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COMMISSION REGULATION (EC) No 391/2007

of 11 April 2007

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

(OJ L 97, 12.4.2007, p. 30)

Amended by:

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		No	page	date
► <u>M1</u>	Commission Regulation (EU) No 1257/2009 of 15 December 2009	L 338	22	19.12.2009
► <u>M2</u>	Commission Regulation (EU) No 1054/2010 of 18 November 2010	L 303	3	19.11.2010
► <u>M3</u>	Commission Implementing Regulation (EU) No 984/2012 of 24 October 2012	L 295	9	25.10.2012



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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) The Community has been financing Member States actions in the field of fisheries control and enforcement since 1990, in line with the objectives established under Council Regulation (EC) No 2371/2002 ⁽²⁾.
- (2) Improvements towards an efficient control system throughout the Community will be difficult to achieve without incentives, in particular when new technologies are to be tested and introduced where appropriate.
- (3) Evidence shows that the resources of Member States are still inadequate to fulfil their obligations under Regulation (EC) No 2371/2002. In particular, Community aid to assist Member States is requested in order to overcome existing differences in their fisheries control and surveillance capabilities.
- (4) Regulation (EC) No 861/2006 provides, amongst other actions, for Community financial measures for expenditure on fisheries control, inspection and surveillance for the period 2007 to 2013.
- (5) Article 8(a) of Regulation (EC) No 861/2006 provides for a list of actions undertaken by Member States in the area of fisheries control and enforcement which shall be considered eligible for Community financial assistance.
- (6) In view of the principle of sound financial management, Member States must have clear indications on the rules to be followed in order to benefit from Community financial assistance when incurring on expenditure in the area of fisheries control and enforcement.
- (7) It is necessary to ensure that Community funds available for such actions are allocated efficiently with a view to reducing identified weaknesses in such a way that controls are carried out to a high standard.

⁽¹⁾ OJ L 160, 14.6.2006, p. 1.

⁽²⁾ OJ L 358, 31.12.2002, p. 59.

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- (8) Member States should assess their programmes and the impact of their expenditure on control, inspection and surveillance, each year and over the whole period 2007 to 2013.
- (9) With the view of simplifying procedures, as of 1 January 2007 claims for reimbursement relating to expenditure approved on the basis of Council Decisions 95/527/EC ⁽¹⁾, 2001/431/EC ⁽²⁾ and 2004/465/EC ⁽³⁾, shall be submitted in accordance with Annexes VI and VII to this Regulation.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

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

Article 2

Definitions

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

- (a) ‘Annual fisheries control programme’ means an annual programme drawn up by a Member State in accordance with Article 20 of Regulation (EC) No 861/2006;
- (b) ‘Budgetary commitment’ means the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment;
- (c) ‘Legal commitment’ means the act whereby the authorising authority of a Member State enters into or establishes an obligation which results in a charge.

Article 3

Annual fisheries control programmes

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

⁽¹⁾ OJ L 301, 14.12.1995, p. 30.

⁽²⁾ OJ L 154, 9.6.2001, p. 22.

⁽³⁾ OJ L 157, 30.4.2004, p. 114, corrected by OJ L 195, 2.6.2004, p. 36. Decision as amended by Decision 2006/2/EC (OJ L 2, 5.1.2006, p. 4).

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

- (a) a yearly forecast of reimbursement requests;
- (b) the measures foreseen to make known to the public that the project received financial support from the Community;
- (c) when the project concerns the purchase and modernisation of vessels and aircraft: the specification of the type of vessel or aircraft;
- (d) a description of all means available by the administration for fisheries monitoring and control, drawn up in accordance with Annex I.

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

▼ M2*Article 4***Commitment of expenditure**

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

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

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

▼ B*Article 5***Eligible expenditure**

In order to be eligible for reimbursement, expenditure shall:

- (a) be foreseen in the fisheries control programme; and
- (b) relate to any of the actions referred to in Article 8(a) of Regulation (EC) No 861/2006;

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

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- (e) concern projects implemented in accordance with Article 8 of this Regulation;
- (f) comply with specific Community rules, where those rules apply.

*Article 6***Eligible expenditure related to certain actions**

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

▼ M2

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

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

- (a) fisheries surveillance methodology;
- (b) Community legislation governing the Common Fisheries Policy and, in particular, control;
- (c) the use of fisheries control techniques;
- (d) the implementation by Member States of the applicable control system, in accordance with the Common Fisheries Policy rules.

*Article 7***Non-eligible expenditure**

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

▼ M1

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

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

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- 3. Value added tax (VAT) shall not be eligible for reimbursement.
- 4. An indicative list of non-eligible expenditure items is set out in Annex V.

