course of its audits.

2. The Commission shall use the data collected in the course of its audits for the sole purpose of fulfilling its responsibilities under Article 75 of Regulation (EU) No 1303/2013. The European Court of Auditors and the European Anti-Fraud Office shall have access to the data collected.

3. The data collected shall not be sent to persons other than those in the Member States or within the Union institutions whose duties require that they have access to it in accordance with the applicable rules without the express agreement of the Member State supplying the data.
SECTION III

Scope and content of audits of operations and accounts and methodology for the selection of the sample of operations

Article 27

Audits of operations

(Article 127(7) of Regulation (EU) No 1303/2013)

1. Audits of operations shall be carried out in respect of each accounting year on a sample of operations selected by a method established or approved by the audit authority in accordance with Article 28 of this Regulation.

2. Audits of operations shall be carried out on the basis of supporting documents constituting the audit trail and shall verify the legality and regularity of expenditure declared to the Commission, including the following aspects:

(a) that the operation was selected in accordance with the selection criteria for the operational programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the operational programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained;

(b) that the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 25 of this Regulation;

(c) that for expenditure declared to the Commission determined in accordance with Articles 67(1)(b) and (c) and 109 of Regulation (EU) No 1303/2013 and Article 14(1) of Regulation (EU) No 1304/2013, outputs and results underpinning payments to the beneficiary have been delivered, participant data or other records related to outputs and results are consistent with the information submitted to the Commission and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 25 of this Regulation.

Audits shall also verify that the public contribution has been paid to the beneficiary in accordance with Article 132(1) of Regulation (EU) No 1303/2013.

3. Audits of operations shall, where applicable, include on-the-spot verification of the physical implementation of the operation.

4. Audits of operations shall verify the accuracy and completeness of the corresponding expenditure recorded by the certifying authority in its accounting system and the reconciliation of the audit trail at all levels.

5. Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the operational programme, the audit authority shall ensure further examination, including, where necessary, additional audits to establish the scale of such problems, and shall recommend the necessary corrective actions.

6. Only expenditure falling within the scope of an audit carried out pursuant to paragraph 1 shall be counted towards the amount of expenditure audited, for the purposes of reporting to the Commission on annual coverage. For those purposes, the model for the control report set out on the basis of Article 127(6) of Regulation (EU) No 1303/2013 shall be used.

Article 28

Methodology for the selection of the sample of operations

(Article 127(7) of Regulation (EU) No 1303/2013)

1. The audit authority shall establish the method for the selection of the sample (the sampling method) in accordance with the requirements set out in this Article taking into account the internationally accepted auditing standards, INTOSAI, IFAC or IIA.

2. In addition to the explanations provided in the audit strategy, the audit authority shall keep a record of the documentation and professional judgement used to establish the sampling methods, covering the planning, selection, testing and evaluation stages, in order to demonstrate that the established method is suitable.
3. A sample shall be representative of the population from which it is selected and enable the audit authority to draw up a valid audit opinion in accordance with Article 127(5)(a) of Regulation (EU) No 1303/2013. That population shall comprise the expenditure of an operational programme or group of operational programmes covered by a common management and control system, which is included in the payment applications submitted to the Commission in accordance with Article 131 of Regulation (EU) No 1303/2013 for a given accounting year. The sample may be selected during or after the accounting year.

4. For the purpose of application of Article 127(1) of Regulation (EU) No 1303/2013, a sampling method is statistical when it ensures:

(i) a random selection of the sample items;

(ii) the use of probability theory to evaluate sample results, including measurement and control of the sampling risk and of the planned and achieved precision.

5. The sampling method shall ensure a random selection of each sampling unit in the population by using random numbers generated for each population unit in order to select the units constituting the sample or through systematic selection by using a random starting point and applying a systematic rule to select the additional items.

6. The sampling unit shall be determined by the audit authority, based on professional judgement. The sampling unit may be an operation, a project within an operation or a payment claim by a beneficiary. Information on the type of sampling unit determined and on the professional judgement used for that purpose shall be included in the control report.

7. Where the total expenditure relating to a sampling unit for the accounting year is a negative amount it shall be excluded from the population referred to in paragraph 3 above and shall be audited separately. The audit authority may also draw a sample of this separate population.

8. Where conditions for the proportional control provided for in Article 148(1) of Regulation (EU) No 1303/2013 apply, the audit authority may exclude the items referred to in that Article from the population to be sampled. If the operation concerned has already been selected in the sample, the audit authority shall replace it using an appropriate random selection.

9. All expenditure declared to the Commission in the sample shall be subject to audit.

Where the selected sampling units include a large number of underlying payment claims or invoices, the audit authority may audit them through sub-sampling, selecting the underlying payment claims or invoices by using the same sampling parameters used to select the sampling units of the main sample.

In that case, appropriate sample sizes shall be calculated within each sample unit to be audited and, in any event, shall not be less than 30 underlying payment claims or invoices for each sampling unit.

10. The audit authority may stratify a population by dividing a population into sub-populations, each of which is a group of sampling units which have similar characteristics, in particular in terms of risk or expected error rate or where the population includes operations consisting of financial contributions from an operational programme to financial instruments or other high-value items.

11. The audit authority shall evaluate the reliability of the system as high, average or low, taking into account the results of systems audits to determine the technical parameters of sampling so that the combined level of assurance obtained from the systems audits and audits of operations is high. For a system assessed as having high reliability the confidence level used for sampling operations shall not be less than 60 %. For a system assessed as having low reliability the confidence level used for sampling operations shall not be less than 90 %. The maximum materiality level shall be 2 % of the expenditure referred to in paragraph 3.

12. Where irregularities or a risk of irregularities have been detected, the audit authority shall decide on the basis of professional judgement whether it is necessary to audit a complementary sample of additional operations or parts of operations that were not audited in the random sample in order to take account of specific risk factors identified.
13. The audit authority shall analyse the results of the audits of the complementary sample separately, draw conclusions based on those results and communicate them to the Commission in the annual control report. Irregularities detected in the complementary sample shall not be included in the calculation of the projected random error of the random sample.

14. On the basis of the results of the audits of operations for the purpose of the audit opinion and control report referred to in Article 127(5)(a) of Regulation (EU) No 1303/2013, the audit authority shall calculate a total error rate, which shall be the sum of the projected random errors and, if applicable, systemic errors and uncorrected anomalous errors, divided by the population.

Article 29

Audits of accounts

(Article 127(7) of Regulation (EU) No 1303/2013)

1. The audits of accounts referred to in Article 137(1) of Regulation (EU) No 1303/2013 shall be carried out by the audit authority in respect of each accounting year.

2. The audit of the accounts shall provide reasonable assurance on the completeness, accuracy and veracity of the amounts declared in the accounts.

3. For the purposes of paragraphs 1 and 2, the audit authority shall take into account, in particular, the results of the system audits carried out on the certifying authority and of the audits on operations.

4. The system audit shall include verification of the reliability of the accounting system of the certifying authority and, on a sample basis, of the accuracy of expenditure of amounts withdrawn and amounts recovered recorded in the certifying authority's accounting system.

5. For the purpose of the audit opinion, in order to conclude that the accounts give a true and fair view, the audit authority shall verify that all elements required by Article 137 of Regulation (EU) No 1303/2013 are correctly included in the accounts and correspond to the supporting accounting records maintained by all relevant authorities or bodies and beneficiaries. The audit authority shall in particular, on the basis of the accounts to be provided to it by the certifying authority, verify that:
   
   (a) the total amount of eligible expenditure declared in accordance with Article 137(1)(a) of Regulation (EU) No 1303/2013 agrees with the expenditure and the corresponding public contribution included in payment applications submitted to the Commission for the relevant accounting year and, if there are differences, that adequate explanations have been provided in the accounts for the reconciling amounts;

   (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries carried out pursuant to Article 71 of Regulation (EU) No 1303/2013, and the irrecoverable amounts presented in the accounts correspond to the amounts entered in the accounting systems of the certifying authority and are based on decisions by the responsible managing authority or certifying authority;

   (c) expenditure has been excluded from the accounts in accordance with Article 137(2) of Regulation (EU) No 1303/2013, where applicable, and that all the required corrections are reflected in the accounts for the accounting year concerned;

   (d) the programme contributions paid to financial instruments and advances of State aid paid to beneficiaries are supported by the information available from the managing authority and from the certifying authority.

Verifications referred to in points (b), (c) and (d) may be carried out on a sample basis.
SECTION IV

Financial corrections by the Commission in relation to systems deficiencies

Article 30

Criteria for determining serious deficiencies in the effective functioning of management and control systems

(Article 144(6) of Regulation (EU) No 1303/2013)

1. The Commission shall base its assessment of the effective functioning of management and control systems on the results of all available systems audits, including tests of controls, and of audits of operations.

