



COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0114 (CNS)

Proposal for a

**COUNCIL REGULATION**

**concerning authorisations for fishing activities of Community fishing vessels outside  
Community waters and the access of third country vessels to Community waters**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The proposal follows the proposal laid down in 2006-08 Action plan for simplifying and improving the Common Fisheries Policy<sup>1</sup>. With regard to the changed circumstances for fisheries outside Community waters since the adoption of Council Regulation (EC) No 3317/94 of 22 December 1994 laying down general provisions concerning the authorization of fishing in the waters of a third country under a fisheries agreement<sup>2</sup> and in order to comply with international obligations, it is necessary to introduce a general Community system for authorisation of all fishing activities of Community vessels outside Community waters.

The rules for access of vessels flying the flag of a third country to Community waters, as currently laid down in several different legal texts, should also be redefined and, as far as appropriate, aligned with the rules applicable to Community fishing vessels.

Introducing electronic exchange of data in the administrative process, where possible, will allow the speed up of the procedures, ensure higher quality output of the process, allow to inform all concerned administrations to get feed-back on-line or via e-mail and increase the overall efficiency of the administrative process.

- **General context**

The Common Fisheries Policy (CFP) covers not only the fishing activities in Community waters, but also fishing activities of Community fishing vessels outside those waters. Fishing activities in international waters and in the waters of third countries are to a large extent covered by bilateral or multilateral agreements to which the Community is party. In order to comply with the obligations deriving from those agreements as well as to serve the objectives of the CFP it is important that there is a clear set of rules concerning the authorisation of fishing activities and the control on those activities by the Member States and the Commission.

The Community fishing fleet is active in the territorial waters of around 20 third countries, under the scope of bilateral agreements between those countries and the Community. Most of these agreements are agreements with a financial contribution for the Community, in particular this is the case for the agreements with African and South American states, like for example Gabon, Cap Verde, Senegal, Mauritania, Madagascar, Mozambique, Mauritius, São Tomé et Príncipe, Seychelles, Kiribati, Micronesia and Salomon Islands but also for example for the agreement with Greenland. The other 'Northern agreements' however, concluded with Norway, Iceland and the Faroe Islands, as well as with French Guyana, do not entail a financial contribution for the Community and are mainly based on the trading of fishing rights.

In the international waters the Community fleet engages in fishing activities under the scope of the various Regional Fisheries Management Organisation (RFMO) agreements: Northwest

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<sup>1</sup> Communication from the Commission to the Council and Parliament of 8.12.2005, COM (2005) 647final.

<sup>2</sup> OJ L 350, 31.12.1994, p. 13.

Atlantic Fisheries Organisation (NAFO), International Convention for the conservation of Atlantic Tunas (ICCAT), Indian Ocean tuna Commission (IOTC), Northeast Atlantic Fisheries Commission (NEAFC), Western and Central Pacific Fisheries Commission (WCPFC), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), General Fisheries Commission for the Mediterranean (GFCM), the Inter-American Tropical Tuna Commission (IATTC) and the Southeast Atlantic Fisheries Organisation (SEAFO).

Apart from the activities regulated under those agreements, Community fishing vessels engage in fishing activities on high seas, not covered by any specific agreement.

The management of the fishing activities takes place through the granting of authorisations to the vessels concerned. The types of authorisations to be issued as well as the procedures differ between the various agreements.

For bilateral agreements, the third country is responsible for issuing authorisations. After concluding the agreement and the repartition of rights between the Member States by the Council, the Commission will transmit requests to the third country and will consequently inform the Member States of the authorisation that have been issued. The administrative procedures relating to those types of agreements both within the Member States as well as the Commission are often heavy and require the compositions of detailed files for each vessel concerned. Where the agreement involves a financial contribution from the Community, further administrative work is necessary for calculation of fees, inventories of errors etc. Approximately 400 Community fishing vessels share 1,600 authorisations yearly to fish under such agreements. As regards the agreements without financial contribution, quota transfers are usual to occur and require that new authorisations are requested. Around 850 Community Fishing vessels share 1600 authorisations under such type of agreements.