▼ B*Article 8***Implementation of projects**

1. Projects shall be started and completed in accordance with the schedule laid down in the annual fisheries control programme.
2. The schedule shall state the foreseen date of commencement and termination of projects.

*Article 9***Non-implementation and delay of projects**

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

- (a) the implications for its annual fisheries control programme, including those of a financial nature;
- (b) the reasons for the delay or non-implementation;
- (c) the foreseen new implementation time frame.

*Article 10***▼ M3****Pre-financing****▼ B**

1. At the reasoned request of a Member State, the Commission may grant a ►**M3** pre-financing ◀ for each project of up to 50 % of the financial contribution granted in the decision provided for in Article 21 of Regulation (EC) No 861/2006. The amount of the ►**M3** pre-financing ◀ shall be deducted from any interim payment as well as from the final payment of the financial contribution for that project to the concerned Member State.

▼ M3

2. The pre-financing shall be paid either on the basis of a contract concluded between the relevant administration and the supplier or on the basis of any supporting documents which make it possible to check the conformity of the actions financed with the terms of the projects referred to in paragraph 1.

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3. If a binding legal commitment is not made by the competent authority of a Member State within the period laid down in Article 4 of this Regulation, any advance granted shall be repaid forthwith.

*Article 11***Claims for reimbursement****▼ M1**

1. Member States shall submit to the Commission their claims for reimbursement within 12 months of the end of the year in which the expenditure was incurred. Those claims shall clearly indicate the project and the Commission decision to which they relate.

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2. Claims for reimbursement shall include the items listed in Annex VI and shall be drafted in accordance with the form set out in Annex VII.

▼ B

3. When submitting claims for reimbursement, Member States shall verify and certify that the expenditure has been incurred in compliance with the conditions laid down in Regulation (EC) No 861/2006, this Regulation and in the decision provided for in Article 21 of Regulation (EC) No 861/2006, and with Community legislation on the award of public contracts. The claim shall include a statement concerning the accuracy and veracity of the transmitted accounts, in accordance with the form set out in Annex VII.

▼ M1

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5. Claims for projects which were not completed in accordance with the schedule referred to in Article 8 of this Regulation may be accepted only where the delay is duly justified. Where such claims are not accepted, the Community appropriations shall be de-committed.

▼ M1

6. If the Commission considers that the claim does not comply with the conditions laid down in Regulation (EC) No 861/2006, in this Regulation, in the decision provided for in Article 21 of Regulation (EC) No 861/2006, or with EU legislation on the award of public contracts, it shall request the Member State to submit its observations on the matter within one month from the Commission's request. If the examination confirms non compliance, the Commission shall refuse to reimburse all or part of the expenditure at issue and, where appropriate, request reimbursement of undue payments.

▼ B*Article 12***Currency**

1. Fisheries control programmes, claims for reimbursement of expenditure and claims for payment of advances shall be expressed in euro.

▼ M1

2. Reimbursement shall be made in euro on the basis of the exchange rate published in the C series of the *Official Journal of the European Union* of the month on which the invoice is registered in the accounting system of the authorising department of the Commission.

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3. Member States not participating in the third stage of Economic and Monetary Union shall specify the exchange rate used.

*Article 13***Audits and financial corrections**

Member States shall provide the Commission and the Court of Auditors with any information those institutions may request for the audits and financial corrections referred to Article 28 of Regulation (EC) No 861/2006.

*Article 14***Reports from the Member States**

1. Member States shall send the Commission information enabling it to verify the use made of the financial contribution and to assess the impact on control, inspection and surveillance activities of the measures provided for in this Regulation.

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2. Member States shall also:
- (a) By 31 March each year, submit to the Commission an intermediate assessment report on their fisheries control programme for the previous year covering the following:
- (i) the projects completed and the rate of execution of the fisheries control programme;
 - (ii) a forecast of claims for reimbursement for the current and following year;
 - (iii) the impact of the projects on the fisheries control programmes, by applying the indicators listed in the programme;

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- (iv) a list of the projects which are given up, if any.

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- (b) By 31 March 2014, submit to the Commission a final assessment report covering the following:
- (i) the projects completed;
 - (ii) the cost of projects;
 - (iii) the impact of the fisheries control programmes, by applying the indicators listed in the programmes;

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- (iv) a list of the projects which were not implemented, if any, with the indication of the EU contribution to those projects;

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- (v) the impact of the financial contribution on fisheries control programmes over the whole period 2007 to 2013.

*Article 15***Transitional provisions**

As of 1 January 2007, claims for reimbursement relating to the financial contribution for expenditure approved on the basis of Decisions 95/527/EC, 2001/431/EC and 2004/465/EC shall be submitted in accordance with Annexes VI and VII to this Regulation.