The assessment shall cover the internal control environment of the programme, the management and control activities of the managing and certifying authorities, monitoring by the managing and certifying authority, and the control activities of the audit authority and shall be based on verification of compliance with the key requirements set out in Table 1 of Annex IV.

The fulfilment of these key requirements shall be assessed on the basis of the categories set out in Table 2 of Annex IV.

2. The main types of serious deficiency in the effective functioning of the management and control system shall be cases where any of the key requirements referred to in points 2, 4, 5, 13, 15, 16 and 18 of Table 1 of Annex IV, or two or more of the other key requirements in Table 1 of Annex IV are assessed as falling into categories 3 or 4 set out in Table 2 of Annex IV.

Article 31

Criteria for applying flat rates or extrapolated financial corrections and criteria for determining the level of financial correction

(Article 144(6) of Regulation (EU) No 1303/2013)

1. Financial corrections shall be applied for all or part of an operational programme, where the Commission identifies one or more serious deficiencies in the functioning of the management and control system.

Notwithstanding the first subparagraph, extrapolated financial corrections shall be applied, for all or part of an operational programme, where the Commission identifies systemic irregularities in a representative sample of operations, allowing for a more accurate quantification of the risk for the Union budget. In this case, the results of the examination of the representative sample shall be extrapolated to the rest of the population from which the sample was drawn for the purpose of determining the financial correction.

2. The level of flat-rate correction shall be fixed taking into account the following elements:

(a) the relative importance of the serious deficiency or serious deficiencies in the context of the management and control system as a whole;

(b) the frequency and extent of the serious deficiency or serious deficiencies;

(c) the degree of risk of loss for the Union budget.

3. Taking into account these elements, the level of financial correction shall be fixed as follows:

(a) where the serious deficiency or serious deficiencies in the management and control system is so fundamental, frequent or widespread that it represents a complete failure of the system that puts at risk the legality and regularity of all expenditure concerned, a flat rate of 100 % shall be applied;

(b) where the serious deficiency or serious deficiencies in the management and control system is so frequent and widespread that it represents an extremely serious failure of the system that puts at risk the legality and regularity of a very high proportion of the expenditure concerned, a flat rate of 25 % shall be applied;
(c) where the serious deficiency or serious deficiencies in the management and control system is due to the system not fully functioning or functioning so poorly or so infrequently that it puts at risk the legality and regularity of a high proportion of the expenditure concerned, a flat rate of 10 % shall be applied;

(d) where the serious deficiency or serious deficiencies in the management and control system is due to the system not functioning consistently so that it puts at risk the legality and regularity of a significant proportion of the expenditure concerned, a flat rate of 5 % shall be applied.

4. Where the application of a flat rate fixed in accordance with paragraph 3 would be disproportionate, the level of correction shall be reduced.

5. Where, due to a failure of the responsible authorities to take adequate corrective measures following the application of a financial correction in an accounting year, the same serious deficiency or serious deficiencies is identified in a subsequent accounting year, the rate of correction may, due to the persistence of the serious deficiency or serious deficiencies, be increased to a level not exceeding that of the next higher category.

Article 32

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 24 shall apply from 1 December 2014, as regards information on data recorded and stored referred to in Annex III, with the exception of data fields 23 to 40, 71 to 78 and 91 to 105. With regard to these fields of Annex III, Article 24 shall apply from 1 July 2015.

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

Done at Brussels, 3 March 2014.

For the Commission
The President
José Manuel BARROSO
### ANNEX I

**Reference periods as referred to in Article 15(2)**

<table>
<thead>
<tr>
<th>Sector</th>
<th>Reference period (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Railways</td>
<td>30</td>
</tr>
<tr>
<td>Water supply/sanitation</td>
<td>30</td>
</tr>
<tr>
<td>Roads</td>
<td>25-30</td>
</tr>
<tr>
<td>Waste management</td>
<td>25-30</td>
</tr>
<tr>
<td>Ports and airports</td>
<td>25</td>
</tr>
<tr>
<td>Urban transport</td>
<td>25-30</td>
</tr>
<tr>
<td>Energy</td>
<td>15-25</td>
</tr>
<tr>
<td>Research and innovation</td>
<td>15-25</td>
</tr>
<tr>
<td>Broadband</td>
<td>15-20</td>
</tr>
<tr>
<td>Business infrastructure</td>
<td>10-15</td>
</tr>
<tr>
<td>Other sectors</td>
<td>10-15</td>
</tr>
</tbody>
</table>
ANNEX II

Criteria for quality review of major projects referred to in Article 23

1. **Quality review criteria for the information requirements of Article 101(a) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council (1)**

   Evidence of sufficient technical, legal, financial and administrative capacity to manage the project in implementation and operational phases.

2. **Quality review criteria for the information requirements of Article 101(b) of Regulation (EU) No 1303/2013**

   Evidence of the eligibility for funding of the project on the basis of related requirements linked to location or project area.

3. **Quality review criteria for the information requirements of Article 101(c) of Regulation (EU) No 1303/2013**

   3.1. Correctness of the calculation of total costs and of total eligible cost, taking into account the requirements set out in Article 61 of Regulation (EU) No 1303/2013, and sufficiency of detail, and appropriateness of the rationale applied for the calculation of costs both in terms of its overall cost to achieve the expected objectives and in terms of unit costs, where applicable.

   3.2. Evidence of eligibility for support from the European Regional Development Fund (ERDF) or the Cohesion Fund, as applicable, and funding envisaged only for those elements that comply with the eligibility rules set down in Regulation (EU) No 1303/2013, Regulation (EU) No 1301/2013 of the European Parliament and of the Council (2) and Regulation (EU) No 1300/2013 of the European Parliament and of the Council (3), and with eligibility rules established by the Member State.

   3.3. Evidence that the public support to the project does not constitute State aid or in case of State aid, that it has been properly taken into account in the calculation of the total public contribution to the project.

4. **Quality review criteria for the information requirements of Article 101(d) of Regulation (EU) No 1303/2013**

   4.1. Reliability of the demand analysis (or business plan in case of productive investment), based on realistic estimates and in line with main demographic trends and developments in the respective sector, justifying the need for the project and the overall capacity of the project facilities.

   4.2. Adequacy of the quality of the options analysis to support the conclusion of the Member State that the main alternatives have been analysed and the best option was selected for implementation including justification of the option chosen.

   4.3. Adequacy of the technology proposed for the project and the capacity of the final beneficiary to ensure its sustainability or, in case of insufficient capacity of the final beneficiary, sufficient provisions envisaged to bring this capacity to the levels necessary.

---


4.4. Soundness of the conclusion that the project is feasible and can be implemented in the period planned for the project or, at latest, by the end of the eligibility period as defined in Article 65(2) of Regulation (EU) No 1303/2013.

5. Quality review criteria for the information requirements of Article 101(e) of Regulation (EU) No 1303/2013

5.1. Cost-benefit analysis correctly followed the required methodology referred to in Article 101 of Regulation (EU) No 1303/2013, and correctly applied the method for calculation of net revenue as referred to in Article 61 of that Regulation and in Articles 15 to 19 of this Regulation.

5.2. Soundness of the conclusion that the project is economically and financially viable and has positive socio-economic effects justifying the level of support to the extent envisaged under the ERDF or the Cohesion Fund.

6. Quality review criteria for the information requirements of Article 101(f) of Regulation (EU) No 1303/2013

6.1. Demonstrated contribution to the objectives of environmental and climate change policies, in particular targets linked to the Europe 2020 strategy and evidence of account being taken of the risks related to climate change, adaptation and mitigation needs, disaster resilience and of appropriate measures implemented or foreseen to ensure resilience of the project to climate change variability.

6.2. Evidence that the polluter pays principle and the principle of preventive action have been correctly applied.

6.3. Compliance of the project with Directive 2011/92/EU of the European Parliament and of the Council (1) for projects listed in Annex I to that Directive, and for projects listed in Annex II to that Directive, for which the competent authorities concluded through the screening provided in Article 4 that an EIA procedure is needed as for projects listed in Annex I to Directive 2011/92/EU:

(a) the non-technical summary of the EIA report is in accordance with Article 5 and Annex IV to Directive 2011/92/EU and has been subject to public consultations; and

(b) consultations with environmental authorities, the public, and if applicable, with other Member States, have been carried out in accordance with Articles 6 and 7 of Directive 2011/92/EU; and

(c) the decision of the competent authority was issued in accordance to Articles 8 and 9 of Directive 2011/92/EU; or

(d) in the cases where the EIA procedure has been completed with a legally binding decision, pending the issuing of development consent in accordance with Articles 8 and 9 of Directive 2011/92/EU, the availability of a written commitment by the Member States for timely action to ensure that the development consent would be issued at latest before the start of works.