Authorisation of fishing activities under the RFMO agreements is usually being coordinated by the secretariat of the RFMO. The procedures are generally simpler. For most cases authorisation takes place by establishing lists of authorised vessels, which are sent to the RFMO secretariat. There is however no harmonisation of the procedures applicable under the various RFMOs. Currently, around 8,000 Community fishing vessels have been authorised (13,000 authorisations) to fish under the scope of the RFMO agreements.

Vessels flying the flag of a third country can be granted access to Community waters. Currently authorisations are granted for 250 vessels, the majority being Norwegian vessels authorised to fish in Community waters under the scope of the yearly agreement between Norway and the Community. The procedure for authorising third country vessels to fish in Community waters is of a different character than the activities mentioned above. For these types of authorisations, the Commission is the authority authorised to issue the authorisation and the rules and procedures are established in Community legislation rather than based on provisions following from the agreements in question.

- **Existing provisions in the area of the proposal**

The existing provisions relating to the authorisation of fishing activities of Community fishing vessels outside Community waters are currently laid down in several different legal texts. Regulation (EC) No 3317/94 contains the general rules concerning the procedure for transmitting applications to third countries.

Apart from these procedural provisions, there exist various specific rules with regard to the authorisation of fishing activities under certain bilateral fisheries agreements and under Regional Fisheries Management Organisations, such as for example in Council Regulations (EC) No 2847/1993 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>3</sup> (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required<sup>4</sup> and several Council Regulations adopting provisions regarding bilateral fisheries agreements and RFMO agreements.

Moreover, as regards the fishing activities of third country fishing vessels in Community waters is regulated in Title VI of Regulation (EC) No 2847/93 as well as in the yearly TAC and Quota Regulation.

The proposal is intended to align these existing provisions and to repeal Regulation (EC) No 3317/94 and some of provisions of the Regulations mentioned above. Specific conditions, applicable under the various agreements, not directly linked to the procedure and conditions for the authorisation of fishing will remain to be in force.

- **Consistency with other policies and objectives of the Union**

The proposal will serve the objectives of the CFP as well as allow the Community to better ensure compliance with its international obligations.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

### Consultation methods, main sectors targeted and general profile of respondents

The Commission has held several meetings with National Administrations. The Advisory Committee on Fisheries and Aquaculture (ACFA) has also been consulted.

### Summary of responses and how they have been taken into account

The parties consulted have supported the proposals from the Commission to clarify, simplify and improve the procedures for the management of fishing authorisations.

Broad support was received on the proposal to ensure better compliance with international obligations. Some ACFA members expressed concerns on the application of sanctions with regard to less serious infringements as well as on the powers granted to the Commission for refusing transmission of requests.

- **Collection and use of expertise**

### Scientific/expertise domains concerned

Managers of fishing authorisations in National Administrations and the Commission.

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<sup>3</sup> OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

<sup>4</sup> OJ L 18, 25.1.2007, p. 11.

### Methodology used

Several meetings with the experts concerned have been held.

### Main organisations/experts consulted

Managers of fishing authorisations: Member States and Commission Administrators.

### Summary of advice received and used

All available expertise has been taken into account to determine the content of the proposed Regulation.

### Methods used to make the results of these expert opinions available to the public

The experts' opinion and advice concerned administrative tasks. They have not been made available to the public.

#### • **Impact assessment**

The aim of this Regulation is to simplify and improve the procedures related to the management of fishing authorisations.

Its application will have a great impact in the simplification of the daily work of National Administrations and of the Commission. The Regulation introduces clear rules and a single procedure to be applied for the management of all fishing authorisations and fixes the general division of responsibilities between the Commission and the Member States.

It will reduce the workload not only on administrators but on fishermen also, in particular through increased use of computerisation and automation of certain procedures. Given the vast amount of authorisations for Community fishing vessels yearly dealt with by the national administration and Commission, this will allow for better coordination of the work and significantly simplify the daily tasks of those administrations.

