

COMMISSION REGULATION (EC) No 1078/2008**of 3 November 2008****laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States for the collection and management of the basic fisheries data**

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) Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy ⁽²⁾ establishes a basis for scientific analyses of fisheries and for providing the formulation of sound scientific advice for the implementation of the Common Fisheries Policy.

(2) The Commission is to adopt a multi-annual Community programme pursuant to Council Regulation (EC) No 199/2008 based on which the Member States should establish multi-annual national programmes for the collection, management and use of data.

(3) Article 9 of Regulation (EC) No 861/2006 provides, amongst other actions, for Community financial contribution for measures in the area of basic data collection. Moreover, Article 24 of that Regulation requires the Commission to decide each year on the annual Community contribution to those measures.

(4) In view of the principle of sound financial management, it is necessary to lay down the rules and procedures to be complied with by Member States in order to benefit from Community financial assistance for expenditure incurred

in the area of data collection. It is also appropriate that the non-compliance with such rules and procedures entails the exclusion of expenditures.

(5) The annual Community contribution should be based on annual budget forecasts which should be evaluated taking into account the national programmes established by the Member States.

(6) With a view to ensure that Community funds are allocated efficiently, the annual budget forecast should be consistent with the activities foreseen in the national programme.

(7) With a view to simplifying procedures, it is necessary to establish the rules and the format for the submission by Member States of the annual budgetary forecast in relation to the execution of the national programmes. Only costs directly related to the implementation of the national programmes, which are properly justified and actually incurred by the Member States, should be considered eligible. In this respect, it is also relevant to clarify the role and obligations of partners and sub-contractors in the implementation of the national programmes.

(8) With regard to the possibility to amend the technical aspects of the multi-annual programmes as provided for in Article 5(2) of Council Regulation (EC) No 199/2008, it is appropriate to establish the rules under which the Member States may amend adequately the funds necessary for the proper implementation of the national programmes. Member States should be allowed to reallocate funds between different cost categories if this is considered of a benefit for the implementation of the national programme.

(9) Rules should be established in order to ensure that the claims for reimbursement of expenditure are in line with the Commission Decision approving the annual Community contribution. Those rules should include the procedure for submission and approval of such claims. Where appropriate, claims which do not comply with those rules should be de-committed.

⁽¹⁾ OJ L 160, 14.6.2006, p. 1.

⁽²⁾ OJ L 60, 5.3.2008, p. 1.

- (10) It is appropriate that payments are made in two instalments, thus allowing Member States to benefit already from the Community financial contribution during the period of implementation of the programme.
- (11) In view of ensuring correct use of Community funds, the Commission and the Court of Audit should be in a position to verify the compliance with the provisions provided in this Regulation and should, for that purpose, be provided with any information relevant for carrying out the audits and financial corrections as referred to in Article 28 of Regulation (EC) No 861/2006.
- (12) 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 for the collection and management of the basic fisheries data.

Article 2

Submission of the annual budget forecast

1. Member States wishing to receive a financial contribution from the Community for the implementation of their multi-annual programme, as referred to in Article 4 of Regulation (EC) No 199/2008, hereinafter 'the national programme', shall submit to the Commission by 31 March of the year prior to the period of the implementation of that programme:

- (a) an annual budget forecast for the first year of implementation of the national programme; and
- (b) indicative annual budget forecasts for each of the following years of implementation of the national programme.

2. Member States shall submit definitive annual budget forecasts for each of the years of implementation of their national programme, following the first, where they differ from the indicative budget forecasts already submitted. Definitive annual budget forecasts shall be submitted by 31 October prior to the year of implementation concerned.

3. For the first national programme covering the period 2009-2010, the annual budget forecasts shall be submitted by 15 October 2008.

Article 3

Content of the annual budget forecast

1. The annual budget forecast shall contain the planned annual expenditure that a Member State expects to incur for the implementation of its national programme.