6.4. Compliance of the project with Directive 2011/92/EU for projects listed in Annex II to that Directive, for which the competent authorities concluded, by means of the screening provided under Article 4, that no EIA procedure was needed:

(a) screening determination of the competent authorities has been issued and made available to the public; and

(b) where screening determination does not refer to the criteria listed in Annex III to Directive 2011/92/EU, the relevant information under Article 4 and Annex III to that Directive has been provided.

6.5. Where appropriate, demonstrated non-applicability of Directive 2011/92/EU.

6.6. If the project results from a plan or programme (subject to the requirements of Directive 2001/42/EC of the European Parliament and of the Council (1)) other than the operational programme, demonstrated consistency of the project with the plan or programme.

6.7. In case of non-fulfilment of the general ex-ante conditionality on environmental legislation and of any, as the case may be, relevant thematic ex ante conditionality for the waste and water sectors, and transport sector (SEA requirements) as set out in Article 19 and Annex XI to Regulation (EU) No 1303/2013, the link to the agreed action plan has to be demonstrated.


(a) in the case of a project likely to have significant effects on a Natura 2000 site(s) (in accordance with Article 6(3)) the appropriate assessment has been carried out and completed before the development consent for the project has been issued;

(b) in the case of a project with significant negative effects on a Natura 2000 site(s), the requirements of Article 6(4) of Directive 92/43/EEC, including notification to or opinion from the Commission, has been fulfilled.

6.9. Adequacy of information about additional environmental integration measures such as environmental audit, environmental management, and specific environmental monitoring, demonstrating their adequacy in respect of identified needs.

6.10. Adequacy of the estimation of the cost of measures taken to address negative environmental impacts.

6.11. Compliance of the project with relevant sectoral environmental directives, if applicable, in particular:

(a) Directive 2000/60/EC of the European Parliament and of the Council (3) for projects affecting water bodies (where applicable, for projects subject to the exemptions under Article 4(7) of that Directive, verification of the assessment);

(b) Council Directive 91/271/EEC (4) for projects in the urban waste water sector;

(c) Directive 2008/98/EC of the European Parliament and of the Council (5) and relevant applicable directives such as Council Directive 1999/31/EC (6) for projects relating to solid waste; and

(d) Directive 2010/75/EU of the European Parliament and of the Council (7) for projects requiring the granting of a permit under that Directive.

7. Quality review criteria for the information requirements of Article 101 (g) of Regulation (EU) No 1303/2013

7.1. Consistency and adequacy of project objectives with the specific objectives defined under the relevant priority axes of the operational programmes concerned.

7.2. Adequacy of expected project contribution to result and output indicators of the priority axis.

7.3. Adequacy of expected project contribution to the socioeconomic development.

7.4. Evidence that a beneficiary has taken appropriate measures to ensure optimal utilisation of the infrastructure in the operational phase.

---

8. **Quality review criteria for the information requirements of Article 101(h) of Regulation (EU) No 1303/2013**

8.1. Justified total planned financial resources and justified planned support from the Funds correctly presented in the financing plan.

8.2. Adequacy of project’s financing plan demonstrating its financial viability for the annual financial needs for implementation of the project.

8.3. Appropriateness and verifiability of the physical and financial indicators for monitoring progress taking account of the identified risks.

9. **Quality review criteria for the information requirements of Article 101(i) of Regulation (EU) No 1303/2013**

9.1. Soundness and feasibility of the proposed timetable for implementing the major project taking into account the identified risks.

9.2. In case the implementation of the project is longer that the programming period, appropriateness of the identified phases and optimal set-up from effectiveness and efficiency point of view.
ANNEX III

List of data to be recorded and stored in computerised form in the monitoring system (referred to in Article 24)

Data is required for operations supported by the ESF, the ERDF, the Cohesion Fund and the EMFF unless otherwise specified in the second column.

<table>
<thead>
<tr>
<th>Data fields</th>
<th>Indication of Funds for which data is not required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Data on the beneficiary</strong></td>
<td>(1) (1)</td>
</tr>
<tr>
<td>1. Name or unique identifier of each beneficiary</td>
<td></td>
</tr>
<tr>
<td>2. Information whether the beneficiary is public law body or private law body</td>
<td></td>
</tr>
<tr>
<td>3. Information whether VAT on expenditure incurred by the beneficiary is non-recoverable under national VAT legislation</td>
<td></td>
</tr>
<tr>
<td>4. Contact details of the beneficiary</td>
<td></td>
</tr>
<tr>
<td><strong>Data on the operation</strong></td>
<td></td>
</tr>
<tr>
<td>5. Name or unique identifier of the operation</td>
<td></td>
</tr>
<tr>
<td>6. Short description of the operation</td>
<td></td>
</tr>
<tr>
<td>7. Date of submission of the application for the operation</td>
<td></td>
</tr>
<tr>
<td>8. Starting date as indicated in the document setting out the conditions for support</td>
<td></td>
</tr>
<tr>
<td>9. End date as indicated in the document setting out the conditions for support</td>
<td></td>
</tr>
<tr>
<td>10. Actual date when the operation is physically completed or fully implemented</td>
<td></td>
</tr>
<tr>
<td>11. Body issuing the document setting out the conditions for support</td>
<td></td>
</tr>
<tr>
<td>12. Date of the document setting out the conditions for support</td>
<td></td>
</tr>
<tr>
<td>13. Information whether the operation is a major project and CCI</td>
<td>Not applicable to the ESF and the EMFF</td>
</tr>
<tr>
<td>14. Information whether the operation is a joint action plan and CCI</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>15. Information whether the operation includes funding under the Youth Employment Initiative (YEI)</td>
<td>Not applicable to the ERDF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>Data fields</td>
<td>Indication of Funds for which data is not required</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>16. Information whether the public support for the operation will constitute State aid</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>17. Information whether the operation is implemented under a public-private-partnership structure</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>18. Currency of the operation</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>19. CCI of the programme(s) under which the operation is supported</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>20. Priority or priorities of the programme(s) under which the operation is supported</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>21. Fund(s) from which the operation is supported</td>
<td>Not applicable to the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>22. Category of region concerned</td>
<td>Not applicable to the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>23. Code(s) for intervention field</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>24. Code(s) for form of finance</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>25. Code(s) for territory type</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>26. Code(s) for territorial delivery systems</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>27. Code(s) for thematic objective</td>
<td>Not applicable to the ESF and the EMFF</td>
</tr>
<tr>
<td>28. Code(s) for ESF secondary theme</td>
<td>Not applicable to the ERDF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>29. Code(s) for economic activity</td>
<td>Not applicable to the EMFF</td>
</tr>
<tr>
<td>30. Code(s) for location</td>
<td>Not applicable to the EMFF</td>
</tr>
</tbody>
</table>

**Data on categories of intervention**

<table>
<thead>
<tr>
<th>Data on indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>31. Name and unique identifier for each of the common and programme specific output indicators relevant for the operation or where required by the Fund-specific rules, name and unique identifier for each common output indicator broken down by gender for participants</td>
</tr>
<tr>
<td>32. Measurement unit for each output indicator</td>
</tr>
<tr>
<td>Data fields</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>33. Target value for the output indicator, broken down by gender where applicable</td>
</tr>
<tr>
<td>34. Achievement level of each output indicator for each calendar year, where applicable broken down by gender</td>
</tr>
<tr>
<td>35. Name and unique identifier for each of the common and programme specific result indicators (*) relevant for the operation, or where required by the Fund-specific rules, name and unique identifier for each common result indicator, broken down by gender where applicable</td>
</tr>
<tr>
<td>36. Measurement unit for each result indicator</td>
</tr>
<tr>
<td>37. Baseline value for each result indicator provided</td>
</tr>
<tr>
<td>38. Target value for the result indicator provided, where applicable broken down by gender</td>
</tr>
<tr>
<td>39. Measurement unit for each result target and baseline value</td>
</tr>
<tr>
<td>40. Achievement level of each result indicator provided for each calendar year, where applicable broken down by gender</td>
</tr>
</tbody>
</table>

Financial data on each operation (in the currency applicable to the operation)

| 41. Amount of the total eligible cost of the operation approved in the document setting out the conditions for support                                                                                         |                                                                                        |
| 42. Amount of the total eligible costs constituting public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013                                                                            |                                                                                        |
| 43. Amount of public support, as set out in the document setting out the conditions for support                                                                                                                                 |                                                                                        |

Data on payment claims from the beneficiary (in the currency applicable to the operation)

