

Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

## TITLE I

### INSPECTIONS OF THIRD COUNTRY FISHING VESSELS IN MEMBER STATES PORTS

#### CHAPTER I

##### *Conditions for access to port by third country fishing vessels*

###### *Article 1*

###### **Prior notification**

By way of derogation from Article 6(1) of Regulation (EC) No 1005/2008, vessels landing the types of fishery products set out in Annex I to this Regulation shall be subject to a prior notification period of 4 hours.

###### *Article 2*

###### **Prior notification form**

1 The form for prior notification referred to in Article 6(1) of Regulation (EC) No 1005/2008 is set out in Annex IIA to this Regulation.

2 Where all catches are accompanied by a validated catch certificate, the simplified prior notification form set out in Annex IIB may be used.

###### *Article 3*

###### **Procedures and forms for pre-landing and pre-transshipment declarations**

1 The form of the pre-landing declaration referred to in Article 8(1) of Regulation (EC) No 1005/2008 shall be as set out in Annex IIIA to this Regulation.

2 The form of the pre-transshipment declaration referred to in Article 8(1) of Regulation (EC) No 1005/2008 shall be as set out in Annex IIIB to this Regulation.

3 A third country fishing vessel may submit the pre-landing or pre-transshipment declaration in electronic format if the Member State whose designated ports of landing and transshipment facilities it intends to use and the flag State of the vessel have agreed to electronic exchange of data.

4 Unless otherwise provided for in the agreement referred to in paragraph 3, a third country fishing vessel shall submit the pre-landing or pre-transshipment declaration either in:

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- a the official language of the Member State of landing or transhipment; or
- b English if accepted by the Member State of landing or transhipment.

5 The pre-landing or pre-transhipment declaration shall be submitted at least 4 hours before the intended landing or transhipment.

## *CHAPTER II*

### ***Port inspections***

#### *Article 4*

#### **Benchmarks for port inspections**

The benchmarks for port inspections as referred to in Article 9(1) of Regulation (EC) No 1005/2008 shall consist of the following criteria:

- (a) the species concerned are subject to a management or recovery plan;
- (b) the fishing vessel is suspected of not implementing applicable provisions on VMS according to Chapter IV of Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems<sup>(1)</sup>;
- (c) the fishing vessel has not been controlled at port in the port Member State in the last 3 months;
- (d) the fishing vessel has not been controlled by the port Member State in the last 6 months;
- (e) the fishing vessel is not on the list of establishments from which imports of specified products of animal origin are permitted, as set out in Article 12 of Regulation (EC) No 854/2004 of the European Parliament and of the Council<sup>(2)</sup>;
- (f) importation, exportation or trade in fishery products obtained from species of high commercial value;
- (g) introduction of new kinds of fishery products or discovery of new trade patterns;
- (h) inconsistencies between the trade patterns and the known fishing activities of a flag State in particular in respect of species, volumes or characteristics of its fishing fleet;
- (i) inconsistencies between the trade patterns and the known fishing-related activities of a third country in particular in respect of the characteristics of its processing industry or its trade in fishery products;
- (j) trade pattern not justified in terms of economic criteria;
- (k) involvement of a newly established operator;
- (l) significant and sudden increase in trade volume for a certain species;
- (m) submission of copies of catch certificates accompanying processing statements according to Annex IV of Regulation (EC) No 1005/2008, for instance when the catch has been split during production;

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- (n) prior notification, required under Article 6 of Regulation (EC) No 1005/2008, not transmitted at the proper time or information incomplete;
- (o) inconsistencies between catch data declared by the operator and other information available to the competent authority;
- (p) vessel or vessel owner suspected of being or having been involved in IUU fishing activities;
- (q) vessel having recently changed name, flag or registration number;
- (r) flag State not notified according to Article 20 of Regulation (EC) No 1005/2008 or information available on possible irregularities in the validation of catch certificates by a given flag State (e.g. stamps or validation seal from a competent authority lost, stolen or forged);
- (s) presumed deficiencies in the control system of a flag State;
- (t) operators concerned who have already been involved in illegal activities constituting a potential risk in respect of IUU fishing<sup>[F1]</sup>;
- (u) <sup>[F2]</sup>the fishing vessel has been denied entry or use of port in accordance with the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, concluded in the framework of the Food and Agriculture Organisation of the United Nations (FAO).]

<sup>[F3]</sup>In respect of points (c) and (d) of the first paragraph, Member States shall without delay report to the Commission the name and the flag of the third country vessel inspected and the date of inspection. The Commission shall make this information available to other Member States.]

#### **Textual Amendments**

- F1** Substituted by Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognised catch documentation schemes adopted by regional fisheries management organisations.
- F2** Inserted by Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognised catch documentation schemes adopted by regional fisheries management organisations.
- F3** Inserted by Commission Regulation (EU) No 86/2010 of 29 January 2010 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) No 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates.

