

Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999

CHAPTER IX

IMMEDIATE ENFORCEMENT MEASURES, SANCTIONS AND ACCOMPANYING SANCTIONS

Article 41

Scope

This Chapter shall apply in relation to:

1. serious infringements committed within the territory of Member States to which the Treaty applies, or within maritime waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories and countries mentioned in Annex II of the Treaty;
2. serious infringements committed by Community fishing vessels or nationals of Member States;
3. serious infringements detected within the territory or within waters as referred to in point 1 of this Article but which have been committed on the high seas or within the jurisdiction of a third country and are being sanctioned pursuant to Article 11(4).

Article 42

Serious infringements

- 1 For the purpose of this Regulation, serious infringement means:
 - a the activities considered to constitute IUU fishing in accordance with the criteria set out in Article 3;
 - b the conduct of business directly connected to IUU fishing, including the trade in/or the importation of fishery products;
 - c the falsification of documents referred to in this Regulation or the use of such false or invalid documents.
- 2 The serious character of the infringement shall be determined by the competent authority of a Member State taking into account the criteria set out in Article 3(2).

Article 43

Immediate enforcement measures

- 1 Where a natural person is suspected of having committed or is caught in the act while committing a serious infringement or a legal person is suspected of being held liable for

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such an infringement, Member States shall start a full investigation of the infringement and, in conformity with their national law and depending on the gravity of the infringement, take immediate enforcement measures such as in particular:

- a the immediate cessation of fishing activities;
- b the rerouting to port of the fishing vessel;
- c the rerouting of the transport vehicle to another location for inspection;
- d the ordering of a bond;
- e the seizure of fishing gear, catches or fisheries products;
- f the temporary immobilisation of the fishing vessel or transport vehicle concerned;
- g the suspension of the authorisation to fish.

2 The enforcement measures shall be of such nature as to prevent the continuation of the serious infringement concerned and to allow the competent authorities to complete its investigation.

Article 44

Sanctions for serious infringements

1 Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions.

2 The Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement.

In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.

In applying these sanctions the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

3 Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.

Article 45

Accompanying sanctions

The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular:

1. the sequestration of the fishing vessel involved in the infringement;
2. the temporary immobilisation of the fishing vessel;
3. the confiscation of prohibited fishing gear, catches or fishery products;
4. the suspension or withdrawal of authorisation to fish;
5. the reduction or withdrawal of fishing rights;
6. the temporary or permanent exclusion from the right to obtain new fishing rights;

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7. the temporary or permanent ban on access to public assistance or subsidies;
8. the suspension or withdrawal of the status of approved economic operator granted pursuant to Article 16(3).

Article 46

Overall level of sanctions and accompanying sanctions

The overall level of sanctions and accompanying sanctions shall be calculated in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements without prejudice to the legitimate right to exercise a profession. For this purpose, account shall be also taken of immediate enforcement measures taken pursuant to Article 43.

Article 47

Liability of legal persons

1 Legal persons shall be held liable for serious infringements where such infringements have been committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, and having a determining position within the legal person, based on:

- a a power of representation of the legal person; or
- b an authority to take decisions on behalf of the legal person; or
- c an authority to exercise control within the legal person.

2 A legal person may be held liable where the lack of supervision or control, by a natural person referred to in paragraph 1, has made possible the commission of a serious infringement for the benefit of that legal person by a natural person under its authority.

3 Liability of a legal person shall not exclude proceedings against natural persons who are perpetrators, instigators or accessories in the infringements concerned.

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