The application of the Regulation will facilitate a better compliance of rules by fishermen and a better enforcement of the CFP rules by the introduction of eligibility criteria, sanctions and the reinforcement of reporting of catches and fishing effort.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### • **Summary of the proposed action**

The proposed Regulation sets up general rules and conditions to be applied for all transmissions of the requests for authorisations. This will not only create clarity for the Member States and fishermen on what conditions need to be fulfilled, but will also help the Commission to manage the transmissions in a more effective and efficient way. Its application will simplify the daily work of National Administrations and of the Commission. The Regulation introduces clear rules and a single procedure to be applied for the management of all fishing authorisations and fixes the general division of responsibilities between the Commission and the Member States.

The proposal will also provide the necessary legal framework for the application of simplified and uniform electronic transmission of data and to enhance reporting. Such an exchange is not

only necessary in order to keep up with the technical evolution, but needed to facilitate a speeding up of procedures, whilst decreasing the risks of mistakes being made throughout the process. Such a system will allow Commission and Member States and, where appropriate, fishermen to get feed-back on-line or via e-mail at every stage of the process and increases the overall efficiency of the administrative process.

Apart from the changes with regard to the administrative process, the proposal will better ensure compliance of rules by fishermen and a better enforcement of the CFP rules by the introduction of eligibility criteria, sanctions and the reinforcement of reporting of catches and fishing effort. The regulation excludes for authorisations, all vessels that have not complied with their obligations during the preceding year, or that have been listed by a RFMO as "IUU vessel", being a vessel involved in illegal, unreported and unregulated (IUU) fishing.

Moreover, compliance with international obligations under the various agreements is strengthened by introducing measures obliging Member States to prohibit fishing for a vessel which has been involved in a serious infringement or has been placed on an IUU list.

In order to ensure compliance of the Member States with their reporting obligations regarding fishing activities falling under the scope of agreements, enforcement of those rules by the Commission is enhanced, by allowing the Commission to refuse transmission of requests for a Member State as long as it has not fully complied with those reporting obligations.

Moreover, in order to avoid over utilisation of fishing rights, the Commission needs to be enabled to refuse the transmission of request for fishing authorisations in case the fishing possibilities available to a Member State concerned are clearly not sufficient for the number of authorisations requested.

Finally, in order to ensure that fishing opportunities available to the Community will be made use of in the fullest extent possible, it would be necessary to introduce some sort of measures allowing for temporary reallocation of fishing authorisations in the case of underutilisation of fishing opportunities.

- **Legal basis**

Article 37 of the Treaty is taken as the legal basis, with regard to the broad scope of the Regulation and given the importance of this text for the functioning of the CFP in the international context.

- **Subsidiarity principle**

This proposal falls within the ambit of the CFP, which is the exclusive competence of the Community. Therefore, the subsidiarity principle does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

- The proposal allows the Community to comply with its international obligations;
- The proposal reflects a fair distribution of the financial and administrative burden between all actors.

- **Choice of instruments**

As it concerns a field of exclusive competence for the Community and seen the need for rules to be applied directly and similarly by all actors concerned, the legislation is proposed in the form of a Regulation.

#### **4. BUDGETARY IMPACT**

There is not impact for the Community budget.

Proposal for a

## **COUNCIL REGULATION**

**concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission<sup>5</sup>,

Having regard to the opinion of the European Parliament<sup>6</sup>,

Whereas:

- (1) Council Regulation (EC) No 3317/94 of 22 December 1994 laying down general provisions concerning the authorization of fishing in the waters of a third country under a fisheries agreement<sup>7</sup> establishes the procedure for authorisation of fishing activities of Community fishing vessels in the waters under jurisdiction of third countries under the scope of fisheries agreements concluded between the Community and third countries. The procedure established in that Regulation is no longer considered to serve the needs with regard to international obligations deriving from bilateral fisheries agreements and multilateral agreements and conventions adopted in the framework of Regional Fisheries Management Organisations (RFMO). Moreover that Regulation no longer suffices to serve the objectives of the Common Fisheries Policy (CFP), in particular as regards sustainable fisheries and control.
- (2) Following the 2006-08 Action plan for simplifying and improving the Common Fisheries Policy<sup>8</sup> and the changed circumstances for fisheries outside Community waters since the adoption of Regulation (EC) No 3317/94, and in order to comply with international obligations, it is necessary to introduce a general Community system for authorisation of all fishing activities of Community vessels outside Community waters. Moreover, the rules for access of vessels flying the flag of a third country to Community waters, as currently laid down in several different legal texts, should be redefined and, as far as appropriate, aligned with the rules applicable to Community fishing vessels.

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<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ C [...], [...], p. [...].

<sup>7</sup> OJ L 350, 31.12.1994, p. 13.

<sup>8</sup> Communication from the Commission to the Council and Parliament of 8.12.2005, COM (2005) 647final.



- (3) Community vessels should only be allowed to engage in fishing activities outside Community waters after having been authorised by the competent authority responsible for the authorisation of the fishing activities concerned, such as the competent authority of the third country in whose waters the activities take place, the authority competent for authorising fishing activities in international waters covered by provisions adopted by an RFMO, or, where it concerns fishing activities not regulated by any agreement, the competent authorities of the Member States.
- (4) It is important to clearly spell out the responsibilities of the Commission and Member States as regards the procedure for the authorisation of fishing activities of Community vessels outside Community waters; in this respect the Commission should be in a position to ensure that international obligations and CFP provisions are complied with, that the requests for transmission of applications are complete and that they are transmitted in accordance with the deadlines established under the agreements concerned.
- (5) With regard to the international obligations, as well as the objectives of the CFP, vessels that during the previous 12 months have been involved in serious infringements or that are placed on an internationally established list of vessels involved in illegal, unreported and unregulated fishing (IUU list), should not be considered eligible for authorisation of any fishing activities outside Community waters. In addition, Member States should be obliged to take immediate measures to prevent the continuation of fishing activities of their vessels that have been involved in such activities.
- (6) Moreover, where a Member State fails to fulfil its obligations under the CFP in relation to fishing activities of its vessels outside Community waters, the Commission, after having given the Member State the opportunity to be heard, should in certain occasions be enabled to refuse transmission of applications for fishing authorisation of that Member State until it has fulfilled the obligations concerned.
- (7) Recital on provisional allocation: [in accordance with doc COM (2005) 238 final, shall be inserted after adoption of that Regulation].
- (8) In order to ensure that the fishing opportunities available to the Community under the fisheries agreements are used in full, it is necessary that the Commission be empowered to temporarily reallocate fishing opportunities not used by a certain Member State, without prejudice to the relative stability for allocation of fishing opportunities between the Member States.
- (9) Provisions on control of utilisation of fishing opportunities outside Community waters and of fishing opportunities within Community waters allocated to third countries should be aligned and should allow for timely action to prevent Member States and third countries for exceeding those opportunities.
- (10) For the consistent and effective prosecution of infringements, the possibility must be provided to make full use of inspection and surveillance reports drawn up by Commission inspectors, Community inspectors, inspectors of the Member States and inspectors of third countries.
- (11) All data related to the agreements and the activities of Community vessels fishing outside Community waters should be up to date and, as far as appropriate, accessible

to the Member States and third countries concerned. For this purpose it is necessary to establish a specific information system.