<p>| 44. Date of receipt of each payment claim from the beneficiary                                                                                                                                               |                                                                                        |
| 45. Date of each payment to the beneficiary on basis of payment claim                                                                                                                                       |                                                                                        |
| 46. Amount of eligible expenditure in payment claim forming the basis for each payment to the beneficiary                                                                                                  |                                                                                        |
| 47. Amount of public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the eligible expenditure forming the basis for each payment                                           |                                                                                        |
| 48. Amount of each payment to the beneficiary on basis of payment claim                                                                                                                                     |                                                                                        |</p>
<table>
<thead>
<tr>
<th>Data fields</th>
<th>Indication of Funds for which data is not required</th>
</tr>
</thead>
<tbody>
<tr>
<td>49. Net revenue generated by the operation during its implementation not taken into account in the document setting out the conditions for support and deducted from the eligible expenditure</td>
<td></td>
</tr>
<tr>
<td>50. Start date of on the spot verifications on the operation carried out pursuant to Article 125(5)(b) of Regulation (EU) No 1303/2013</td>
<td></td>
</tr>
<tr>
<td>51. Date of on the spot audits of the operation pursuant to Article 127(1) of Regulation (EU) No 1303/2013 and Article 28 of this Regulation</td>
<td></td>
</tr>
<tr>
<td>52. Body carrying out the audit or verification</td>
<td></td>
</tr>
<tr>
<td><strong>Data on expenditure in payment claim from beneficiary based on real costs (in the currency applicable to the operation)</strong></td>
<td></td>
</tr>
<tr>
<td>53. Eligible expenditure declared to the Commission established on the basis of costs actually incurred and paid, together with in-kind contributions and depreciations, where applicable</td>
<td></td>
</tr>
<tr>
<td>54. Public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the eligible expenditure declared to the Commission established on the basis of costs actually reimbursed and paid, together with in-kind contributions and depreciations, where applicable</td>
<td></td>
</tr>
<tr>
<td>57. Eligible expenditure incurred and paid based on a contract if the contract is subject to the provisions of Directive 2004/17/EC or Directive 2004/18/EC or Directive 2014/23/EU</td>
<td></td>
</tr>
<tr>
<td>58. The procurement procedure used if the contract award is subject to the provisions of Directive 2004/17/EC or Directive 2004/18/EC or Directive 2014/23/EU</td>
<td></td>
</tr>
<tr>
<td>59. Name or unique identifier of the contractor if the contract award is subject to the provisions of Directive 2004/17/EC or Directive 2004/18/EC or Directive 2014/23/EU</td>
<td></td>
</tr>
<tr>
<td><strong>Data on expenditure in payment claim from beneficiary based on standard scales of unit costs (amounts in the currency applicable to the operation)</strong></td>
<td></td>
</tr>
<tr>
<td>60. Amount of eligible expenditure declared to the Commission established on the basis of standard scales of unit costs</td>
<td></td>
</tr>
<tr>
<td>61. Public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the eligible expenditure declared to the Commission established on the basis of standard scales of unit costs</td>
<td></td>
</tr>
<tr>
<td>Data fields</td>
<td>Indication of Funds for which data is not required</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>62.</td>
<td>Definition of a unit to be used for the purposes of the standard scale of unit costs</td>
</tr>
<tr>
<td>63.</td>
<td>Number of units delivered as indicated in the payment claim for each unit item</td>
</tr>
<tr>
<td>64.</td>
<td>Unit cost for a single unit for each unit item</td>
</tr>
<tr>
<td><strong>Data on expenditure in payment claim from beneficiary based on lump sum payments (amounts in the currency applicable to the operation)</strong></td>
<td></td>
</tr>
<tr>
<td>65.</td>
<td>Amount of eligible expenditure declared to the Commission established on the basis of lump sums</td>
</tr>
<tr>
<td>66.</td>
<td>Public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the eligible expenditure declared to the Commission established on the basis of lump sums</td>
</tr>
<tr>
<td>67.</td>
<td>For each lump sum, deliverables (outputs or results) agreed in the document setting out the conditions for support as the basis for disbursement of lump sum payments</td>
</tr>
<tr>
<td>68.</td>
<td>For each lump sum, agreed amount in the document setting out the conditions for support</td>
</tr>
<tr>
<td><strong>Data on expenditure in payment claim from beneficiary based on flat rates (in the currency applicable to the operation)</strong></td>
<td></td>
</tr>
<tr>
<td>69.</td>
<td>Amount of eligible expenditure declared to the Commission established on the basis of a flat rate</td>
</tr>
<tr>
<td>70.</td>
<td>Public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the eligible expenditure declared to the Commission established on the basis of a flat rate</td>
</tr>
<tr>
<td><strong>Data on recoveries from the beneficiary</strong></td>
<td></td>
</tr>
<tr>
<td>71.</td>
<td>Date of each recovery decision</td>
</tr>
<tr>
<td>72.</td>
<td>Amount of public support affected by each recovery decision</td>
</tr>
<tr>
<td>73.</td>
<td>Total eligible expenditure affected by each recovery decision</td>
</tr>
<tr>
<td>74.</td>
<td>Date of receipt of each amount paid back by the beneficiary following a recovery decision</td>
</tr>
<tr>
<td>75.</td>
<td>Amount of public support paid back by the beneficiary following a recovery decision (without interest or penalties)</td>
</tr>
<tr>
<td>76.</td>
<td>Total eligible expenditure corresponding to the public support paid back by the beneficiary</td>
</tr>
<tr>
<td>Data fields</td>
<td>Data on payment applications to the Commission (in EUR)</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>77. Amount of public support irrecoverable following a recovery decision</td>
<td></td>
</tr>
<tr>
<td>78. Total eligible expenditure corresponding to irrecoverable public support</td>
<td></td>
</tr>
<tr>
<td>79. Date of submission of each payment application including eligible expenditure from the operation</td>
<td></td>
</tr>
<tr>
<td>80. The total amount of eligible expenditure incurred by the beneficiary and paid in implementing the operation included in each payment application</td>
<td></td>
</tr>
<tr>
<td>81. The total amount of public support irrecoverable following a recovery decision</td>
<td></td>
</tr>
<tr>
<td>82. Total eligible expenditure corresponding to irrecoverable public support</td>
<td></td>
</tr>
<tr>
<td>83. Where the operation is a financial instrument, the total amount of programme contributions paid to the financial instruments included in each payment application</td>
<td></td>
</tr>
<tr>
<td>84. Where the operation is a financial instrument, the total amount of programme contributions effectively paid as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) of Regulation (EU) No 1303/2013 included in each payment application</td>
<td></td>
</tr>
<tr>
<td>85. Where the operation is a financial instrument, the total amount of programme contributions effectively paid as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) of Regulation (EU) No 1303/2013 correspondingly to the total amount of programme contributions paid to financial instruments included in each payment application</td>
<td></td>
</tr>
<tr>
<td>86. Where the operation is a financial instrument, the total amount of programme contributions effectively paid as eligible expenditure in the meaning of Article 42(1)(a), (b) and (d) of Regulation (EU) No 1303/2013 correspondingly to the total amount of programme contributions paid to the beneficiary</td>
<td></td>
</tr>
<tr>
<td>87. In the case of State aid where Article 131(5) of Regulation (EU) No 1303/2013 applies, the amount paid to the beneficiary under the operation as an advance included in each payment application which has been covered by expenditure paid by the beneficiary within three years of the payment of the advance</td>
<td></td>
</tr>
<tr>
<td>88. In the case of State aid where Article 131(5) of Regulation (EU) No 1303/2013 applies, the amount paid to the beneficiary under the operation as an advance included in each payment application which has not been covered by expenditure paid by the beneficiary and for which the three-year period has not yet elapsed</td>
<td></td>
</tr>
<tr>
<td>Data fields</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Data fields</strong></td>
<td><strong>Indication of Funds for which data is not required</strong></td>
</tr>
<tr>
<td><strong>89.</strong> Amount of eligible expenditure included in each payment application on the basis of Article 14(1) of Regulation (EU) No 1304/2013</td>
<td>Not applicable to the ERDF, the Cohesion Fund, the EMFF</td>
</tr>
<tr>
<td><strong>90.</strong> Amount of public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 included in each payment application on the basis of Article 14(1) of Regulation (EU) No 1304/2013</td>
<td>Not applicable to the ERDF, the Cohesion Fund, the EMFF</td>
</tr>
</tbody>
</table>

**Data on accounts submitted to the Commission under Article 138 of Regulation (EU) No 1303/2013 (in EUR)**

91. The date of submission of each set of accounts including expenditure under the operation

92. Date of submission of the accounts in which the final expenditure of the operation is included following the completion of the operation (where the total eligible expenditure is EUR 1 000 000 or more (Article 140 of Regulation (EU) No 1303/2013))

93. Total amount of eligible expenditure of the operation entered into the accounting systems of the certifying authority which has been included in the accounts

