

Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008

TITLE II

**FISHING OPERATIONS BY UNION FISHING VESSELS OUTSIDE UNION WATERS**

*CHAPTER I*

***Common provisions***

*Article 4*

**General principle**

Without prejudice to the requirement to obtain an authorisation from the competent organisation or third country, a Union fishing vessel shall not carry out fishing operations outside Union waters unless it has been authorised by its flag Member State, and the fishing operations are indicated in a valid fishing authorisation issued in accordance with Chapters II to V, as appropriate.

*Article 5*

**Eligibility criteria**

1 A flag Member State may only issue a fishing authorisation for fishing operations outside Union waters if:

- a it has received complete and accurate information, in accordance with the requirements of the Annex or the SFPAs concerned or RFMO concerned, about the fishing vessel and the associated support vessel(s), including non-Union support vessels;
- b the fishing vessel has a valid fishing licence under Article 6 of the Control Regulation;
- c the fishing vessel and any associated support vessel apply the relevant IMO ship identification number scheme insofar as is required under Union law;
- d the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
- e where applicable, fishing opportunities are available to the flag Member State under the fisheries agreement concerned or the relevant provisions of the RFMO; and
- f where applicable, the fishing vessel complies with the requirements set out in Article 6.

2 The Commission is empowered to adopt delegated acts, in accordance with Article 44, for the purpose of amending the Annex to ensure appropriate monitoring of the activities of fishing vessels under this Regulation, in particular through new data requirements resulting from fisheries agreements or the development of information technologies.

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## Article 6

### Reflagging operations

1 This Article applies to vessels that, during the 5 years preceding the application for a fishing authorisation, have:

- a left the Union fishing fleet register and been reflagged in a third country; and
- b subsequently returned to the Union fishing fleet register.

2 A flag Member State may only issue a fishing authorisation if it has verified that, during the period that the vessel referred to in paragraph 1 operated under a third-country flag, it did not:

- a engage in IUU fishing;
- b operate in waters of a third country identified as a country allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012 of the European Parliament and of the Council<sup>(1)</sup>;
- c operate in waters of a third country listed as non-cooperating pursuant to Article 33 of the IUU Regulation; and
- d operate in waters of a third country identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of 6 weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation.

3 To that end, an operator shall provide the following information related to the period during which the vessel operated under a third-country flag required by a flag Member State:

- a a declaration of catches and fishing effort during the relevant period as required by the third-country flag state;
- b a copy of any fishing authorisations permitting fishing operations during the relevant period;
- c an official statement by the third country where the vessel was reflagged listing the sanctions the vessel or the operator had been subject to during the relevant period;
- d complete flag history during the period when the vessel had left the Union fleet register.

4 A flag Member State shall not issue a fishing authorisation to a vessel that has been reflagged in a third country:

- a listed as non-cooperating in fighting IUU fishing pursuant to Article 33 of the IUU Regulation;
- b identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of 6 weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation; or
- c identified as allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012.

5 Paragraph 4 shall not apply if the flag Member State is satisfied that, as soon as the circumstances described in points (b) to (d) of paragraph 2 or points (a) to (c) of paragraph 4 became applicable, the operator:

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- a ceased fishing operations; and
- b immediately started the relevant administrative procedures to remove the vessel from the fishing fleet register of the third country.

## *Article 7*

### **Management of fishing authorisations**

1 When applying for a fishing authorisation, an operator shall provide the flag Member State with complete and accurate data.

2 An operator shall immediately inform the flag Member State of any change to the related data.

3 A flag Member State shall on a regular basis monitor whether the conditions on the basis of which a fishing authorisation has been issued continue to be met during the period of validity of that authorisation.

4 If, as a result of the final outcome of the monitoring activities referred to in paragraph 3, there is evidence that the conditions on the basis of which a fishing authorisation has been issued are no longer met, the flag Member State shall take appropriate action, including amending or withdrawing the authorisation and, if necessary, imposing sanctions. The sanctions applied by the flag Member State in respect of infringements shall be sufficiently stringent to ensure effective compliance with the rules, to prevent infringements and to deprive offenders of the benefits derived from infringements. The flag Member State shall immediately notify the operator and the Commission thereof. Where relevant, the Commission shall notify the secretariat of the RFMO or the third country concerned accordingly.

5 Upon a reasoned request from the Commission, a flag Member State shall take appropriate action as provided for in paragraph 4, in the event of contravention of conservation and management measures of marine biological resources adopted by an RFMO to which the Union is a contracting party, or under SFPAs.