2. The annual budget forecast shall be presented:

- (a) by category of expenditure as referred to in Annex I to this Regulation;
- (b) by module as defined in the Commission Decision establishing the multi-annual Community programme on collection, management and use of data for the fisheries and aquaculture sectors; and
- (c) where relevant, by region as defined in Article 1(a) of Commission Regulation (EC) No 665/2008 ⁽¹⁾.

3. Member States shall submit the annual budget forecast by electronic means and using the financial forms established and communicated to them by the Commission.

Article 4

Evaluation of the annual budget forecast

1. The Commission shall evaluate the annual budget forecasts by taking into account the national programmes approved in accordance to Article 6(3) of Regulation (EC) No 199/2008.

⁽¹⁾ OJ L 186, 15.7.2008, p. 3.

2. For the purpose of evaluating the annual budget forecast, the Commission may request a Member State to provide further clarification on the expenditure concerned. The Member State shall provide that clarification within 15 calendar days from the Commission's request.

3. If the Member State fails to communicate sufficient clarification within the deadline referred to in paragraph 2, the Commission may exclude as appropriate the concerned expenditure from the respective annual budget forecast to be approved.

Article 5

Community financial contribution

The Commission shall approve the annual budget forecast and shall decide on the annual Community financial contribution to each national programme in accordance with the procedure laid down in Article 24 of Regulation (EC) No 861/2006 and on the basis of the outcome of the evaluation of the annual budget forecasts as referred to in Article 4.

Article 6

Amendments to the approved annual budget forecast

1. Member States shall be authorised to transfer the amounts set out in the annual budget forecast approved in accordance with Article 5 between modules and cost categories within the same region only, provided that:

(a) the amounts transferred do not exceed EUR 50 000 or 10 % of the approved total budget for the region where the amount of that budget is less than EUR 500 000;

(b) they inform the Commission upon the occurrence of the need for transfer.

2. Any other amendments of the annual budget forecast approved in accordance with Article 5 shall be duly justified and shall be approved by the Commission before the expenditure is incurred.

Article 7

Eligible expenditure

1. In order to be eligible for Community financial contribution, expenditure shall:

(a) be actually incurred by the Member State;

(b) concern an action foreseen in the national programme;

(c) be indicated in the annual budget forecast;

(d) fall in one of the categories listed in Annex I;

(e) concern an action executed in compliance with the conditions laid down in Regulation (EC) No 199/2008 and its implementing provisions;

(f) be identifiable and verifiable, in particular being recorded in the accounting records of the Member State and their partners;

(g) be determined according to the applicable accounting standards and comply with the requirements of national legislation;

(h) be reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency;

(i) be incurred during the implementation period of the action as foreseen in the national programme.

2. Eligible expenditure shall be related to:

(a) the following data collection activities:

— collection of data on the sampling sites as referred to in Article 10 of Regulation (EC) No 199/2008 from direct sampling or interviews and queries,

— at-sea-monitoring of commercial and recreational fisheries as referred to in Article 11 of Regulation (EC) No 199/2008,

— research surveys at sea as referred to in Article 12 of Regulation (EC) No 199/2008;

(b) the following data management activities, as provided for in the multi-annual Community programme referred to in Article 3 of Regulation (EC) No 199/2008:

- database and web site development,
 - data input (storage),
 - data quality control and validation,
 - data processing from primary data into detailed or aggregated data,
 - transformation process of the primary socioeconomic data into metadata;
- (c) the following data use activities as provided for in the multi-annual Community programme referred to in Article 3 of Regulation (EC) No 199/2008:
- production of sets of data and their uses to support scientific analysis as a basis for advice to fisheries management,
 - biological parameter estimates (age, weight, sex, maturity and fecundity),
 - preparation of sets of data for stock assessments, bio-economic modelling and corresponding scientific analysis.