94. Total amount of public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 incurred in implementing the operation corresponding to the total amount of eligible expenditure entered into the accounting systems of the certifying authority which has been included in the accounts

95. Total amount of payments made to the beneficiary under Article 132(1) of Regulation (EU) No 1303/2013 corresponding to the total amount of eligible expenditure entered into the accounting systems of the certifying authority which has been included in the accounts

96. Total eligible expenditure of the operation withdrawn during the accounting year included in the accounts

97. Total public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the total eligible expenditure withdrawn during the accounting year included in the accounts

98. Total eligible expenditure of the operation recovered during the accounting year included in the accounts

99. Total public expenditure corresponding to the total eligible expenditure of the operation recovered during the accounting year included in the accounts

100. Total eligible expenditure of the operation to be recovered as at the end of the accounting year included in the accounts
<table>
<thead>
<tr>
<th>Data fields</th>
<th>Indication of Funds for which data is not required</th>
</tr>
</thead>
<tbody>
<tr>
<td>101. Total public expenditure of the operation corresponding to the total eligible expenditure to be recovered as at the end of the accounting year included in the accounts</td>
<td></td>
</tr>
<tr>
<td>102. For the operation included in each set of accounts, total eligible amount of expenditure recovered pursuant to Article 71 of Regulation (EU) No 1303/2013 during the accounting year</td>
<td></td>
</tr>
<tr>
<td>103. For the operation included in each set of accounts, public expenditure as defined in Article 2(15) of Regulation (EU) No 1303/2013 corresponding to the total eligible amount of expenditure recovered pursuant to Article 71 of that Regulation during the accounting year</td>
<td></td>
</tr>
<tr>
<td>104. Total eligible amount of expenditure of the operation irrecoverable as at the end of the accounting year included in the accounts</td>
<td></td>
</tr>
<tr>
<td>105. Total public expenditure of the operation corresponding to the total eligible amount of expenditure irrecoverable as at the end of the accounting year included in the accounts</td>
<td></td>
</tr>
<tr>
<td><strong>Data on specific types of expenditure subject to ceilings</strong></td>
<td></td>
</tr>
<tr>
<td>106. Amount of incurred and paid ERDF-type expenditure co-financed by the ESF under Article 98(2) of Regulation (EU) No 1303/2013</td>
<td>Not applicable to the ERDF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>107. Amount of incurred and paid ESF-type expenditure co-financed by the ERDF under Article 98(2) of Regulation (EU) No 1303/2013</td>
<td>Not applicable to the ESF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>108. Amount of incurred and paid expenditure outside the programme area but within the Union, under article 70(2) of Regulation (EU) No 1303/2013 and Article 13(2) of Regulation (EU) No 1304/2013</td>
<td></td>
</tr>
<tr>
<td>109. Amount of incurred and paid expenditure outside the Union under Article 13(3) of Regulation (EU) No 1304/2013</td>
<td>Not applicable to the ERDF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>110. Amount of incurred and paid expenditure outside the Union part of the programme area under Article 20(2) of Regulation (EU) No 1299/2013</td>
<td>Not applicable to the ESF, the Cohesion Fund and the EMFF</td>
</tr>
<tr>
<td>111. Amount of incurred and paid expenditure for land purchase under Article 69(3)(b) of Regulation (EU) No 1303/2013</td>
<td></td>
</tr>
<tr>
<td>112. Amount of in-kind contributions to the operation under Article 69(1) of Regulation (EU) No 1303/2013</td>
<td></td>
</tr>
<tr>
<td>Data fields</td>
<td>Indication of Funds for which data is not required</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>113. Amount of incurred and paid expenditure in third countries covered by the Instrument for Pre-Accession Assistance or by the European Neighbourhood Instrument for ETC operations</td>
<td>Not applicable to the ESF, the Cohesion Fund and the EMFF</td>
</tr>
</tbody>
</table>

(1) In case of the ETC, beneficiaries shall include the lead beneficiary and other beneficiaries.
(2) Beneficiary includes, where applicable, other bodies incurring expenditure under the operation which is treated as expenditure incurred by the beneficiary.
(3) For ESF, the common result indicators include the indicators set out in Annex I and II of the Regulation (EU) No 1304/2013.
# ANNEX IV

**Key requirements of management and control systems and their classification with regard to their effective functioning referred to in Article 30**

**Table 1**

<table>
<thead>
<tr>
<th>Key requirements of management and control system</th>
<th>Bodies/authorities concerned</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Adequate separation of functions and adequate systems for reporting and monitoring in cases where the responsible authority entrusts execution of tasks to another body.</td>
<td>Managing authority</td>
<td>Internal control environment</td>
</tr>
<tr>
<td>2 Appropriate selection of operations.</td>
<td>Managing authority</td>
<td></td>
</tr>
<tr>
<td>3 Adequate information to beneficiaries on applicable conditions for the selected operations.</td>
<td>Managing authority</td>
<td>Management and control activities</td>
</tr>
<tr>
<td>4 Adequate management verifications.</td>
<td>Managing authority</td>
<td></td>
</tr>
<tr>
<td>5 Effective system in place to ensure that all documents regarding expenditure and audits are held to ensure an adequate audit trail.</td>
<td>Managing authority</td>
<td></td>
</tr>
<tr>
<td>6 Reliable system for collecting, recording and storing data for monitoring, evaluation, financial management, verification and audit purposes, including links with electronic data exchange systems with beneficiaries.</td>
<td>Managing authority</td>
<td>Management and control activities/Monitoring</td>
</tr>
<tr>
<td>7 Effective implementation of proportionate anti-fraud measures.</td>
<td>Managing authority</td>
<td>Management and control activities</td>
</tr>
<tr>
<td>8 Appropriate procedures for drawing up the management declaration and annual summary of final audit reports and of controls carried out.</td>
<td>Managing authority</td>
<td></td>
</tr>
<tr>
<td>9 Adequate separation of functions and adequate systems for reporting and monitoring in cases where the responsible authority entrusts execution of tasks to another body.</td>
<td>Certifying authority</td>
<td>Internal control environment</td>
</tr>
<tr>
<td>10 Appropriate procedures for drawing up and submitting payment applications.</td>
<td>Certifying authority</td>
<td>Management and control activities/Monitoring</td>
</tr>
<tr>
<td>11 Appropriate computerised records of expenditure declared and of the corresponding public contribution are maintained.</td>
<td>Certifying authority</td>
<td></td>
</tr>
<tr>
<td>12 Appropriate and complete account of amounts recoverable, recovered and withdrawn.</td>
<td>Certifying authority</td>
<td>Management and control activities</td>
</tr>
<tr>
<td>13 Appropriate procedures for drawing up and certifying the completeness, accuracy and veracity of the annual accounts.</td>
<td>Certifying authority</td>
<td></td>
</tr>
<tr>
<td>Key requirements of management and control system</td>
<td>Bodies/authorities concerned</td>
<td>Scope</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>14 Adequate separation of functions and adequate systems for ensuring that any other body that carries out audits in accordance with the programme audit strategy has the necessary functional independence and takes account of internationally accepted audit standards.</td>
<td>Audit authority</td>
<td>Internal control environment</td>
</tr>
<tr>
<td>15 <strong>Adequate systems audits.</strong></td>
<td>Audit authority</td>
<td>Control activities</td>
</tr>
<tr>
<td>16 <strong>Adequate audits of operations.</strong></td>
<td>Audit authority</td>
<td></td>
</tr>
<tr>
<td>17 Adequate audits of accounts.</td>
<td>Audit authority</td>
<td></td>
</tr>
<tr>
<td>18 <strong>Adequate procedures for providing a reliable audit opinion and for preparing the annual control report.</strong></td>
<td>Audit authority</td>
<td></td>
</tr>
</tbody>
</table>

Table 2

Classification of key requirements for management and control systems with regard to their functioning

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Works well. No, or only minor improvement(s) needed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 2</td>
<td>Works. Some improvement(s) needed.</td>
</tr>
<tr>
<td>Category 3</td>
<td>Works partially. Substantial improvements needed.</td>
</tr>
<tr>
<td>Category 4</td>
<td>Essentially does not work.</td>
</tr>
</tbody>
</table>
COMMISSION DELEGATED REGULATION (EU) 2015/616
of 13 February 2015

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular the third subparagraph of Article 38(4), the second subparagraph of Article 68(1) and the first subparagraph of Article 125(8) thereof,

Whereas:


(3) Since the rules on public private partnerships as set out in Regulation (EU) No 1303/2013 are also applicable to the EMFF, it is necessary to amend Annex III to Delegated Regulation (EU) No 480/2014 so that the relevant information on whether the operation is implemented under a public-private-partnership structure is also stored in computerised form in the monitoring system with regard to the EMFF.