6 Where the Union is a contracting party to an RFMO and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 21 as established in the final inspection report recognised by the RFMO, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels referred to in Article 22 to the Secretariat of the RFMO to address the vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

7 Where the Union has concluded an SFPAs with a third country and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 10 as established in the final inspection report recognised by the competent authorities, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

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Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels to the third country to address the Union fishing vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

## CHAPTER II

### ***Fishing operations by Union fishing vessels in third-country waters***

#### *Section 1*

#### ***Fishing operations under sfpas***

#### *Article 8*

#### **Scope**

This Section shall apply to fishing operations carried out by Union fishing vessels in third-country waters under an SFPA.

#### *Article 9*

#### **RFMO membership**

A Union fishing vessel may only carry out fishing operations in waters of a third country on stocks managed by an RFMO if that third country is a contracting party to that RFMO.

#### *Article 10*

#### **Conditions for fishing authorisations by the flag Member State**

A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters under an SFPA if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the conditions set out in the relevant SFPA are complied with;
- (c) the operator has paid all fees due under the relevant agreements, and where applicable, related financial sanctions established by a judicial or administrative decision having final and binding effect; and
- (d) the fishing vessel has a valid fishing authorisation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place.

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## Article 11

### **Procedure for obtaining fishing authorisations of the third country**

1 For the purpose of point (d) of Article 10, a flag Member State that has verified that the conditions set out in points (a) to (c) of Article 10 are complied with shall send to the Commission the corresponding application for the authorisation of the third country.

2 The application referred to in paragraph 1 shall contain the information required under the SFPAs.

3 The flag Member State shall send the application to the Commission at least 10 calendar days before the deadline for the transmission of applications laid down in the SFPAs. The Commission may send a duly justified request to the flag Member State for any additional information necessary for verifying the conditions.

4 Upon receipt of the application or any additional information requested pursuant to paragraph 3 of this Article, the Commission shall conduct a preliminary examination to determine whether the conditions set out in points (a) to (c) of Article 10 are met. The Commission shall then:

- a send the application to the third country without delay and, in any event, before the expiry of the deadline for the transmission of applications laid down in the SFPAs, provided that the deadline set out in paragraph 3 of this Article has been met; or
- b notify the Member State that the application is refused.

5 If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a fishing authorisation for a Union fishing vessel under the agreement, the Commission shall immediately inform the flag Member State accordingly, if possible by electronic means.

## Article 12

### **Temporary reallocation of unused fishing opportunities in the framework of SFPAs**

1 During a specific year or any other relevant period of the implementation of a protocol to an SFPAs taking into account validity periods of the fishing authorisations and fishing seasons, the Commission may identify unused fishing opportunities and inform Member States benefiting from the corresponding shares of the allocation accordingly.

2 Within 10 calendar days of receipt of this information from the Commission, the Member States referred to in paragraph 1 may:

- a inform the Commission that they will use their fishing opportunities later in the relevant period of implementation by providing a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing; or
- b notify the Commission of the use of their fishing opportunities through exchanges of fishing opportunities, pursuant to Article 16(8) of the Basic Regulation.

3 If certain Member States have not informed the Commission of one of the actions referred to in paragraph 2, or have informed it of a partial use of their fishing opportunities only, and, if as a result, fishing opportunities remain unused, the Commission may launch a call for interest for the available unused fishing opportunities among the other Member States

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benefiting from a share of the allocation. The Commission shall at the same time inform all Member States of the launch of the call for interest.

4 Within 10 calendar days of receipt of the call for interest referred to in paragraph 3, Member States benefiting from a share of the allocation may communicate their interest in the available unused fishing opportunities to the Commission. In support for their request, they shall provide a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing.

5 If deemed necessary for the assessment of the request, the Commission may ask the Member States concerned for additional information.

6 In the absence of interest in the total amount of the available unused fishing opportunities by the Member States benefiting from a share of the allocation at the end of the 10-day period referred to in paragraph 4, the Commission may extend the call for interest to all Member States. A Member State may communicate its interest in the unused fishing opportunities under the conditions referred to in that paragraph.

7 On the basis of the information provided by Member States in accordance with paragraph 4 or 6 of this Article, the unused fishing opportunities shall be reallocated by the Council in accordance with Article 43(3) TFEU, solely on a temporary basis for the relevant period of time referred to in paragraph 1 of this Article.

The Commission shall inform the Member States of the Member States to which the reallocation has been made and the quantities reallocated.