### *Article 5*

#### **Reporting on the application of benchmarks**

1 Member States shall report on the application of benchmarks referred to in Article 4 in their report to be transmitted to the Commission every two years according to Article 55(1) of Regulation (EC) No 1005/2008.

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2 On the basis of those reports and its own observations, the Commission shall undertake an evaluation and possible adjustment of the benchmarks.

## TITLE II

### CATCH CERTIFICATION SCHEME FOR IMPORTATION AND EXPORTATION OF FISHERY PRODUCTS

#### CHAPTER I

##### *Catch certificates*

##### *Article 6*

##### **Simplified catch certificate**

- 1 This Article shall apply to third country fishing vessels:
- a with an overall length of less than 12 metres without towed gear; or
  - b with an overall length of less than 8 metres with towed gear; or
  - c without a superstructure; or
  - d of less than measured 20 GT.

2 Catches from third country fishing vessels referred to in paragraph 1 which are only landed in the flag State of those vessels and which together constitute one consignment may be accompanied by a simplified catch certificate instead of the catch certificate referred to in Article 12 of Regulation (EC) No 1005/2008. The simplified catch certificate shall contain all the information specified in the specimen shown in Annex IV to this Regulation and shall be validated by a public authority of the flag State with the necessary powers to attest the accuracy of the information.

3 The validation of the simplified catch certificate shall be requested by the exporter of the consignment upon submission to the public authority of all the information specified in the specimen shown in Annex IV.

##### *Article 7*

##### **Recognised catch documentation schemes in RFMOs**

1 The catch documentation schemes adopted by regional fisheries management organisations listed in Annex V, Part I, to this Regulation, shall be recognised for the purposes of Article 13(1) of Regulation (EC) No 1005/2008 as complying with the requirements of that Regulation without additional conditions.

2 The catch documentation schemes adopted by regional fisheries management organisations listed in Annex V, Part II, of this Regulation, shall be recognised, for the purposes of Article 13(1) of Regulation (EC) No 1005/2008, as complying with the requirements of that Regulation subject to additional conditions.

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## *Article 8*

### **Deadline for the submission of catch certificates**

By way of derogation from Article 16(1) of Regulation (EC) No 1005/2008, the submission of catch certificates for imports of fishery products in consignments by means of transportation referred to in Annex VI to this Regulation shall be subject to the shorter deadlines set out in that Annex.

## *CHAPTER II*

### *Approved economic operators*

#### *Section 1*

#### ***Conditions for granting the approved economic operator certificate***

### *Article 9*

#### **General provisions**

Economic operators may, following an application, be granted a certificate of approved economic operator (hereinafter referred to as APEO certificate) for the purposes of Article 16 of Regulation (EC) No 1005/2008 only if they:

- (a) hold an authorised economic operator certificate (hereinafter referred to as AEO certificate) in accordance with Commission Regulation (EEC) No 2454/93<sup>(9)</sup> (hereinafter referred to as the Implementing Rules of the Community Customs Code); and
- (b) fulfil the criteria laid down in Article 16(3)(a) to (g) of Regulation (EC) No 1005/2008 and detailed in Articles 10 to 13 of this Regulation.

### *Article 10*

#### **Sufficient import**

1 The sufficient number and volume of import operations referred to in Article 16(3)(b) of Regulation (EC) No 1005/2008 must be achieved in the Member State of establishment.

2 Each Member State shall determine the minimum threshold for number and volume of import operations and inform the Commission thereof.

### *Article 11*

#### **Record of compliance**

1 The record of compliance with the requirements of conservation and management measures referred to in Article 16(3)(c) of Regulation (EC) No 1005/2008 shall be considered

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as appropriate if, over the last three years preceding the submission of the application, the applicant:

- a has not committed a serious infringement of the rules of the common fisheries policy;
- b has not committed repeated infringements of the rules of the common fisheries policy;
- c has not directly or indirectly participated in or supported activities of vessels or operators engaged in IUU fishing or which are currently subject to investigation in that respect; and
- d has not directly or indirectly participated in or supported activities of vessels included in IUU vessel lists adopted by a RFMO.

2 Notwithstanding paragraph 1, the record of compliance with the requirements of conservation and management measures may be considered as appropriate if the competent Member State authority considers an infringement committed by the applicant:

- a not to be serious; and
- b of negligible quantitative importance in relation to the number or size of the import-related operations carried out by the applicant.

#### *Article 12*

#### **Management of records**

The system of managing catch certificates and, where appropriate, processing records, as referred to in Article 16(3)(d) of Regulation (EC) No 1005/2008, shall be considered satisfactory if it ensures:

- (a) the handling of catch certificates connected to the trade in fisheries products;
- (b) the archiving of the applicant's records and information; and
- (c) the protection against the loss of information.