(4) Delegated Regulation (EU) No 480/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 480/2014 is amended as follows:

(1) point (b) of Article 6(1) is replaced by the following:

‘(b) final recipients shall be informed that funding is provided under programmes co-financed by the ESI Funds, in accordance with the requirements laid down:

(i) in Article 115 of Regulation (EU) No 1303/2013 for the ERDF, the ESF and the Cohesion Fund;


(iii) in Article 97(1)(b) of Regulation (EU) No 508/2014 of the European Parliament and of the Council (**) for the EMFF;


(2) point (d) of Article 20 is replaced by the following:

‘(d) the operations supported by the EMFF and programmed in accordance with Articles 26, 28, 39 or 47 of Regulation (EU) No 508/2014.’

(3) point (d) of Article 21 is replaced by the following:

‘(d) the operation supported by the EMFF and programmed in accordance with Articles 38, 40(1), 41(1), 44(6), 48(1)(e), (f), (g) or (k) or 80(1)(b) of Regulation (EU) No 508/2014.’

(4) in Annex III, data field ‘17. Information whether the operation is implemented under a public-private-partnership structure’, the following text in the right column ‘Indication of Funds for which data is not required’ is deleted:

‘Not applicable to the EMFF.’

Article 2

This Regulation shall enter into force on the twentieth 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 February 2015.

For the Commission

The President

Jean-Claude JUNCKER

108
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/1076
of 28 April 2015
laying down, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, additional rules on the replacement of a beneficiary and on the related responsibilities, and minimum requirements to be included in Public Private Partnership agreements funded by the European Structural and Investment Funds

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular Articles 63(4) and 64(4) thereof,

Whereas:

(1) Article 63(1) of Regulation (EU) No 1303/2013 stipulates that in relation to a Public Private Partnership (PPP) operation a beneficiary may be a body governed by private law of a Member State (‘private partner’). In accordance with Article 63(3) of Regulation (EU) No 1303/2013, the private partner selected to implement the operation may be replaced as beneficiary during implementation where this is required under the terms and conditions of the PPP or of the underlying financing agreement between the private partner and the financial institution co-financing the operation.

(2) In order to specify a complete set of obligations of the partners under a PPP operation, it is necessary to lay down additional rules on the replacement of the beneficiary and on the related responsibilities.

(3) In the case of the replacement of a beneficiary in a PPP operation funded by European Structural and Investment Funds, it is necessary to ensure that after the replacement, the new partner or body provides at least the same service, and with the same minimum quality standards, which was required by the initial PPP contract.

(4) For a PPP operation where the public law body is the beneficiary of the grant, Article 64(1) of Regulation (EU) No 1303/2013 sets out the conditions under which expenditure incurred and paid by a private partner may be considered as incurred and paid by the beneficiary. Article 64(2) of that Regulation requires the payment in respect of such expenditure to be made into an escrow account in the name of the beneficiary.

(5) It is necessary to lay down the minimum requirements to be included in PPP agreements which are necessary for the application of Article 64(1) of Regulation (EU) No 1303/2013, including provisions related to termination of the PPP agreement and for the purpose of ensuring an adequate audit trail.

HAS ADOPTED THIS REGULATION:

CHAPTER I
Rules on the replacement of a beneficiary under PPP operations funded by European Structural and Investment Funds
(Article 63(4) of Regulation (EU) No 1303/2013)

Article 1

Additional conditions on the replacement of the private partner

The replacement of the private partner or public law body referred to in Article 63(3) of Regulation (EU) No 1303/2013 (‘partner or body’) shall comply with the following additional conditions:

(a) the partner or body is able to provide at least the service, including at least the minimum quality standards, determined in the Public Private Partnership (PPP) contract;

(b) the partner or body has agreed to assume the rights and responsibilities of a beneficiary in relation to the support for PPP operations from the date on which the managing authority is notified of the replacement proposal.

Article 2

Proposal to replace the private partner

1. The partner or body shall send the managing authority the proposal to replace the private partner as beneficiary within one month from the date of the decision to replace the private partner.

2. The proposal referred to in paragraph 1 shall contain the following:

(a) the terms and conditions of the PPP or financing agreement between the private partner and the financial institution co-financing the operation requiring replacement;

(b) evidence of the fulfillment by the partner or body of the conditions set out in Article 1 of this Regulation and evidence that it fulfills and assumes all the corresponding obligations of a beneficiary under Regulation (EU) No 1303/2013;

(c) evidence that the partner or body has been provided with a copy of the original support agreement and any amendments made to that agreement.

Article 3

Confirmation of the replacement of the private partner

Within one month of the receipt of the proposal referred to in Article 2, and provided that the partner or body fulfills and assumes all the corresponding obligations of a beneficiary under Regulation (EU) No 1303/2013 and complies with the conditions set out in Article 1 of this Regulation, the managing authority shall:

(a) register the partner or body as the beneficiary as from the date referred to in Article 1(b) of this Regulation;

(b) inform the partner or body of the remaining amount of support available from the ESI Funds.

CHAPTER II
Minimum requirements to be included in PPP agreements funded by European Structural and Investment Funds
(Article 64(4) of Regulation (EU) No 1303/2013)

Article 4

Escrow account

With regard to the escrow account referred to in Article 64(2) of Regulation (EU) No 1303/2013, the PPP agreement shall contain the following requirements:

(a) where appropriate, the criteria for the selection of the financial institution where the escrow account is to be opened, including requirements regarding its creditworthiness;
(b) the conditions under which payments from the escrow account can be made;

c) whether the public law body that is a beneficiary may use the escrow account as collateral/security for the performance of its or the private partner’s obligations under the PPP agreement;

d) the obligation for the holders of the escrow account to inform the managing authority, upon its written request, about the amount of funds in the escrow account disbursed and the balance of the escrow account;

e) rules on how the remaining funds in the escrow account shall be disbursed when the escrow account is closed due to a termination of the PPP agreement.

Article 5

Reporting and audit trail

1. The PPP agreement shall contain provisions on the establishment of a reporting and document retention mechanism. This mechanism shall contain the same reporting and document retention obligations as those of the beneficiary who incurs and pays himself for expenditure that is eligible under Article 65 of Regulation (EU) No 1303/2013.

2. The PPP agreement shall include procedures to ensure the adequate audit trail as set out in Article 25 of Commission Delegated Regulation (EU) No 480/2014 (1). These procedures shall in particular allow for the reconciliation of the payments incurred and paid by the private partner for the implementation of the operation with the expenditure declared by the beneficiary to the Managing authority.

Article 6

Entry into force

This Regulation shall enter into force on the twentieth 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, 28 April 2015.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2015/1516

of 10 June 2015

establishing, pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council, a flat rate for operations funded by the European Structural and Investment Funds in the Research, Development and Innovation sector

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular the third subparagraph of Article 61(3) thereof,

Whereas:

(1) In accordance with Article 61 of Regulation (EU) No 1303/2013 revenues generated by operations are to be taken into account when the public contribution is calculated.

(2) Regulation (EU) No 1303/2013 provides for the application of flat-rate revenue percentages to operations in the sector of research, development and innovation without calculating the discounted net revenue.

(3) Based on historical data flat rate for net revenues generated in the sector of research, development and innovation should be set at 20 % in order to avoid over-financing and market distortion,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation sets out a flat rate applicable to operations in the sector of Research Development and Innovation for the purpose of determining in advance the potential net revenues of such operations and allowing for the establishment of the eligible expenditure of operations in accordance with Article 61(2) of Regulation (EU) No 1303/2013.

Article 2

For the purpose of the application of the flat rate net revenue percentage referred to in Article 61(3)(a) of Regulation (EU) No 1303/2013, a flat rate of 20 % is established for operations in the sector of research, development and innovation.

Article 3

This Regulation shall enter into force on the twentieth 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, 10 June 2015.

For the Commission
The President
Jean-Claude JUNCKER
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2015/1970

of 8 July 2015

supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1), and in particular the fifth subparagraph of Article 122(2) thereof,

Whereas:

(1) The purpose of this Regulation is to determine which irregularities Member States should report to the Commission. In order to allow the Commission to perform its tasks concerning the protection of the financial interests of the Union, in particular to allow the Commission to perform risk analysis, it should also be established which data are to be provided.

(2) Financial interests of the Union should be protected in the same way irrespective of the fund used to deliver the objectives for which it was established. To that end Regulation (EU) No 1303/2013, as well as Regulations (EU) No 1306/2013 (2), (EU) No 223/2014 (3) and (EU) No 514/2014 (4) of the European Parliament and of the Council, empower the Commission to adopt rules on the reporting of irregularities. To ensure that identical rules

apply in respect of all of the funds governed by those Regulations, it is necessary that this Regulation contains provisions identical to those in Commission Delegated Regulations (EU) 2015/1971 (1), (EU) 2015/1972 (2) and (EU) 2015/1973 (3).