*Article 16***Entry into force**

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

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

*ANNEX I***Description of means available to the Member State for fisheries monitoring and control**

The description of means available to the Member State for fisheries control, as referred to in Article 3(2)(d) of this Regulation, shall include the following:

- (a) a brief description of the administrative bodies in charge of fisheries control at national, regional and local level;
- (b) a brief description of human resources, equipments (in particular the number of vessels, aircraft and helicopters available) and main actions undergone the year before to fulfil the duties under the rules of the Common Fisheries Policy;
- (c) the yearly budget allocated to fisheries control, expressed in euro with details on investments and on running costs of means used for fisheries control (data by category, including human resources).

▼B*ANNEX II***Indicative list of eligible expenditure items relating to the implementation of control technologies**

The following expenditure is considered eligible:

- (a) Purchase of, installation and technical assistance for, computer technology and setting up of IT networks, including remote sensing capability, in order to allow efficient and secure data exchange in connection with monitoring, control and surveillance of fisheries activities. Expenditure incurred on technical assistance is covered during two years as from the installation.
- (b) Purchase and installation of:
 - (i) Automatic localisation devices enabling vessels to be monitored at a distance by a fisheries monitoring centre through a vessel monitoring system (VMS);
 - (ii) Electronic recording and reporting devices, allowing electronic transmission of data related to fishing activities.Devices must be in conformity with the requirements laid down by the relevant Community rules.
- (c) Purchase of personal computers, tablet PCs and Personal digital assistants (PDAs) designed to store and process data related to fishing activities.
- (d) Pilot projects relating to new technologies on the control of fisheries activities and their implementation.

*ANNEX III***Indicative list of eligible expenditure items relating to the purchase and modernisation of aircraft and vessels used for fisheries control purposes**

The following expenditure is considered eligible:

- (a) Fixed wing aircraft, unmanned aerial vehicles and helicopters and their equipment designed for fisheries control purposes. In particular, detection, communication and navigation equipment and software which is installed on board and which is a part of vessels or aircraft used for inspection and surveillance of fisheries activities and that enable data exchange between the vessels or aircraft and the fisheries control authorities;
- (b) Equipment replacing obsolete equipment designed to improve efficiency for fisheries control. The cost incurred in modernizing the engine room, wheelhouse boarding and launching facilities is also eligible;
- (c) Boarding boats (such as seariders and RIBs), including installed equipment, engines, launching davits and cranes (inclusive of hydraulic systems and installation), changes to the main vessel in order to adapt to the boarding boats (such as reinforcement of the deck and superstructure);
- (d) Major items for the propulsion system of the vessel, such as propeller systems, gear boxes, new main engines and auxiliary engines;
- (e) Equipment securing the confidentiality of communications such as encryption equipment and scramblers;
- (f) Water-proofed Personal Computers installed on board.

▼B*ANNEX IV***Indicative list of eligible expenditure items relating to training and exchange programmes, seminars and media tools**

- (a) The following expenditure is considered eligible:
- (i) Renting of lecture rooms;
 - (ii) Purchase or hiring of equipment used for training and seminars;
 - (iii) Fees of trainers not acting in their capacity as Member State or Community civil servants;

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- (iv) Travel costs incurred by inspectors, public prosecutors, judges and fishermen attending the courses as well as by training staff;

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- (v) Any expenditure related to purchase or printing of material required for seminar, training or media such as books, posters, CDs, DVDs, videos, leaflets, banners.
- (b) Expenditure is eligible to the extent that it is eligible for reimbursement in conformity with relevant national rules.

▼ B*ANNEX V***Indicative list of non-eligible expenditure items**

The following expenditure is considered non-eligible:

- (a) Renting and leasing contracts;
- (b) Equipment which is not used exclusively for fisheries control purposes, such as personal computers, laptops, scanners, printers, mobile phones, telephone standards, walkie-talkies, measure tapes, rules and other similar equipment, videos and cameras;
- (c) Articles of clothing and footwear, such as uniforms, protecting suits, etc. and general personal equipment;
- (d) Running and maintenance costs, such as telecommunication costs, financial interests, insurance premiums, fuel;
- (e) Spare parts needed to keep in service any eligible item;
- (f) Vehicles and motorbikes;
- (g) Buildings and sites;

▼ M3

- (h) Salary costs of personnel of national administrations and indemnities;
- (i) Grants.