#### *Article 13*

#### **Facilities**

The applicant's facilities, as referred to in Article 16(3)(e) of Regulation (EC) No 1005/2008, shall be considered appropriate if they:

- (a) prevent unauthorised access to storage areas, shipping areas, loading docks and cargo areas;
- (b) ensure the handling of fishery products including protection against tampering with cargo units;
- (c) ensure the handling of import and/or export licenses connected to prohibitions and restrictions and to distinguish fishery products subject to catch certificates from fishery products not subject to catch certificates.

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## Section 2

### **Application for an APEO certificate**

#### Article 14

##### **Submission of the application**

1 The application for an APEO certificate shall be submitted to the competent Member State authority on whose territory the importer is established in accordance with the specimen set out in Annex VII.

2 The application shall include records and documentation enabling the competent Member State authority to verify and monitor the compliance with the criteria laid down in Articles 9 to 13 of this Regulation, including a copy of the AEO certificate issued in accordance with the Implementing Rules of the Community Customs Code. Applicants shall submit necessary data to the competent Member State authority.

3 If a part of the relevant records and documentation is kept in another Member State, the consultation procedure referred to in Article 17 shall apply.

4 Where the competent Member State authority establishes that the application does not contain all the information required, it shall, within 30 calendar days of receipt of the application, require the applicant to supply the relevant information.

5 When the authority has received all the information necessary it shall inform the applicant that the application has been deemed complete, specifying the date from which the time limits laid down in Article 18(2) of this Regulation will run.

6 An operator who has been granted the status of approved economic operator in one Member State shall when applying for the same status in a subsequent Member State, attach a copy of the APEO certificate granted by the first Member State.

#### Article 15

##### **Inadmissibility of applications**

The application referred to in Article 14 shall be inadmissible in the following cases:

- (a) where the application does not comply with Article 14; or
- (b) where the application is submitted within three years after the withdrawal of the APEO certificate referred to in points (a), (b) and (d) of Article 27(1).

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### Section 3

#### **Procedure for issuing APEO certificates**

##### Article 16

#### **Examination of application**

1 The issuing Member State authority shall examine whether the criteria laid down in Articles 9 to 13 are met. The examination and its results shall be documented by the competent Member State authority.

2 Where the applicant holds an ‘AEO certificate — Security and safety’ or an ‘AEO certificate — Customs simplification/security and safety’, as referred to in Article 14a of the Implementing Rules of the Community Customs Code, the criteria set out in Article 13 need not be examined.

3 In cases where the applicant has previously been granted the status of approved economic operator in another Member State, the issuing authority shall examine whether the following criteria are met:

- a the criteria set out in Articles 12 and 13;
- b optionally, the criteria set out in Articles 10 and 11.

4 The issuing authority may accept conclusions provided by an expert in the relevant fields referred to in Articles 12 and 13 in respect of the criteria referred to in those Articles. The expert shall not in any way be related to the applicant.

##### Article 17

#### **Consultation of other Member States**

1 The issuing authority shall consult the competent authorities of other Member States if the examination of the compliance with one or more of the criteria laid down in Articles 9 to 13 cannot be performed by it due either to a lack of information or to the impossibility of checking it. The consulted competent authorities of the Member States shall respond within 60 calendar days, starting from the date of the communication of the request by the issuing Member State authority.

2 If the consulted competent authority fails to respond within the deadline of 60 calendar days referred to in paragraph 1, the issuing authority may assume that the applicant meets the criteria for which the consultation took place.

##### Article 18

#### **Issuing of an APEO certificate**

1 The issuing authority shall issue the APEO certificate in accordance with the specimen set out in Annex VIII.

2 The APEO certificate shall be issued within 90 calendar days starting from the date of receipt of all the information necessary in accordance with Article 14.



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3 The period of 90 calendar days provided for in paragraph 2 may be extended by one further period of 30 calendar days where the competent authority is unable to meet the deadline. In such cases, the competent Member State authority shall, before the expiry of the period referred to in paragraph 2, inform the applicant of the reasons for the extension.

4 The period provided for in paragraph 2 may also be extended if, in the course of the examination of the compliance with the criteria laid down in Articles 9 to 13, the applicant carries out adjustments in order to satisfy those criteria and communicates them to the competent authority.

#### *Article 19*

### **Rejection of an application**

1 Where the result of the examination carried out in accordance with Articles 16 and 17 is likely to lead to the rejection of the application, the issuing authority shall communicate the findings to the applicant and provide him with the opportunity to respond within 30 calendar days, before rejecting the application. The period laid down in paragraph 2 shall be suspended accordingly.

2 If the application is rejected, the competent authority shall inform the applicant of the reasons on which the decision is based. The decision to reject an application shall be notified to the applicant within the time limits laid down in paragraphs 2, 3 and 4 of Article 18 and paragraph 1 of this Article.