(3) To enable a coherent application of the reporting requirements across the Member States it is necessary to define the term ‘suspected fraud’, taking into account the definition of fraud contained in the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests (4), and the term ‘primary administrative or judicial finding’.

(4) Regulations (EU) No 1303/2013 and (EU) No 223/2014 determine the reporting threshold below which irregularities do not need to be reported to the Commission and cases for which there is no need for reporting. In order to simplify and to align the provisions, and to strike a balance between the administrative burden on Member States and the common interest in the provision of accurate data for the purpose of analysis in the Union’s fight against fraud, it is necessary to apply the same reporting threshold and the same derogations for the reporting of irregularities under Regulations (EU) No 1306/2013 and (EU) No 514/2014.

(5) It is necessary to determine which Member State should report irregularities in relation to the European territorial cooperation goal under Regulation (EU) No 1299/2013 of the European Parliament and of the Council (5).

(6) In order to ensure consistency of reporting it is necessary to establish criteria for determining when irregularities are to be initially reported and the data to be provided in such initial reports.

(7) In order for the data provided to the Commission to be accurate, follow-up reporting is necessary. Member States should, therefore, provide the Commission with up-to-date information on any significant progress in the administrative and legal procedures or proceedings related to each initial report.

(8) In light of Directive 95/46/EC of the European Parliament and of the Council (6) and Regulation (EC) No 45/2001 of the European Parliament and of the Council (7), the Commission and the Member States should, in relation to the information provided pursuant to this Regulation, prevent any unauthorised disclosure of, or access to, personal data. In addition, this Regulation should specify the purposes for which the Commission and the Member States may process that data.

(9) As payments have already been made for the funds concerned and irregularities could occur, the provisions of this Regulation should apply immediately. This Regulation should therefore enter into force on the day following that of its publication in the Official Journal of the European Union.


(4) OJ C 316, 27.11.1995, p. 49.


HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation determines which irregularities are to be reported and establishes which data are to be provided by Member States to the Commission.

Article 2

Definitions

The definitions in Regulation (EU) No 1303/2013 shall apply. In addition, for the purposes of this Regulation:

(a) ‘suspected fraud’ means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests;

(b) ‘primary administrative or judicial finding’ means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

Article 3

Initial reporting

1. Member States shall report irregularities to the Commission which

(a) affect an amount that exceeds EUR 10 000 in contribution from the funds; 

(b) have been the subject of a primary administrative or judicial finding.

2. In the initial report Member States shall provide the following information:

(a) the fund, goal, category of region where appropriate, name and the Common Identification Code (CCI) number of the operational programme, priority and operation concerned; 

(b) the identity of the natural or legal persons concerned, or both, or of any other entity having a role in in the commission of the irregularity and their role, except where that information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned; 

(c) the region or area where the operation has been carried out, identified using appropriate information such as the NUTS level; 

(d) the provision or provisions which have been infringed; 

(e) the date and source of the first information leading to the suspicion that an irregularity has been committed; 

(f) the practices employed in committing the irregularity;
(g) where appropriate, whether the practice gives rise to suspected fraud;

(h) the manner in which the irregularity was discovered;

(i) where appropriate, the Member States and third countries involved;

(j) the period during which, or the date on which, the irregularity was committed;

(k) the date on which the primary administrative or judicial finding on the irregularity was established;

(l) the total amount of expenditure of the operation concerned, expressed in terms of the Union’s contribution, the national contribution and the private contribution;

(m) the amount affected by the irregularity, expressed in terms of the Union’s contribution and the national contribution;

(n) in the case of suspected fraud, and where no payment of the public contribution has been made to the beneficiary, the amount which would have been unduly paid had the irregularity not been identified, expressed in terms of the Union’s contribution and the national contribution;

(o) the nature of the irregular expenditure;

(p) the suspension of payments, where applicable, and the possibility of recovery of amounts paid.

3. By way of derogation from paragraph 1, the Member States shall not report to the Commission irregularities referred to in the second subparagraph of Article 122(2) of Regulation (EU) No 1303/2013.

In all other cases, in particular, those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

4. Irregularities relating to operational programmes under the European territorial cooperation goal shall be reported by the Member State in which the expenditure is paid out by the beneficiary in implementing the operation. The Member State shall inform the managing authority, the certifying authority for the programme and the audit authority.

5. Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.

Article 4

Follow-up reporting

1. Where some of the information referred to in Article 3(2), 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 provide the missing or correct information in follow-up reports of irregularities to the Commission.

2. Member States shall keep the Commission informed on the initiation, conclusion or abandonment of any procedures or proceedings for imposing administrative measures, administrative penalties, or criminal penalties with regard to the reported irregularities, as well as the outcome of those procedures or proceedings. With regard to irregularities for which penalties have been imposed, Member States shall also indicate:

(a) whether the penalties are of an administrative or a criminal nature;

(b) whether the penalties result from a breach of Union or national law and details of the penalties;

(c) whether fraud was established.
3. At the Commission’s written request the Member State shall provide information in relation to a specific irregularity or group of irregularities.

**Article 5**

**Use and processing of information**

1. The Commission may use any information provided by Member States in accordance with this Regulation to perform risk analysis, using information technology support, and may, on the basis of the information obtained, produce reports and develop systems serving to identify risks more effectively.

2. Information provided under this Regulation shall be covered by professional confidentiality and protected in the same way as it would be protected by the national legislation of the Member State that provided it and by the provisions applicable to the Union’s institutions. Member States and the Commission shall take all necessary precautions to ensure that the information remains confidential.

3. The information referred to in paragraph 2 may not, in particular, be disclosed to persons other than those in the Member States or within the Union’s institutions whose duties require that they have access to it, unless the Member State providing it has given its express consent.

4. The information referred to in paragraph 2 may not be used for any purposes other than the protection of the Union’s financial interests unless the authorities that have provided it have given their express consent.

**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**.

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

Done at Brussels, 8 July 2015.

*For the Commission*

*The President*

Jean-Claude JUNCKER
II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/568
of 29 January 2016

supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1) and in particular the fifth subparagraph of Article 122(2) thereof,

Whereas:

(1) In accordance with the fourth subparagraph of Article 122(2) of Regulation (EU) No 1303/2013, when an amount unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State is responsible for reimbursing the amount concerned to the budget of the Union.

(2) The document on irrecoverable amounts submitted by the certifying authority to the Commission, as part of the annual accounts in accordance with Article 137(1)(b) and Article 138(a) of Regulation (EU) No 1303/2013 each year from 2016 until and including 2025, establishes the irrecoverable amounts at the level of each priority. That document should also include explicit information regarding the amounts that should not, according to the Member State, be reimbursed to the Union budget, in particular by demonstrating the administrative and legal measures taken by the Member State to effectively pursue the recovery of the irrecoverable amounts. However, as that document refers to amounts previously included in certified accounts submitted to the Commission, it should be submitted for the first time in 2017.

(3) In accordance with point (b) of Article 126 and with Article 137(1) of Regulation (EU) No 1303/2013, deductions made before submission of certified accounts cannot be considered as recoveries if they relate to the expenditure included in the final interim payment application of a given accounting year for which the accounts are prepared. It should therefore be clarified that the information on irrecoverable amounts submitted under this Delegated Regulation should only concern amounts already included in certified accounts previously submitted to the Commission.

To allow the Commission to decide whether the irrecoverable amounts should be reimbursed to the Union budget, the Member State should submit the required information, at the level of each operation and beneficiary, before the deadline set for the submission of accounts in Article 59(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (1). In accordance with that provision, it should be possible to extend also the deadline for the document on irrecoverable amounts.

It is necessary to establish criteria that will enable the Commission to assess whether a Member State has been at fault or negligent in the recovery during the administrative and legal measures. The presence of one or more of these criteria should not automatically mean that the Member State has in fact been at fault or negligent.

For reasons of legal certainty, the Commission should conclude its assessment by a given deadline, and Member States should react to the Commission’s assessment by another given deadline. For the same reasons, the Commission should be able to conclude its assessment even where the Member State does not provide additional information. However, in the cases preceding a bankruptcy or of suspected fraud, as referred to in the third subparagraph of Article 122(2) of Regulation (EU) No 1303/2013, the deadlines should not apply.

Pursuant to the second sentence of the fourth subparagraph of Article 122(2) of Regulation (EU) No 1303/2013, a Member State may decide not to recover from a beneficiary an amount unduly paid at the level of an operation in the accounting year concerned that does not exceed EUR 250, not including interest, in contribution from the Funds. In this case, the amount does not need to be reimbursed to the budget of the Union. No information will be requested on such de minimis amounts.