▼B*ANNEX VI***Content of claims for reimbursement**

Claims for reimbursement shall include the following:

- (a) A letter stating the total amount claimed for reimbursement. This letter shall clearly state:
 - (i) The Commission Decision to which it refers (relevant Article and Annex);
 - (ii) The amount claimed to the Commission in euro, VAT excluded;
 - (iii) The type of claim (pre-finance, interim payment, final payment);
 - (iv) The bank account to which the transfer should be done.
 - (b) A statement of expenditure, using the form established in Annex VII (one per Commission Decision).
 - (c) A list including the following information:
 - (i) The name(s) of the project(s) and reference to the annual fisheries control programme(s) on which it (they) was (were) included;
 - (ii) The reference of the contract to which invoices are related to;
 - (iii) A list of the enclosed invoices related to the project (number of invoices and amounts, VAT excluded).
 - (d) With regard to each project for which reimbursement is claimed:
 - (i) Original or certified copy of invoices;
 - (ii) If invoices are not quoted in euro, the exchange rate applied;
 - (iii) The original or certified copy of, the proof of payment of each invoice enclosed;
 - (iv) A document stating future instalments (where applicable) and their foreseen payment dates;
 - (v) Certified copy of the contract related to the invoice;
 - (vi) The yearly use of the vessel, aircraft or unmanned aerial vehicle used for fisheries control, in percentage terms and in days;
 - (vii) Information on public procurement: in all cases where expenditure exceeds the publication threshold ceiling, the photocopy of the tender notices published in the *Official Journal of the European Union*, the minutes of the tenders opening, the evaluation of tenders, the award notice as well as the contract shall be enclosed. Expenditure incurred on vessels and aircraft to be used fully or partly for fisheries control purposes cannot benefit from any exemption from EU procurement rules with reference to Article 346 Treaty on the Functioning of the European Union;
- ▼M1**
- (viii) A brief description of the action, stating in detail what has been achieved, accompanied by a brief assessment of the impact of the investment on fisheries control and surveillance. A forecast of the future use of the items shall also be included;
 - (ix) In the case of expenditure on pilot projects or media tools, the final report or document should be included;
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- (x) In case of training and seminars, information on the subject, the speaker, a list of participants and the date and place of the training shall be included.
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▼ **M3***ANNEX VII***Statement of expenditure****EXPENDITURE ⁽¹⁾ INCURRED IN CARRYING OUT THE NATIONAL PROGRAMME FOR IMPLEMENTING THE CONTROL, INSPECTION AND SURVEILLANCE SYSTEMS ON FISHERIES ACTIVITIES**

Referred to in Article 11 of Commission Regulation (EC) No 391/2007

Commission Decision of / No. _____

National reference (if any) _____

I, the undersigned _____ representing the authority _____ responsible for the relevant financial and control procedures, hereby certify, after verification, that all the amounts shown below represent the total cost, paid in 20 ____, in accordance with relevant national legislation, with regards to projects approved and referring to actions set out in Article 8(a) of Council Regulation (EC) No 861/2006:

(a) Computer technology and IT networks	_____	EUR ⁽²⁾
(b) Remote control technology devices and electronic recording and reporting devices	_____	EUR
(c) Pilot projects on new technologies	_____	EUR
(d) Training and exchange programmes of control civil servants	_____	EUR
(e) Pilot inspection and observer schemes	_____	EUR
(f) Assessment of public expenditure in the control area	_____	EUR
(g) Seminars and media	_____	EUR
(h) Acquisition and modernisation of vessels and aircraft	_____	EUR
	TOTAL	_____ EUR

I also certify that the statement of expenditure is accurate and the application for payment takes account of any recoveries made.

The operations were carried out in compliance with the objectives laid down in Regulation No 861/2006 and in Regulation (EC) No 391/2007, and with the provisions of Regulation (EC) No 2371/2002, and in particular as regards:

- Compliance with the conditions laid down in Regulation (EC) No 391/2007. In the case of procurement contracts, I certify that contracts were awarded to the tender offering the best value for money, while taking care to avoid any conflict of interests, in respect of the principles of transparency and equal treatment, and, where applicable, in compliance with the Community legislation concerning the coordination of procedures for the award of public works supplies and service contracts.
- Application of management and control procedures aimed at verifying the delivery of the products and services co-financed and the reality of expenditure aimed at preventing, detecting and correcting irregularities, pursuing fraud, and recovering unduly paid amounts.

Finally, I certify that I have / have not ⁽³⁾ received an advance payment for action(s) _____ referred to above.

The statement of expenditure is accurate.

Date,

Name capitals, stamp and position and signature of competent authority

⁽¹⁾ Investments referred to in Article 8 (a) (i) of Regulation 861/2006 may be carried out by the competent national authorities, by administrative bodies or by the private sector.

⁽²⁾ Exact amount to two decimal places.

⁽³⁾ Delete as appropriate.