8 The temporary reallocation of fishing opportunities shall be based on transparent and objective criteria including, where applicable, those of an environmental, social and economic nature. Those criteria may include:

- a the fishing opportunities available for reallocation;
- b the number of requesting Member States;
- c the share assigned to each requesting Member State in the initial allocation of fishing opportunities;
- d the historic catch and effort levels of each requesting Member State, where applicable;
- e the viability of the fishing plans provided by the requesting Member States, in light of the number, type and characteristics of vessels and gear used.

### *Article 13*

#### **Sub-allocation of a yearly quota broken down into several successive catch limits**

1 Where a protocol to an SFPA sets monthly or quarterly catch limits or other subdivisions of the fishing opportunities available for the relevant year, and where the fishing opportunities allocated are not all used during the same monthly, quarterly or otherwise applicable period of time, the corresponding available fishing opportunities shall be sub-allocated by the Council in accordance with Article 43(3) TFEU among the Member States concerned for the relevant periods of time.

2 The sub-allocation of the available fishing opportunities shall be carried out using transparent and objective criteria. It shall be consistent with the annual fishing opportunities allocated to Member States under the relevant Council Regulation.

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## Section 2

### ***Fishing operations under agreements on exchange or joint management***

#### Article 14

##### **Applicable provisions**

1 Articles 8 to 11 shall apply *mutatis mutandis* to Union fishing vessels fishing in third-country waters under an agreement on exchange of fishing opportunities or joint management of fish stocks of common interest.

2 By way of derogation from Article 11, a flag Member State may provide the Commission with the details of Union fishing vessels that are eligible for carrying out fishing operations in third-country waters under the relevant agreement. When it is established that the conditions set out in points (a) to (c) of Article 10 are met, the Commission shall forward the details of the relevant Union fishing vessels to the third country without delay. As soon as the third country informs the Commission that the details of those Union fishing vessels have been approved, the Commission shall inform the flag Member State accordingly. The Union fishing vessels for which the required details have been provided shall be considered to have a valid fishing authorisation for the purpose of point (d) of Article 10. The Commission shall also inform the flag Member State without delay by electronic means of any notification by the third country that a Union fishing vessel is not eligible for carrying out fishing operations in its waters.

#### Article 15

##### **Consultations with third countries in respect of Union fishing vessels**

The Commission is empowered to adopt delegated acts, in accordance with Article 44, in order to supplement Article 10 by implementing in Union law the outcome of the consultations between the Union and third countries with which the Union has concluded an agreement, or of arrangements with coastal states with which fish stocks are shared, as regards the conditions for fishing authorisations.

## Section 3

### ***Fishing operations under direct authorisations***

#### Article 16

##### **Scope**

This Section shall apply to fishing operations carried out by Union fishing vessels in waters of a third country outside the framework of an agreement referred to in Section 1 or 2.

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## Article 17

### Conditions for fishing authorisations by the flag Member States

1 A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters outside the framework of an agreement referred to in Section 1 or 2 if:

- a the eligibility criteria set out in Article 5 are fulfilled;
- b no SFPA or agreement on exchange of fishing opportunities or joint management with the third country concerned is in force or provisionally applied;
- c the operator has provided each of the following:
  - a copy of or an exact reference to the applicable fisheries legislation as provided to the operator by the third country with sovereignty or jurisdiction over the waters where the activities take place,
  - a scientific evaluation demonstrating the sustainability of the planned fishing operations, including consistency with the provisions of Article 62 of UNCLOS, as applicable,
  - a designated official, public bank account number for the payment of all the fees;
- d in the event that the fishing operations are to be carried out on species managed by an RFMO, the third country is a contracting party to that organisation; and
- e the operator has provided either:
  - a valid fishing authorisation for the fishing vessel concerned, issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place; or
  - a written confirmation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place, following the discussions between the operator and that third country, of the terms of the intended direct authorisation to give the operator access to its fishing resources, including the duration, conditions, and fishing opportunities expressed as effort or catch limits.

2 In any event, fishing operations shall not commence until the third country has issued the valid fishing authorisation referred to in point (e) of paragraph 1. The flag Member State shall suspend its authorisation if the third-country authorisation has not been issued by the beginning of the planned fishing operations.

3 The scientific evaluation referred to in the second indent of point (c) of paragraph 1 shall be provided by an RFMO or by a regional fisheries body with scientific competence or shall be provided by, or in cooperation with, the third country. The scientific evaluation emanating from the third country shall be reviewed by a scientific institute or body of a Member State or of the Union.