With regard to programmes under the European territorial cooperation goal subject to Regulation (EU) No 1299/2013 of the European Parliament and of the Council (2), that Regulation does not establish a different system with regard to amounts referred to in the second sentence of the fourth subparagraph of Article 122(2) of Regulation (EU) No 1303/2013. It is therefore for the Member States and third countries participating in a given European territorial cooperation programme to decide that neither the lead beneficiary nor the programme’s managing authority is obliged to recover an amount unduly paid that does not exceed EUR 250, not including interest, in contribution from the Funds.

HAS ADOPTED THIS REGULATION:

**Article 1**

**Submission of information on irrecoverable amounts**

1. Where a Member State considers that an amount unduly paid to a beneficiary, previously included in certified accounts submitted to the Commission, is irrecoverable, and where it has concluded that this amount should not be reimbursed to the Union budget, the certifying authority shall submit a request to the Commission to confirm that conclusion.

2. The certifying authority shall submit a request referred to in paragraph 1, at the level of each operation, in the form set out in the Annex to this Regulation by way of the electronic data exchange system laid down in Article 74(4) of Regulation (EU) No 1303/2013.

3. The Member State shall submit a request established in accordance with paragraphs 1 and 2 each year from 2017 until and including 2025 by 15 February with regard to the previous accounting year. The Commission may exceptionally extend the deadline to 1 March, upon request by the Member State concerned.


Article 2

Conditions for determining fault or negligence on the part of the Member States

The following criteria are indicative of fault or negligence on the part of the Member State:

(a) the Member State did not submit any description of the administrative and legal measures, with dates, taken by the Member State to recover the relevant amount (or to reduce or cancel the level of support or withdraw the document in accordance with Article 125(3)(c) of Regulation (EU) No 1303/2013, where such a withdrawal is subject to a separate procedure);

(b) the Member State did not provide any copy of the first and any subsequent recovery order (and of any copy of the letter reducing or cancelling the level of support or withdrawing the document in accordance with Article 125(3)(c) of Regulation (EU) No 1303/2013, where such withdrawal is subject to a separate procedure);

(c) the Member State did not provide the date of the last payment of the public contribution to the beneficiary of the given operation and a copy of proof of this payment;

(d) the Member State, after detection of the irregularity, made one or more undue payments to the beneficiary in relation to the part of the operation that was affected by the irregularity;

(e) the Member State did not send the letter reducing the level of support or withdrawing the document in accordance with Article 125(3)(c) of Regulation (EU) No 1303/2013, where such withdrawal is subject to a separate procedure, or take any equivalent decision within 12 months of the detection of the irregularity;

(f) the Member State did not initiate the recovery procedure within 12 months of the grant being definitively reduced or cancelled (either after an administrative or judicial procedure or by agreement of the beneficiary);

(g) the Member State did not exhaust all recovery possibilities available through the national institutional and legal framework;

(h) the Member State did not provide documents related to insolvency and bankruptcy procedures, when applicable;

(i) the Member State did not reply to the Commission's request for further information in accordance with Article 3.

Article 3

Procedure to determine whether an irrecoverable amount shall be reimbursed by Member States

1. Based on the information submitted by the Member State in accordance with Article 1 of this Regulation, the Commission shall assess each case in order to conclude whether the failure to recover an amount is a result of fault or negligence on the part of the Member State, taking due account of specific circumstances and the institutional and legal framework of the Member State. Where one or more of the criteria listed in Article 2 is fulfilled, the Commission may still conclude that the Member State has not been at fault or negligent.

2. By 31 May of the year in which the accounts are submitted, the Commission may:

(a) request the Member State in writing to submit further information on the administrative and legal measures taken to recover any Union contribution unduly paid to beneficiaries; or

(b) request the Member State in writing to continue its recovery procedure.

Where the Commission has taken the option referred to in point (a) of the first subparagraph, paragraphs 5 to 8 shall apply.
3. If the Commission does not act pursuant to and by the deadline set in paragraph 2, the Union contribution shall not be reimbursed by the Member State.

4. The deadline set in paragraph 2(a) and (b) shall not apply to those irregularities preceding a bankruptcy or to cases of suspected fraud.

5. The Member State shall reply within 3 months to the Commission's request for information sent pursuant to paragraph 2.

6. If the Member State does not submit further information as requested pursuant to paragraph 2, the Commission shall continue its assessment based on the information available.

7. Within 3 months of receiving the reply from the Member State, or, in the absence of a reply by the deadline, the Commission shall inform the Member State where it concludes that the Union contribution should be reimbursed by the Member State setting out the basis for its conclusion, and requesting the Member State to provide its observations within 2 months. If the Commission does not act pursuant to and by the deadline set in the preceding sentence, the Union contribution shall not be reimbursed by the Member State.

8. Within the 6 months following the deadline for observations by the Member State set out in paragraph 7, the Commission shall conclude its assessment based on the information available and, when it maintains its conclusion that the Union contribution shall be reimbursed by the Member State, shall adopt a decision. If the Commission does not act pursuant to and by the deadline set in the preceding sentence, the Union contribution shall not be reimbursed by the Member State.

For the purpose of calculating the Union contribution to be reimbursed by the Member State, the co-financing rate at level of each priority, as laid down in the financing plan in force at the time of the request, shall apply.

Article 4

Provision of information on amounts not recovered that do not exceed EUR 250 in contribution from the Funds

Where a Member State decides not to recover from a beneficiary an amount unduly paid at the level of an operation in the accounting year concerned that does not exceed EUR 250, not including interest, in contribution from the Funds, no information needs to be provided to the Commission under this Regulation.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth 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, 29 January 2016.

For the Commission

The President

Jean-Claude JUNCKER
### Submission of information on irrecoverable amounts

<table>
<thead>
<tr>
<th>a</th>
<th>b</th>
<th>c</th>
<th>d</th>
<th>e</th>
<th>f</th>
<th>g</th>
<th>h</th>
<th>i</th>
<th>j</th>
<th>k</th>
<th>l</th>
<th>m</th>
<th>n</th>
<th>o</th>
<th>p</th>
<th>q</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority (1)</td>
<td>Name of operation and IT identification number</td>
<td>Name of beneficiary</td>
<td>Date and proof of last payment of public contribution to the beneficiary for the operation concerned</td>
<td>Nature of irregularity (nature to be defined by Member State)</td>
<td>Body which detected the irregularity (indicate which: MA, CA or AA or other, or name of EU body)</td>
<td>Date of detection of irregularity (1)</td>
<td>Total expenditure corresponding to amounts declared irrecoverable</td>
<td>Expenditure declared irrecoverable</td>
<td>Amount of irrecoverable Union contribution (2)</td>
<td>Accounting year(s) in which the expenditure corresponding to the irrecoverable Union contribution was declared</td>
<td>Date of launch of recovery proceedings</td>
<td>Copy of first and any subsequent recovery orders (4)</td>
<td>Date of establishment of irrecoverability (5)</td>
<td>Documents related to bankruptcy procedures, when applicable (7)</td>
<td>Indicate whether the Union contribution should be borne by the Union budget (6)</td>
<td></td>
</tr>
<tr>
<td>Pr. 1</td>
<td>Op 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pr. 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pr. n</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Corresponding to the information on priority provided in the accounts in line with Appendix 5 of Annex VII of Commission Implementing Regulation (EU) No 1011/2014. The reporting shall be at priority level and at the level of category of region, if applicable.

(2) The date on which the primary administrative or judicial finding on the irregularity was established.

(3) Calculated in accordance with the co-financing rate at priority level, as laid down in the financing plan in force at the time of the request.

(4) In addition, when applicable, a copy of the letter reducing/cancelling the level of support and/or withdrawing the document in terms of Article 125(3)(c) of Regulation (EU) No 1303/2013.

(5) Indicate whether the reason for irrecoverability is bankruptcy of the beneficiary. If not, indicate the applicable reason.

(6) When a request is made that the Union contribution should be borne by the Union budget, the Member State confirms it has exhausted all the recovery possibilities available through the national institutional and legal framework.

(7) Legend for the characteristics of fields: type: N = Number, D = Date, S = String, C = Currency, B = Boolean — input = M — Manual, S = Selection, G = Generated by system — 'maxlength' = Maximum number of characters including spaces — ATT: Attachments.
How to obtain EU publications

**Free publications:**
- one copy:
  via EU Bookshop (http://bookshop.europa.eu);
- more than one copy or posters/maps:
  from the European Union's representations (http://ec.europa.eu/represent_en.htm);
  from the delegations in non-EU countries (http://eeas.europa.eu/delegations/index_en.htm);
  by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm) or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*)
(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

**Priced publications:**
- via EU Bookshop (http://bookshop.europa.eu);

**Priced subscriptions:**