Article 8

Non-eligible expenditure

The following expenditure shall not be eligible for Community financial contribution:

- (a) profit margins, provisions and bad debts;
 - (b) interest owed and bank charges;
 - (c) average labour costs;
 - (d) indirect costs such as: buildings and sites, administration, support staff, office supplies, infrastructure, running and maintenance costs, such as telecommunication costs, goods and services;
 - (e) equipment which is not used for data collection and management purposes, such as scanners, printers, mobile phones, walkie-talkies, videos and cameras;
 - (f) purchase of vehicles;
 - (g) distribution, marketing and advertising costs of promoting products and commercial activities;
- (h) entertainment expenses, other than those regarded by the Commission as strictly necessary for carrying out the national programme;
 - (i) expenditure on luxuries and publicity;
 - (j) all expenditure on other programmes/projects financed by a third party;
 - (k) all expenditure on protecting the results of the work carried out under the national programme;
 - (l) any recoverable types of levy (including VAT);
 - (m) resources made available to the Member State free of charge;
 - (n) value of contributions in kind;
 - (o) unnecessary or ill-considered expenses.

Article 9

Implementation of programmes

1. Member States may be assisted by partners for the implementation of the national programme. The partners shall be organisations expressly identified in the national programme to assist the Member States to implement the whole or a significant part of the national programme. The partners shall be directly involved in the technical implementation of one or more tasks of the national programme and shall be subject to the same obligations as the Member States in relation to the implementation of the national programmes.
2. The partners shall not act, in the context of the programme, as subcontractors to the Member State or other partners.
3. For a fixed duration, specific tasks of the national programme may be carried out by subcontractors, who shall not be considered as partners. Subcontractors shall be natural or legal persons providing services to the Member States and/or partners. Any recourse to subcontracting while the action is under way, if not provided for in the initial programme proposal, shall be subject to prior written authorisation by the Commission.

Article 10

Submission of claims for reimbursement

1. Member States shall submit to the Commission claims for reimbursement of expenditure incurred for the implementation of the national programmes by 31 May of each year following the calendar year concerned. Those claims shall be comprised of:

- (a) a letter stating the total amount claimed for reimbursement, which shall clearly indicate the items listed in Annex II;
- (b) a financial report, presented by category of expenditure, module and, where relevant, by region as indicated in the financial forms referred to in Article 3(3). The financial report shall be presented in the format established and communicated to Member States by the Commission;
- (c) a statement of expenditure as defined in the Annex III; and
- (d) the relevant supporting documents as indicated in the Annex I.

2. The claims for reimbursement shall be submitted to the Commission by electronic means.

3. When submitting claims for reimbursement, Member States shall take all appropriate steps to verify and certify that:

- (a) the actions conducted and the statement of expenditure incurred under the Decision referred to in Article 5 correspond to the national programme as approved by the Commission;
- (b) the claim for reimbursement complies with the conditions set out in Articles 7 and 8;
- (c) the expenditure has been incurred in compliance with the conditions laid down in Regulation (EC) No 861/2006, this Regulation, the Decision referred to in Article 5 and with Community legislation on the award of public contracts.

Article 11

Evaluation of the claims for reimbursement

1. The Commission shall evaluate the claims for reimbursement on their compliance with this Regulation.

2. For the purpose of evaluating the claim for reimbursement, the Commission may request a Member State to provide further clarification. The Member State shall provide that clarification within 15 calendar days from the Commission's request.

Article 12

Exclusion from reimbursement

If the Member States fails to communicate sufficient clarification within the deadline referred to in Article 11(2) and the Commission considers that the claim for reimbursement does not comply with the conditions laid down in this Regulation, it shall request the Member State to submit its observations within 15 calendar days. If the examination confirms the non-compliance, the Commission shall refuse to reimburse all or part of the expenditure concerned by the non-compliance and, where appropriate, request reimbursement of undue payments or de-commit the outstanding amounts.

Article 13

Approval of the claims for reimbursement

The Commission shall approve the claims for reimbursement on the basis of the outcome of the procedure laid down in Articles 11 and 12.