## Article 18

### Procedure for obtaining fishing authorisations of the third country

1 A flag Member State that has verified that the conditions set out in points (a) to (e) of Article 17(1) are complied with shall send the Commission the relevant information listed



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in the Annex, and information related to the fulfilment of the conditions set out in point (c) of Article 17(1).

2 If the Commission considers that the information referred to in paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 17, it shall request further information or justification within 10 working days of the receipt of that information.

3 If, following the request for further information or justification referred to in paragraph 2 of this Article and after discussions with the Member State concerned, the Commission finds that the conditions set out in Article 17 are not met, it may object to the granting of the fishing authorisation within 30 calendar days of receipt of all the required information or justification. If the Commission finds that those conditions are met, it shall inform the Member State concerned without delay of its intention not to object.

4 The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or prior to that deadline, provided that the Commission has informed the Member State of its intention not to raise objections.

5 By way of derogation from paragraphs 1 to 4, in the event of renewal of a fishing authorisation with the same terms and conditions and within 2 years from the granting of the initial fishing authorisation, the flag Member State may issue the fishing authorisation upon verification of the information received in relation to the conditions set out in points (a), (b), (d) and (e) of Article 17(1) and shall inform the Commission thereof without delay.

6 If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the Commission shall immediately inform the flag Member State accordingly.

7 If a third country informs the flag Member State that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the flag Member State shall immediately inform the Commission accordingly.

8 An operator shall provide the flag Member State with a copy of the agreed final conditions between him and the third country, including a copy of the direct authorisation.

### CHAPTER III

#### *Fishing operations by Union fishing vessels under the auspices of RFMOs*

##### Article 19

##### Scope

This Chapter shall apply to fishing operations carried out by Union fishing vessels fishing for stocks under the auspices of an RFMO, in or outside Union waters, insofar as their operations are subject to an authorisation regime put in place by the RFMO.

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## Article 20

### Fishing authorisations

1 A Union fishing vessel the fishing operations of which are subject to an authorisation regime adopted by the RFMO shall not carry out fishing operations under the auspices of the RFMO unless:

- a the Union is a contracting party to the RFMO;
- b it has been issued with a fishing authorisation by its flag Member State;
- c it has been included in the relevant register or list of authorised vessels of the RFMO; and
- d where the fishing operations are carried out in third-country waters, it has been issued with a fishing authorisation by the relevant third country in accordance with Chapter II.

2 Point (a) of paragraph 1 of this Article shall not apply in respect of Union fishing vessels fishing exclusively in Union waters that have already been issued with a fishing authorisation in accordance with Article 7 of the Control Regulation.

## Article 21

### Conditions for fishing authorisations by the flag Member States

A flag Member State may issue a fishing authorisation only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the rules laid down by the RFMO or the transposing Union law are complied with; and
- (c) where the fishing operations are carried out in third-country waters, the criteria set out in Article 10 or 17 are complied with.

## Article 22

### Registration by RFMOs

1 A flag Member State shall send the Commission details of vessels it has authorised for fishing operations in accordance with Article 20 of this Regulation or, in the case of Article 20(2) of this Regulation, in accordance with Article 7 of the Control Regulation.

2 The details referred to in paragraph 1 shall be drawn up in accordance with conditions laid down by the RFMO and accompanied by the information required by that organisation.

3 The Commission may request any additional information that it deems necessary from the flag Member State within a period of 10 days after receiving the details referred to in paragraph 1. It shall provide a justification for any such request.

4 When it is satisfied that the conditions set out in Article 21 are met, and within a period of 15 days after receiving the details referred to in paragraph 1 of this Article, the Commission shall send the details of authorised vessels to the RFMO.

5 If the RFMO register or list is not public, the Commission shall circulate the details of authorised vessels to the Member States involved in the relevant fishery.

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## CHAPTER IV

### **Fishing operations by Union fishing vessels on the high seas**

#### Article 23

##### **Scope**

This Chapter shall apply to fishing operations carried out on the high seas falling outside the scope of Chapter III by Union fishing vessels exceeding 24 metres in overall length.

#### Article 24

##### **Conditions for fishing authorisations by the flag Member States**

A flag Member State may issue a fishing authorisation for fishing operations on the high seas only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the planned fishing operations are:
  - in accordance with a scientific evaluation, demonstrating the sustainability of the planned fishing operations, provided or validated by a scientific institute in the flag Member State, or
  - part of a research programme, including a scheme for data collection, organised by a scientific body. The scientific protocol of the research, which will be required in any event, shall be validated by a scientific institute in the flag Member State.