3 The issuing authority shall inform the Commission, as soon as possible, that an application has been rejected. The Commission shall make that information available to the competent authorities of the other Member States by electronic means.

#### *Section 4*

### ***Status of approved economic operator***

#### *Article 20*

### **Verifications**

1 When the holder of an APEO certificate has advised the competent Member State authority of the arrival of fishery products, that authority may, before the arrival of the consignment into that Member State, notify the approved economic operator when, as a result of a risk analysis in accordance with Article 17 of Regulation (EC) No 1005/2008, the consignment has been selected for further verification. That notice shall only be provided where it does not jeopardise the verification to be carried out.

2 The holder of an APEO certificate shall be subject to fewer physical and document-based verifications than other importers, unless the competent Member State authority decides otherwise in order to take into account a specific risk, or control obligations set out in other Community legislation.

3 Where, following a risk analysis, the competent Member State authority selects for further examination a consignment accompanied by a catch certificate lodged by an approved economic operator, it shall carry out the necessary verifications as a matter of priority. If the

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approved economic operator so requests, and subject to agreement with the competent Member State authority concerned, those verifications may be carried out at a place which is different from the place of the office of the competent Member State authority.

## Section 5

### **Legal effects of APEO certificates**

#### Article 21

#### **General provisions**

1 The APEO certificate shall take effect on the tenth working day after the date of its issue. Its period of validity shall not be limited.

2 The APEO certificate shall only be valid in the Member State of the issuing authority.

3 The competent authorities shall monitor compliance with the criteria laid down in Articles 9 to 13.

4 In the case of an APEO certificate issued to an applicant established for less than three years, close monitoring shall take place during the first year after issue.

5 A reassessment of the compliance with the criteria referred to in Articles 9 to 13 shall be carried out by the issuing authority in the following cases:

- a major changes to the relevant Community legislation;
- b reasonable indication that the relevant criteria are no longer met by the approved economic operator.

6 Article 16(4) shall apply to the reassessment.

7 The issuing authority shall inform the Commission, as soon as possible, of the results of the reassessment. The Commission shall make that information available to the competent authorities of all Member States, by electronic means.

#### Article 22

#### **Suspension of the status of an approved economic operator**

1 The status of approved economic operator shall be suspended by the issuing authority in the following cases:

- a where non-compliance with the criteria laid down in Articles 9 to 13 has been detected;
- b where the competent Member State authorities have sufficient reason to believe that an act has been perpetrated by the approved economic operator, which gives rise to legal proceedings and is linked to an infringement of the rules of the common fisheries policy or of Regulation (EC) No 1005/2008;
- c where the status of the authorised economic operator has been suspended in accordance with the Implementing Rules of the Community Customs Code;
- d where the suspension is requested by the approved economic operator which is temporarily unable to meet any of the criteria laid down in Articles 9 to 13.

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2 Before taking a decision in accordance with paragraph 1(a), (b) and (c), the competent Member State authorities shall communicate their findings to the economic operator concerned. The operators shall be entitled to express its point of view within 30 calendar days starting from the date of receiving the communication.

3 However, where the nature or the level of the threat to the conservation measures for a certain stock or stocks so require, suspension shall take place immediately. The suspending authority shall immediately inform the Commission in order to permit other Member States to take appropriate action.

4 The suspension referred to in paragraph 1 shall take effect from the day following its notification to the approved economic operator. The suspension shall however not affect any import procedure already started before the date of suspension and not yet completed.

### *Article 23*

#### **Suspension in the case of non-compliance with relevant criteria**

1 In the case referred to in point (a) of Article 22(1), if the approved economic operator does not regularise the situation within the period referred to in paragraph 2 of that Article, the status of approved economic operator shall be suspended for a period of 30 calendar days. The competent Member State authority shall, without delay, notify the economic operator of the suspension and the competent authorities of the other Member States.

2 Where the economic operator concerned has been unable to regularise the situation within the suspension period of 30 calendar days referred to in paragraph 1 but can provide evidence that the conditions can be met if the suspension period is extended, the issuing authority shall suspend the status of approved economic operator for a further 30 calendar days. The competent authorities of the other Member States shall be informed of the extension.

3 When the economic operator concerned has, within the time limit set out in paragraphs 1 or 2, taken the necessary measures to comply with the criteria laid down in Articles 9 to 13, the issuing authority shall withdraw the suspension and inform the economic operator concerned and the Commission. The suspension may be withdrawn before the expiry of the time limit laid down in paragraphs 1 or 2.

### *Article 24*

#### **Suspension in case of legal proceedings**

1 In the case referred to in point (b) of Article 22(1), the issuing authority shall suspend the status of the approved economic operator for the duration of the proceedings. It shall notify the approved economic operator thereof. Notification shall also be sent to the competent authorities of the other Member States.