Article 14

Payments

1. The Community financial contribution granted to a Member State in accordance with Article 8 in respect of each year of implementation of the national programme shall be paid in two instalments as follows:

- (a) a pre-financing payment equivalent to 50 % of the Community contribution. That payment shall be made after the notification to the Member State of the Decision referred to in Article 5 and the receipt of a letter requesting the pre-financing payment and clearly stating the items listed in Annex II;
- (b) an annual balance payment based on the claim of reimbursement referred to in Article 10. That payment shall be made within 45 days of approval, by the Commission, of the claim for reimbursement referred to in Article 12.

2. Penalty reductions as referred to in Article 8 of Regulation (EC) No 199/2008 shall be executed on the annual balance payment as referred to in paragraph 1(b).

3. Additional cost claims and supporting documents shall not be accepted after the execution of the balance payment.

Article 15

Currency

1. The annual budget forecasts and the claims for reimbursement shall be expressed in euro.

2. For the first year of implementation of the national programme, Member States not participating in the third stage of Economic and Monetary Union shall apply the exchange rate published in the C series of the *Official Journal of the European Union* on 1 March of the year prior to the period of the implementation of that programme. For the first national programme covering the period 2009-2010, that date shall be 1 October 2008.

3. For each of the years of implementation of the national programme following the first, Member States not participating in the third stage of Economic and Monetary Union shall apply the exchange rate published in the C series of the *Official Journal of the European Union* on 1 October of the year prior to the year of implementation concerned.

4. The Member States not participating in the third stage of the Economic and Monetary Union shall specify the exchange rate used in the annual budget forecast and the claim for reimbursement.

Article 16

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 in Article 28 of Regulation (EC) No 861/2006.

Article 17

Entry into force

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

It shall apply to expenditure incurred as of 1 January 2009.

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

Done at Brussels, 3 November 2008.

For the Commission

Joe BORG

Member of the Commission

ANNEX I

Eligibility of expenditure incurred for the implementation of national programmes

The eligible expenditure categories shall include all or some of the following:

(a) Staff costs:

- expenditure on staff for the time actually devoted to the national programme by scientific or technical staff only,
- staff costs shall be established in relation to the working time actually devoted to the national programme and shall be calculated by reference to actual labour costs (wages, social costs, social security and pension contributions), but excluding any other costs,
- calculation of the hourly/daily rates shall be done on the basis of 210 productive days per year,
- time devoted by staff to the programme must appear in full in the records (time sheets) and be certified at least once each month by the responsible person. The time sheets shall be made available to the Commission on request.

(b) Travel expenses:

- travel expenses shall be established in accordance with the internal rules of the Member State or partners. For travel outside the Community, prior agreement of the Commission shall be required if not specified in the national programme.

(c) Durable goods:

- durable goods must have an expected life not shorter than the duration of the work under the programme. They are included in the inventory of durable goods or are regarded as assets in accordance with the accounting methods, rules and principles of the Member State or partners concerned,
- for the purpose of calculating the eligible expenditure, durable goods will be considered to have a probable life of 36 months in the case of computer equipment of a value not exceeding EUR 25 000, and 60 months in the case of other goods. The eligible amount will depend on the expected life of the goods in relation to the duration of the programme, on condition that the period used to calculate this amount starts on the actual date of commencement of the programme, or the date of purchase of the goods where this occurs after the date of commencement, and ends on the date of completion of the programme. Account should be taken also of the use made of the goods during that period,
- as an exception, durable equipment may have been purchased or leased with an option to buy within six months before the commencement day of the national programme,
- applicable public procurement rules shall also apply in case of purchase of durable goods,
- expenditure related to durable goods shall be justified with certified invoices, confirming the delivery date, and must be submitted to the Commission together with the statement of expenditure.

(d) Consumable materials and supplies including computing costs:

- consumable materials and supplies expenditure are consumable raw materials for the purchase, production, repair or use of any goods or equipment which have a probable life shorter than the duration of the work under the programme. They are not included in the inventory of durable goods of the Member State or partners concerned, or are not regarded as assets in accordance with the accounting principles, rules and methods of the Member State or partners concerned,
- their description must be detailed enough to allow decision on their eligibility,
- eligible computing costs concern the establishment and supply to Member States of software for the management and interrogation of databases.

