

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 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.

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⁽¹⁾ (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 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.

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).

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.

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

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.

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.

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 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.

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.

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.

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.

(1) OJ L 253, 11.10.1993, p. 1.