2 The competent Member State authority may however decide not to suspend the status of approved economic operator if it considers the infringement to be of negligible quantitative importance in relation to the number or volume of the import-related operations carried out by that operator.

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## Article 25

### **Suspension related to the status of authorised economic operator**

In the case referred to in point (c) of Article 22(1), the issuing authority shall suspend the status of the approved economic operator until the suspension of the status of authorised economic operator has been withdrawn. It shall notify the approved economic operator thereof. It shall also notify the competent authorities of the other Member States.

## Article 26

### **Suspension upon request**

1 In the case referred to in Article 22(1)(d) the approved economic operator shall notify the issuing authority of its temporary inability to meet the criteria laid down in Articles 9 to 13, specifying the date when the criteria will be met again. The approved economic operator shall also notify the issuing authority of any planned measures and their timescale.

2 The issuing authority shall send the notification to the Commission and the competent authorities of the other Member States.

3 If the approved economic operator fails to regularise the situation within the period set out in its notification, the issuing authority may grant a reasonable extension, provided that the approved economic operator has acted in good faith. The extension shall be notified to the Commission and the competent authorities of the other Member States.

## Article 27

### **Withdrawal of the APEO certificate**

1 The APEO certificate shall be withdrawn in the following cases:

- a where the approved economic operator fails to take the necessary measures to comply with the criteria laid down in Articles 9 to 13 in accordance with Article 23(3);
- b where it has been established that a serious infringement or repeated infringements related to the rules of the common fisheries policy or of Regulation (EC) No 1005/2008 have been committed by the approved economic operator and there is no further right of appeal;
- c where the approved economic operator fails to take the necessary measures to comply with the criteria laid down in Articles 9 to 13 in accordance with Article 26;
- d where the status of authorised economic operator, granted in accordance with the Implementing Rules of the Community Customs Code, has been withdrawn;
- e upon request of the approved economic operator.

2 In the case referred to in point (b) of paragraph 1, the competent authority may decide not to withdraw the APEO certificate if the infringements are of negligible quantitative importance in relation to the number or size of the import-related operations carried out by that operator.

3 The withdrawal shall take effect from the day following its notification to the approved economic operator.

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4 The issuing authority shall immediately inform the Commission of the withdrawal of an APEO certificate.

### *Section 6*

#### **Information exchange**

##### *Article 28*

#### **Information requests**

1 The approved economic operator shall inform the issuing authority of all factors arising after the certificate is granted which may influence its continuation.

2 All relevant information at the disposal of the issuing authority concerning economic operators approved by it shall *upon request* be made available to the Commission and the competent authorities of the other Member States where the approved economic operators carry out import-related activities.

##### *Article 29*

#### **Sharing of information on approved economic operators**

1 The Commission and the competent authorities in all Member States shall store for a period of three years or longer in accordance with national rules, and have access to the following information:

- a the electronically transmitted data of the applications;
- b the APEO certificates, and where applicable, their amendment or withdrawal of those certificates, or the suspension of the status of approved economic operator.

2 The IUU fishing information system referred to in Article 51 of Regulation (EC) No 1005/2008 may be used for the information and communication process between the competent authorities and for information of the Commission and of the economic operators as provided for in this chapter.

3 The list of approved economic operators may be disclosed by the Commission to the public via the Internet with prior agreement of the approved economic operators concerned. The list shall be kept up to date.

##### *Article 30*

#### **Reporting obligations and evaluation**

1 Member States shall include information on the application of the approved economic operator scheme as laid down in this chapter in their report to be transmitted to the Commission every two years according to Article 55(1) of Regulation (EC) No 1005/2008.

2 On the basis of those reports and its own observations, the Commission shall undertake an evaluation and possible adjustment of the approved economic operator scheme.

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## CHAPTER III

### **Verifications related to catch certificates**

#### *Article 31*

#### **Community criteria for verifications**

Verifications intended to ensure that the provisions of Regulation (EC) No 1005/2008 are complied with, as referred to in Article 17 of that Regulation, shall be focused towards risks identified on the basis of the following Community criteria:

- (a) importation, exportation or trade in fishery products obtained from species of high commercial value;
- (b) introduction of new kinds of fishery products or discovery of new trade patterns;
- (c) inconsistencies between the trade patterns and the known fishing activities of a flag State in particular in respect of species, volumes or characteristics of its fishing fleet;
- (d) inconsistencies between the trade patterns and the known fishing-related activities of a third country in particular in respect of the characteristics of its processing industry or its trade in fishery products;
- (e) trade pattern not justified in terms of economic criteria;
- (f) involvement of a newly established operator;
- (g) significant and sudden increase in trade volume for a certain species;
- (h) submission of copies of catch certificates accompanying processing statements according to Annex IV of Regulation (EC) No 1005/2008, for instance when the catch has been split during production;
- (i) prior notification, required under Article 6 of Regulation (EC) No 1005/2008, not transmitted at the proper time or information incomplete;
- (j) inconsistencies between catch data declared by the operator and other information available to the competent authority;
- (k) vessel or vessel owner suspected of being or having been involved in IUU fishing activities;
- (l) vessel having recently changed name, flag or registration number;
- (m) flag State not notified according to Article 20 of Regulation (EC) No 1005/2008 or information available on possible irregularities in the validation of catch certificates by a given flag State (e.g. stamps or validation seal from a competent authority lost, stolen or forged);
- (n) presumed deficiencies in the control system of a flag State;
- (o) operators concerned who have already been involved in illegal activities constituting a potential risk in respect of IUU fishing.

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## Article 32

### **Reporting obligations and evaluation**

1 Member States shall include information on the application of the Community criteria referred to in Article 31 in their report to be transmitted to the Commission every two years according to Article 55(1) of Regulation (EC) No 1005/2008.

2 On the basis of those reports and its own observations, the Commission shall undertake an evaluation and possible adjustment of the Community criteria.

## CHAPTER IV

### **Cooperation with third countries**

## Article 33

### **Administrative cooperation with third countries concerning catch certificates**

1 The administrative arrangements in which the catch certificate is established, validated or submitted by electronic means or is replaced by electronic traceability systems ensuring the same level of control by authorities, established within the framework of the administrative cooperation set out in Article 20(4) of Regulation (EC) No 1005/2008, are listed in Annex IX to this Regulation.

2 The Commission shall within 15 working days after establishment of a new administrative arrangement pertaining to the implementation of the catch certification provisions of Regulation (EC) No 1005/2008, inform the competent authorities of Member States thereof, place the information on its website as soon as possible and update Annex IX to this Regulation.

## TITLE III

### **SIGHTINGS**

## Article 34

### **Form for submission of information regarding sighted fishing vessels**

1 The form for submission of information regarding sighted fishing vessels referred to in Article 49(1) of Regulation (EC) No 1005/2008 is set out in Annex XA to this Regulation.

2 The instructions for filling in the form referred to in paragraph 1 are set out in Annex XB to this Regulation.

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## TITLE IV

### MUTUAL ASSISTANCE

#### CHAPTER I

##### *General provisions*

##### *Article 35*

###### **Scope**

1 This Title lays down the conditions under which the Member States shall administratively cooperate with each other, third countries, the Commission and the body designated by it in order to ensure the effective application of Regulation (EC) No 1005/2008 and this Regulation.

2 This Title shall not bind Member States to grant each other assistance where that would be likely to be injurious to their national legal system, public policy, security or other fundamental interests. Before denying a request for assistance, the requested Member State shall consult the applicant Member State to determine whether assistance may be given in part, subject to specific terms and conditions. Where a request for assistance cannot be complied with the applicant Member State and the Commission shall promptly be notified of that fact and reasons shall be stated.

3 This Title shall not affect the application in the Member States of rules on criminal procedure and mutual assistance in criminal matters, including those on secrecy of judicial inquiries.

##### *Article 36*

###### **Protection of personal data**

1 This Regulation leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter either the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Community institutions and bodies relating to their processing of personal data under Regulation (EC) No 45/2001 when fulfilling their responsibilities. The Member States and the Commission shall ensure that all applicable provisions laid down in Regulation (EC) No 45/2001 and Directive 95/46/EC are respected.

2 The rights of persons with regard to their registration data processed in national systems shall be exercised in accordance with the law of the Member State which stored their personal data, and in particular the provisions implementing Directive 95/46/EC, and, with regard to their registration data processed in Community systems, shall be exercised in accordance with Regulation (EC) No 45/2001.



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### *Article 37*

#### **Use of information and protection of professional and commercial secrecy**

1 The applicant Member State shall use information communicated according to this Title solely for the purposes of implementing Regulation (EC) No 1005/2008 and at all times in accordance with Directive 95/46/EC. The use of such information for other purposes shall be subject to prior written consultation of the requested Member State which provided the information. Such use shall then be subject to any conditions established by the requested Member State for non-disclosure of information in accordance with Directive 95/46/EC. The use of personal information data for other purposes shall be in compliance with the conditions laid down in Directive 95/46/EC.

2 The applicant Member State shall consider specific demands related to disclosure of the information such as the safety and privacy of persons identified or identifiable by the information.

3 The information shall benefit from the same protection accorded to similar data by the national legislation of the Member State receiving them and, for a Community institution receiving them, by the corresponding provisions applicable to this institution. It may be invoked as evidence in administrative or criminal proceedings by the Member State receiving the information, in accordance with the law of that Member State.