(e) Vessel costs:

- for research surveys at sea referred to in Article 12 of Regulation (EC) No 199/2008, including those conducted from chartered vessels, only rental costs and other operating costs shall be eligible. A certified copy of the invoice must be submitted to the Commission together with the statement of expenditure,
- when a vessel is the property of the Member State or the partner, a detailed breakdown showing how the operating costs charged have been calculated shall be submitted to the Commission together with the statement of expenditure.

(f) Subcontracting costs/external assistance:

- subcontracting/external assistance concerns standard and non-innovative services provided to the Member State and/or the partners who are unable to provide these services themselves. These costs shall not represent more than 20 % of the approved overall annual budget. The prior written approval of the Commission is required where the cumulative amount of the subcontracts in the national programme exceeds the above-specified limit,
- subcontracts must be awarded by a Member State/partner in accordance with the applicable rules on public tendering and in conformity with Community Directives on public procurement procedures,
- all invoices by subcontractors shall include a clear reference to the national programme and module (i.e. number and title or short title). All invoices shall be sufficiently detailed as to allow identification of single items covered by the service delivered (i.e. clear description and cost of each item),
- the Member States and partners must ensure that each subcontract shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over the subcontractor who has received Community funds,
- countries outside the Community may, if their contribution is considered necessary for carrying out Community programmes, participate as subcontractors in a national programme with the prior written approval of the Commission,
- a certified copy of the contract with the subcontractor and subsequent proves of payment must be submitted to the Commission together with the statement of expenditure.

(g) Other specific costs:

- Any other additional or unforeseen expenditure not falling within one of the above categories can be charged to the programme only with the prior agreement of the Commission unless they are already foreseen in the annual budget forecast.

(h) Support for scientific advice:

- daily allowances and travel costs are eligible for the duration of the meetings referred to in Article 10(2) of Regulation (EC) No 665/2008 in accordance with rule established in Article 10(3) of Regulation (EC) No 665/2008,
 - a certified copy of the supporting travel documents must be submitted to the Commission together with the statement of expenditure.
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*ANNEX II***Content of the letter stating the amount claimed for reimbursement or demanded as pre-financing payment**

The letter stating the amount claimed for reimbursement or demanded as pre-financing payment shall clearly indicate:

1. the Commission Decision to which it refers (relevant Article and Annex);
 2. the reference to the national programme;
 3. the amount claimed from the Commission expressed in Euro, VAT excluded;
 4. the type of claim (pre-finance, balance payment);
 5. the bank account to which the transfer should be made.
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ANNEX III

STATEMENT OF EXPENDITURE

(to be sent to unit MARE.C4 through official channels)

PUBLIC EXPENDITURE INCURRED IN CARRYING OUT THE NATIONAL PROGRAMME FOR DATA COLLECTION

Commission Decision of/No**National reference (if any)****CERTIFICATE**

I, the undersigned representing the authority responsible for the relevant financial and control procedures, hereby certify, after verification, that all eligible expenditure included in the attached documents, representing the total cost, was paid in 200... and amounts to: EUR (exact amount to two decimal places) concerning the national data collection programme 200... and corresponding to the European Commission contribution of 50 %;

An instalment of EUR has already been received in respect of the above programme.

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 accordance with the objectives laid down in the decision and with the provisions of Council Regulation (EC) No 199/2008 as well as Council Regulation (EC) No 861/2006, in particular as regards:

- compliance with Community law and instruments adopted under it, in particular the rules on competition and the award of public contracts,
- application of management and control procedures to the financial assistance, in particular to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to prevent, detect and correct irregularities, pursue fraud, and recover unduly paid amounts.

The tables attached comprise the expenditure incurred. Certified copies of invoices for durable goods and vessel costs are annexed. Originals of all supporting documents and invoices will continue to be available for a minimum period of three years following payment of the balance by the Commission.

Date: .../.../...

*Name capitals, stamp, position and
signature of competent authority*

List of enclosures:
