

Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (repealed)

CHAPTER II

FISHING ACTIVITIES BY COMMUNITY FISHING VESSELS OUTSIDE COMMUNITY WATERS

SECTION I

General provisions

Article 3

General provision

Only Community fishing vessels for which a fishing authorisation has been issued in accordance with this Regulation shall be entitled to engage in fishing activities outside Community waters.

SECTION II

Authorisations for fishing activities within the framework of agreements

Article 4

Submission of applications

1 At the latest five working days before the deadline for the transmission of applications laid down in the agreement concerned or, in the absence of a deadline in the agreement, at the latest in accordance with the arrangement set out in the agreement and without prejudice to specific provisions contained in Community legislation, Member States shall submit to the Commission, through electronic transmission, the applications for fishing authorisations for the fishing vessels concerned.

2 The applications referred to in paragraph 1 shall contain the Community fleet register identification number and international radio call sign of the vessel and any other data required under the agreement concerned, or prescribed in accordance with the procedure referred to in Article 27(2).

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 1006/2008 (repealed), CHAPTER II. (See end of Document for details)

Article 5

Eligibility criteria

1 Member States shall only submit to the Commission applications for a fishing authorisation for fishing vessels flying their flag:

- a which are already carrying out fishing activities and which during the previous 12 months of fishing activities under the agreement concerned or, in case of a new agreement, under the agreement that preceded it, have, where appropriate, fulfilled the conditions under the agreement for that period;
- b which during the 12 months prior to the application for the fishing authorisation, have been subject to sanction proceedings for serious infringements or have been considered suspected of such breaches according to the national law of the Member State and/or where the owner of the vessel has changed and the new owner provides guarantees that the conditions will be fulfilled;
- c which are not included in an IUU list;
- d for which the data contained in the Community fleet register and the Community fishing authorisation information system is complete and accurate;
- e which have a fishing licence as referred to in Commission Regulation (EC) No 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein⁽¹⁾;
- f for which the data required under the agreement concerned is available and accessible for the authorising authority; and
- g for which the applications for a fishing authorisation are in accordance with the agreement concerned and this Regulation.

2 Each Member State shall ensure that the applications for fishing authorisations for which it requests transmission are commensurate with the fishing opportunities available to that Member State under the agreement concerned.

Article 6

Transmission of applications

1 The Commission shall transmit the applications to the authorising authority concerned within five working days after receipt of the request from the Member State and in accordance with this Article.

2 The Commission shall examine the requests for transmission of applications, taking into account:

- a the fishing opportunities allocated to each Member State by the Council on the basis of Article 20 of Regulation (EC) No 2371/2002 or Article 37 of the Treaty; and
- b the conditions laid down in the agreement concerned and in this Regulation.

3 The Commission shall verify that:

- a the conditions laid down in Article 5 are complied with; and
- b the applications for fishing authorisations for which transmission is requested by the Member State concerned are commensurate with the fishing opportunities available under the agreement concerned, taking into account the applications of all Member States.

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Article 7

Non-transmission of applications

1 The Commission shall not transmit to the authorising authority applications, with regard to which:

- a the data provided by the Member State in accordance with Article 4(2) is incomplete for the vessel concerned;
- b the fishing opportunities of the Member State concerned are insufficient, taking into consideration the technical specifications of the agreement concerned and the applications submitted by the Member State;
- c the conditions laid down in the agreement concerned and in this Regulation are not complied with.

2 In case of non-transmission of one or more applications, the Commission shall without delay inform the Member State concerned thereof, and shall state its reasons.

If the Member State disagrees with the reasons stated by the Commission, it shall transmit to the Commission any information or documents supporting its objection within five working days. The Commission shall review the application in the light of this information.

Article 8

Information

1 The Commission shall inform the flag Member State without delay, by electronic transmission, of the fishing authorisation granted by the authorising authority, or of the decision by the authorising authority not to issue a fishing authorisation for a particular fishing vessel.

Where required under, or pursuant to, an agreement, the accompanying and original paper documents shall be sent by paper transmission and/or by electronic means.

2 The flag Member States shall immediately inform the owners of the fishing vessels concerned of the information received in accordance with paragraph 1.

3 If an authorising authority informs the Commission that it has decided to suspend or withdraw a fishing authorisation issued for a Community fishing vessel under an agreement, the Commission shall immediately inform, by electronic transmission, the flag Member State of that vessel. The flag Member State shall immediately transmit that information to the owner of that vessel.

4 The Commission shall carry out checks to establish the compatibility of the decision to refuse or suspend a fishing authorisation with the agreement concerned, in consultation with the flag Member State and the relevant authorising authority, and shall inform them both of the outcome.

Article 9

Continuity of fishing activities

1 Where:

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- the protocol to a bilateral fisheries agreement with a third country which sets out the fishing opportunities provided for in that agreement has expired, and
- a new protocol has been initialled by the Commission but a decision has not yet been adopted on its conclusion or on its provisional application;

the Commission may, during a period of six months from the expiration date of the previous protocol and without prejudice to the competence of the Council to decide on the conclusion or provisional application of the new protocol, transmit applications for fishing authorisations to the third country concerned in accordance with this Regulation.

2 In accordance with the rules set out under the fisheries agreement concerned, Community vessels authorised to engage in fishing activities under that agreement may, at the expiration date of the fishing authorisations, continue to fish under the agreement for a maximum period of six months after the expiration date, provided that scientific advice allows for this.

3 In this context, the Commission shall apply the method of allocating fishing opportunities in force in the previous protocol for paragraph 1, and in the existing protocol for paragraph 2.

Article 10

Underutilisation of fishing opportunities in the context of Fisheries Partnership Agreements

1 In the context of a Fisheries Partnership Agreement if, on the basis of the requests for transmission of applications referred to in Article 4 of this Regulation, it appears that the number of fishing authorisations or the amount of fishing opportunities allocated to the Community under an agreement are not fully utilised, the Commission shall inform the Member States concerned and shall request them to confirm not making use of those fishing opportunities. The absence of a reply within the deadlines, to be set by the Council upon the conclusion of the Fisheries Partnership Agreement, shall be considered as confirmation that the vessels of the Member State concerned are not making full use of their fishing opportunities in the given period.

2 After confirmation by the Member State concerned, the Commission shall assess the total non-utilised fishing opportunities and shall make that assessment available to the Member States.

3 Member States wishing to make use of the non-utilised fishing opportunities referred to in paragraph 2, shall submit to the Commission a list of all vessels for which they intend to request a fishing authorisation, as well as the request for the transmission of applications for each of those vessels, in accordance with Article 4.

4 The Commission shall decide on the reallocation, in close cooperation with the Member States concerned.

If a Member State concerned objects to this reallocation, the Commission shall, in accordance with the procedure laid down in Article 27(2), decide on the reallocation taking into account the criteria laid down in Annex I, and shall notify the Member States concerned thereof.

5 The transmission of applications in accordance with this Article shall in no way affect the allocation of fishing opportunities or their exchange amongst Member States, in accordance with Article 20 of Regulation (EC) No 2371/2002.

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6 The Commission shall not be prevented from applying the mechanism referred to in paragraphs 1 to 4 until the deadlines mentioned in paragraph 1 are finalised.

SECTION III

Fishing activities not falling within the scope of an agreement

Article 11

General provisions

1 An operator of a Community fishing vessel, intending to conduct fishing activities on the high seas in waters not falling within the scope of an agreement or a RFMO, shall inform the authorities of the flag Member State about such activities.

Without prejudice to Community legislation concerning fishing activities on the high-seas, Community fishing vessels shall be entitled to engage in fishing activities on the high seas in waters not falling within the scope of an agreement or a RFMO if they have been issued with an authorisation from their flag Member State in accordance with national provisions.

Member States shall inform the Commission ten days before the start of the fishing activities referred to in the first subparagraph of the vessels authorised to fish in accordance with that subparagraph, specifying the species, the fishing gear, the period and area to which the authorisation applies.

2 Member States shall endeavour to obtain information on any arrangements, between their nationals and a third country, which allow fishing vessels flying their flag to engage in fishing activities in waters under the jurisdiction or sovereignty of a third country, and shall inform the Commission thereof by the electronic transmission of a list of the vessels concerned.

3 This section shall only apply to vessels exceeding 24 metres in overall length.

SECTION IV

Reporting obligations and closure of fishing activities

Article 12

Community fishing authorisation information system

1 The Commission shall set up a Community fishing authorisation information system, containing the data relating to the authorisations issued in accordance with this Regulation. The Commission shall establish a secure website for this purpose.

2 Member States shall ensure that the data required with respect to fishing authorisations in the framework of an agreement or an RFMO are contained in the Community fishing authorisation information system and they shall keep this data up-to-date at all times.

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Article 13

Reporting of catches and fishing effort

1 Community fishing vessels for which a fishing authorisation has been issued under Section II or III shall, on a weekly basis, transmit to their competent national authority data concerning their catches and, where required, their fishing effort. This data shall be accessible to the Commission upon request.

Notwithstanding the first subparagraph, Community fishing vessels exceeding 24 metres in overall length shall, as from 1 January 2010, transmit on a daily basis to their competent national authority the data concerning their catches and, where required, their fishing effort in accordance with Commission Regulation (EC) No 1566/2007 of 21 December 2007 laying down the detailed rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing⁽²⁾. As from 1 January 2011, this shall also apply to Community fishing vessels exceeding 15 metres in overall length.

2 Member States shall collect the data referred to in paragraph 1 of this Article and, before the 15th of each calendar month, shall submit by electronic transmission to the Commission, or to a body designated by the Commission, data for each stock, group of stocks or fishing category, on the quantities caught, and, where required under an agreement or regulation implementing that agreement, on the fishing effort deployed during the previous month by vessels flying their flag in the waters falling under the scope of an agreement and in the previous six months for fishing activities outside Community waters not falling under the scope of an agreement.

3 The Commission shall, in accordance with the procedure laid down in Article 27(2), decide on the format in which to transmit the data referred to in paragraph 1 of this Article.

Article 14

Control of catches and fishing effort

Without prejudice to the provisions in Chapter V of Regulation (EC) No 2371/2002, Member States shall ensure compliance with the obligations regarding the reporting of catches and, where required, of fishing effort, as laid down in the agreement concerned.

Article 15

Closure of fisheries

1 Without prejudice to Article 26(4) of Regulation (EC) No 2371/2002 and Article 21(3) of Regulation (EEC) No 2847/93, when a Member State considers that its available fishing opportunities are deemed to have been exhausted, it shall immediately prohibit fishing activities for the respective area, gear, stock or group of stocks. This provision shall apply without prejudice to specific provisions laid down in the agreement concerned.

2 Where the available fishing opportunities of a Member State are expressed both in terms of catch and effort limits, the Member State shall prohibit fishing activities for the respective area, gear, stock or group of stocks as soon as one of these opportunities is deemed to be exhausted. In order to allow for the continued fishing of non-exhausted fishing

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opportunities which also targets the exhausted fishing opportunities, Member States shall notify the Commission of technical measures which will have no negative impact on the exhausted fishing opportunities. This provision shall apply without prejudice to specific provisions laid down in the agreement concerned.

3 Member States shall notify the Commission without delay of any prohibition of fishing activities decided in accordance with this Article.

4 Where the Commission finds that fishing opportunities available to the Community or to a Member State are deemed to have been exhausted, the Commission shall inform the Member States concerned thereof and shall request that they prohibit fishing activities in accordance with paragraphs 1, 2 and 3.

5 As soon as the fishing activities are prohibited in accordance with paragraphs 1 or 2, the fishing authorisations specified for the stock or group of stocks concerned shall be suspended.

Article 16

Suspension of fishing authorisations

1 Where an authorising authority under a fisheries agreement notifies the Commission of its decision to suspend or withdraw a fishing authorisation in respect of a fishing vessel flying the flag of a Member State, the Commission shall forthwith inform the flag Member State thereof. The Commission shall carry out the relevant checks, in accordance with the procedures laid down under the agreement concerned, where appropriate in consultation with the flag Member State and with the authorising authorities of the third country concerned, and shall inform the flag Member State and, where appropriate, the authorising authorities of the third country of the outcome.

2 Where an authorising authority of a third country suspends a fishing authorisation which it has granted to a Community fishing vessel, the flag Member State shall suspend the fishing permit under the agreement for the entire period of suspension of the fishing authorisation.

Where the fishing authorisation is definitively withdrawn by the authorising authorities of a third country, the flag Member State shall immediately withdraw the fishing permit granted to the vessel concerned under the agreement concerned.

3 Inspection and surveillance reports drawn up by Commission inspectors, Community inspectors, inspectors of Member States or inspectors of a third country, which is party to the agreement concerned, shall constitute admissible evidence in administrative or judicial proceedings of any Member State. For the purpose of establishing facts, those reports shall be treated equally to inspection and surveillance reports of the Member State concerned.

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SECTION V

Access to data

Article 17

Access to data

1 Without prejudice to the obligations under Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information⁽³⁾, the data submitted to the Commission, or to a body designated by the Commission, by Member States in accordance with this Chapter shall be made available on the secure website linked to the Community fishing authorisation information system for all users concerned which are authorised by:

- a the Member States;
- b the Commission, or a body designated by the Commission, concerning control and inspection.

The data accessible to these persons shall be limited to the data they need in the framework of the fishing authorisation process and/or their inspection activities and shall be subject to the rules on data confidentiality.

2 The owners or agents of the vessels registered in the Community fishing authorisation information system may receive an electronic copy of the data contained in the register by transmitting an official request to the Commission via their national administration.

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- (1) OJ L 203, 4.8.2005, p. 3.
- (2) OJ L 340, 22.12.2007, p. 46.
- (3) OJ L 41, 14.2.2003, p. 26.

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