4 Information communicated in any form to persons working for national public authorities and the Commission shall be covered by duties of confidentiality and professional secrecy if their disclosure would undermine

- a the protection of the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;
- b the commercial interests of a natural or legal person, including intellectual property;
- c court proceedings and legal advice; or
- d the purpose of inspections or investigations.

5 Paragraph 4 shall not apply where the disclosure is necessary to bring about the cessation of IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 and the authority communicating the information consents to its disclosure.

### *Article 38*

#### **Costs**

Member States shall bear their own costs of executing a request for assistance and shall waive all claims for the reimbursement of expenses incurred in applying this Title.

### *Article 39*

#### **Single authority**

1 Each Member State shall designate a single liaison office responsible for the application of this Title.

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2 Each Member State shall communicate to the Commission and the other Member States the identity of the single liaison office and keep that information up to date.

3 The Commission shall publish and update the list of single liaison offices in the *Official Journal of the European Union*.

#### *Article 40*

### **Follow-up measures**

1 Where national authorities decide, in response to a request for assistance based on this Title or following a spontaneous exchange of information, to take measures which may be implemented only with the authorisation or at the demand of a judicial authority, they shall communicate to the Member State concerned and the Commission any information on those measures which is related to IUU fishing or serious infringements referred to in Article 42(1) (b) and (c) of Regulation (EC) No 1005/2008, or to infringements of this Regulation.

2 Any such communication must have the prior authorisation of the judicial authority if such authorisation is required by national law.

## *CHAPTER II*

### ***Information without prior request***

#### *Article 41*

### **Information without prior request**

1 When a Member State becomes aware of any potential IUU fishing activity or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 or reasonably suspects that such an activity or infringement may occur, it shall notify the other Member States concerned and the Commission, without delay. That notification shall supply all necessary information and shall be made via the single authority as referred to in Article 39.

2 When a Member State takes enforcement measures in relation to an IUU fishing activity or infringement referred to in paragraph 1, it shall notify the other Member States concerned and the Commission via the single authority as referred to in Article 39.

3 All notifications according to this Article shall be made in writing.

## *CHAPTER III*

### ***Requests for assistance***

#### *Article 42*

### **Definitions**

For the purposes of this Title ‘request for assistance’ means a request addressed by one Member State to another Member State for:

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- (a) information;
- (b) enforcement measures; or
- (c) administrative notification.

#### *Article 43*

### **General requirements**

1 The applicant Member State shall ensure that all requests for assistance contain sufficient information to enable a requested Member State to fulfil the request, including any necessary evidence obtainable in the territory of the applicant Member State.

2 Requests for assistance shall be limited to substantiated cases where there is reasonable cause to believe that IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 have occurred and where the applicant Member State is not able to obtain the requested information or to take the requested measures by its own means.

#### *Article 44*

### **Transmission of requests and replies**

1 Requests shall only be sent by the single authority of the applicant Member State or by the Commission to the single authority of the requested Member State. All replies to a request shall be communicated in the same way.

2 Requests for mutual assistance and the respective replies shall be made in writing.

3 The languages used for requests and for the communication of information shall be agreed by the single authorities concerned before requests are made. If no agreement can be reached, requests shall be communicated in the official language(s) of the applicant Member State and replies in the official language(s) of the requested Member State.

#### *Article 45*

### **Requests for information**

1 A requested Member State shall, at the request of an applicant Member State, or of the Commission, supply any relevant information required to establish whether IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 have occurred or to establish whether there is a reasonable suspicion it may occur. That information shall be supplied via the single authority as referred to in Article 39.

2 The requested Member State shall, at the request of the applicant Member State or of the Commission, carry out the appropriate administrative enquiries concerning operations which constitute, or appear to the applicant Member State to constitute, IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008. The requested Member State shall communicate the results of such administrative enquiries to the applicant Member State and to the Commission.

3 At the request of the applicant Member State, or of the Commission, the requested Member State may permit a competent official of the applicant Member State to accompany the officials of the requested Member State or of the Commission, in the course of administrative

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enquiries referred to in paragraph 2. In so far as national provisions on criminal proceedings restrict certain acts to officials specifically designated by national law, the officials of the applicant Member State shall not take part in such acts. In no event, shall they participate in searches of premises or the formal questioning of persons under criminal law. The officials of the applicant Member States present in the requested Member State must at all time be able to present written authority stating their identity and their official functions.

4 At the request of the applicant Member State, the requested Member State shall supply it with any document or certified true copies in its possession which relates to IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008.

5 The standard form for the exchange of information on request is set out in Annex XI.

#### *Article 46*

### **Requests for enforcement measures**

1 A requested Member State shall, based on the evidence referred to in Article 43, at the request of an applicant Member State, or of the Commission, take all necessary enforcement measures to bring about the cessation, within its territory or within maritime waters under its sovereignty or jurisdiction, of any IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 without delay.

