

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 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.

### *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.
- 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:

- (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

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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 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.

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.

## 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.