#### Article 25

##### **Procedure for obtaining fishing authorisations**

1 A flag Member State that has verified that the conditions set out in Article 24 are complied with, shall send to the Commission the information listed in the Annex, and information related to the fulfilment of the conditions set out in Article 5.

2 If the Commission considers that the information provided in accordance with paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 24, it shall request further information or justification within 10 calendar days of receipt of that information.

3 If, after receiving the requested additional information or justification referred to in paragraph 2 of this Article, the Commission finds that the conditions set out in Article 24 are not met, it may object to the granting of the fishing authorisation within five calendar days of receipt of the additional information or justification. If the Commission finds that the conditions are met, it shall inform the Member State concerned without delay of its intention not to object.

4 The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or

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prior to that deadline, provided that the Commission informed the Member State of its intention not to raise objections.

## CHAPTER V

### **Chartering of Union fishing vessels**

#### *Article 26*

#### **Principles**

- 1 A Union fishing vessel shall not carry out fishing operations under chartering arrangements in waters in which an SFPA is in force or is provisionally applied.
- 2 A Union fishing vessel shall not carry out fishing operations under more than one chartering arrangement at the same time or engage in sub-chartering.
- 3 Union fishing vessels shall operate under chartering agreements in waters under the auspices of an RFMO only if the State to which the vessel is chartered is a contracting party to that organisation.
- 4 A chartered Union fishing vessel shall not use the fishing opportunities of its flag Member State during the period of application of the charter. The catches of a chartered Union fishing vessel shall be counted against the fishing opportunities of the chartering State.
- 5 Nothing in this Regulation shall diminish the responsibilities of the flag Member State with respect to its obligations under international law, the Control Regulation, the IUU Regulation or other provisions of the CFP, including reporting requirements.
- 6 The holder of the fishing licence of a Union fishing vessel that is to be chartered shall inform the flag Member State of the chartering arrangement before its start. That Member State shall inform the Commission thereof without delay.

#### *Article 27*

#### **Management of fishing authorisations under a chartering arrangement**

When issuing a fishing authorisation to a vessel in accordance with Article 17, 21 or 24, and when the relevant fishing operations are carried out under a chartering arrangement, the flag Member State shall verify that:

- (a) the chartering State's competent authority has officially confirmed that the arrangement is in line with its national law; and
- (b) the details of the chartering arrangement are specified in the fishing authorisation including time period, fishing opportunities and fishing area.

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## CHAPTER VI

### **Transhipment operations**

#### *Article 28*

### **Transhipment operations**

1 Any transhipment operation conducted by a Union fishing vessel on the high seas or under direct authorisations shall be conducted in accordance with Articles 21 and 22 of the Control Regulation. The flag Member State shall provide the Commission by the end of March each year, for transhipments which took place the previous year, with the information given in the transhipment declaration, the date of transhipment, the geographical position and area where the transhipment took place.

2 Masters of Union fishing vessels fishing under direct authorisations or on the high seas shall notify the competent authorities of their flag Member State, prior to the transhipment, of the following information:

- a the name and external identification number of the receiving vessel;
- b the time and geographical position of the planned transhipment operation; and
- c the estimated quantities of species to be transhipped.

3 This Article shall not apply to transhipments carried out in ports by Union fishing vessels.

## CHAPTER VII

### **Observation and reporting obligations**

#### *Article 29*

### **Observer programme data**

If data are collected on board a Union fishing vessel under an observer programme, related reports shall be sent, in accordance with the transmission rules specified in the observer programme, without delay to the competent authority of the flag Member State.

#### *Article 30*

### **Information to third countries**

1 When carrying out fishing operations under this Title the master of a Union fishing vessel or that master's representative shall make the relevant catch declarations and landing declarations available to the third country, and in addition send its flag Member State an electronic copy of those data.

2 A flag Member State shall assess, through cross-checking in accordance with Article 109 of the Control Regulation, the consistency of the data referred to in paragraph 1 of this Article, with the data it has received in accordance with that Regulation and, where applicable, in accordance with relevant provisions of the SFPA.

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3 The non-transmission of catch declarations or landing declarations to the third country referred to in paragraph 1 of this Article shall also be considered serious infringements for the purposes of Article 90 of the Control Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the flag Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition.

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- (1) Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing (OJ L 316, 14.11.2012, p. 34).

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