2 The requested Member State may consult the applicant Member State and the Commission in the course of taking the enforcement measures referred to in paragraph 1.

3 The requested Member State shall report the measures taken and their effect to the applicant Member State, the other Member States concerned and the Commission, via the single authority as referred to in Article 39.

#### *Article 47*

### **Deadline for replies to requests for information and enforcement measures**

1 The requested Member State shall provide the information referred to in Article 45(1) and Article 46 (3) as quickly as possible, but not later than 4 weeks following the date of receipt of the request. Different time limits may be agreed between the requested and the applicant Member State or the Commission.

2 Where the requested Member State is unable to respond to the request by the deadline, it shall inform the applicant Member State or the Commission in writing of the reason for its failure to do so, and indicate when it considers it will be able to respond.

#### *Article 48*

### **Requests for administrative notification**

1 A requested Member State shall, at the request of an applicant Member State and in accordance with its national rules governing the notification of similar instruments and decisions, notify the addressee of all instruments and decisions taken in the field covered by Regulation (EC) No 1005/2008 which emanate from the administrative authorities of the applicant Member State and are to be served in the territory of the requested Member State.

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2 Requests for notification shall be made using the standard form attached to this Regulation in Annex XII.

3 The requested Member State shall transmit its reply to the applicant Member State immediately after the notification via the single authority referred to in Article 39. The reply shall be made using the standard form attached to this Regulation in Annex XII.

## CHAPTER IV

### **Relations with the Commission**

#### *Article 49*

#### **Communication between the Member States and the Commission**

1 Each Member State shall communicate to the Commission as soon as it is available to it any information it considers relevant concerning methods, practices or revealed tendencies used or suspected of having been used for IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008.

2 The Commission shall communicate to the Member States, as soon as it becomes available to it, any information that would help them to enforce the implementation of Regulation (EC) No 1005/2008.

#### *Article 50*

#### **Coordination by the Commission**

1 Where a Member State becomes aware of operations which constitute, or appear to constitute, IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 and which are of particular relevance at Community level, it shall communicate to the Commission as soon as possible any relevant information needed to determine the facts. The Commission shall convey that information to the other Member States concerned.

2 For the purposes of paragraph 1, operations which constitute IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 shall be deemed to be of particular relevance at Community level especially where:

- a they have, or might have, connections in other Member States; or
- b it appears likely to the Member State that similar operations have also been carried out in other Member States.

3 Where the Commission considers that operations which constitute IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 have taken place in one or more Member States, it shall inform the Member States concerned thereof which shall as soon as possible carry out enquiries. The Member States concerned shall, as soon as possible, communicate to the Commission the findings of those enquiries.

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## CHAPTER V

### **Relations with third countries**

#### *Article 51*

#### **Information exchange with third countries**

1 When a Member State receives information relevant to ensure the effective application of Regulation (EC) No 1005/2008 and this Regulation from a third country, it shall communicate that information to the other Member States concerned via the single authority, in so far as it is permitted to do so by bilateral assistance agreements with that third country.

2 Information received under this Title may be communicated to a third country by a Member State via its single authority under a bilateral assistance agreement with that third country; That communication shall take place after consultation of the Member State that originally communicated the information and in accordance with Community legislation and national legislation regarding the protection of individuals with regard to the processing of personal data.

3 The Commission may, in the framework of fisheries agreements concluded between the Community and third countries or in the framework of Regional Fisheries Management Organisations or similar arrangements to which the Community is a Contracting Party or a non-contracting Cooperating Party, communicate relevant information concerning IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 1005/2008 to other parties to those agreements, organisations or arrangements, subject to the consent of the Member State that supplied the information.

## CHAPTER VI

### **Transitional provision**

#### *Article 52*

#### **Establishment of an IUU Fishing Information System**

Pending the establishment of the 'IUU Fishing Information System', as referred to in Article 51(2) of Regulation (EC) No 1005/2008, the competent authorities of the Member States shall cooperate under this title with each other and the Commission through existing information arrangements.

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## TITLE V

### AMENDMENTS

#### *Article 53*

#### **Amendments to Regulation (EC) No 1005/2008**

Annex I of Regulation (EC) No 1005/2008, containing the list of products excluded from the definition of ‘fisheries products’ in Article 2(8) of that Regulation is amended as set out in Annex XIII to this Regulation.

## TITLE VI

### FINAL PROVISIONS

#### *Article 54*

#### **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 from 1 January 2010.

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

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 1010/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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- (1) OJ L 333, 20.12.2003, p. 17.
- (2) OJ L 226, 25.6.2004, p. 83.
- (3) OJ L 253, 11.10.1993, p. 1.



**Status:**

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