- (12) Flexibility should be introduced to allow for exemptions to this Regulation where required to comply with international obligations; measures for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>9</sup>.
- (13) Regulation (EC) No 3317/94 as well as the provisions relating to access of third country fishing vessels to Community waters laid down in Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits<sup>10</sup> and Regulation (EC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>11</sup>, need to be repealed,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Scope and objectives**

This Regulation establishes provisions concerning:

- (a) the authorisation for Community fishing vessels
- (i) to engage in fishing activities in the waters under the sovereignty or jurisdiction of a third country in the framework of an agreement concluded between the Community and that country or
  - (ii) to engage in fishing activities falling under the scope of a fisheries agreement adopted in the framework of a Regional Fisheries Management Organisation (hereinafter to be referred to as "RFMO") or
  - (iii) to engage in fishing activities outside Community waters not falling under the scope of a fisheries agreement;
- (b) the authorisation for vessels flying the flag of a Member State other than Community fishing vessels to engage in activities outside Community waters in the framework of an agreement;

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<sup>9</sup> OJ L 184, 17.7.1999, p. 23.

<sup>10</sup> OJ L 171, 06.07.1994, p. 7.

<sup>11</sup> OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

- (c) the authorisation for Community installations, vessels or facilities to engage in fish farming outside Community waters in the framework of an agreement;
- (d) the authorisation for third country vessels to engage in fishing activities in Community waters;

and the reporting obligations relating to the activities authorised.

## *Article 2*

### **Definitions**

For the purpose of this Regulation the following definitions shall apply:

- (a) Agreement: fisheries agreement concluded or signed in accordance with Article 300 of the Treaty;
- (b) Fishing activities: catching, retaining on board, processing, transferring or transporting of fish;
- (c) Fish farming: caging or transferring to cages of fish for fattening or farming purposes and related rearing, harvesting or catching activities;
- (d) Community fishing vessel: Community fishing vessel as referred to in Article 3(d) of Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>12</sup>;
- (e) Community fleet register: Community fishing fleet register as referred to in Article 15 (3) of Regulation (EC) No 2371/2002;
- (f) Fishing opportunity: Fishing opportunity as defined in Article 3(q) of Regulation (EC) No 2371/2002;
- (g) Authorising authority: authority responsible for the authorisation of fishing activities of Community fishing vessels under the agreement;
- (h) Fishing authorisation: entitlement to engage in fishing activities during a specified period, in a given area or for a given fishery;
- (i) Fishing effort: fishing effort as defined in Article 3(h) of Regulation (EC) No 2371/2002;
- (j) Electronic transmission: transfer of data in electronic format, with the contents, format and protocol established by the Commission or agreed upon by the parties of an agreement;
- (k) Mixed fisheries: fishing activities targeting more than one species and resulting in catches consisting of at least two different species, each of which amounting to at least 4% of the total catch either in value or in biomass;

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<sup>12</sup> OJ L 358, 31.12.2002, p. 59.

- (l) Fishing category: a subdivision of the fleet based on criteria such as in particular type of vessels, type of fishing activities and fishing gear deployed;
- (m) Serious infringement: a serious infringement as defined in Regulation (EC) No 1447/99 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy<sup>13</sup>, or a serious infringement or a serious violation under the agreement concerned;
- (n) IUU list: list of fishing vessels identified in the framework of a RFMO as having been involved in illegal unreported and unregulated fishing;
- (o) Community fishing authorisation information system: information system established by the Commission in accordance with Article 16;
- (p) Third country vessel: a vessel, flying the flag and/or registered in a third country.

## **CHAPTER II**

### **FISHING ACTIVITIES BY COMMUNITY FISHING VESSELS OUTSIDE COMMUNITY WATERS**

#### **SECTION I**

##### **GENERAL PROVISIONS**

###### *Article 3*

###### **General provision**

Only Community fishing vessels for which a fishing authorisation has been issued in accordance with this Regulation shall be entitled to engage in fishing activities in the waters subject to an agreement.

#### **SECTION II**

##### **AUTHORISATIONS FOR FISHING ACTIVITIES WITHIN THE FRAMEWORK OF AGREEMENTS**

###### *Article 4*

###### **Statement of interest**

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<sup>13</sup> OJ L 167, 02.07.1999, p. 5.

1. When an agreement has been concluded, the Commission shall inform the Member States thereof.
2. At the latest 15 days after the information from the Commission referred to in paragraph 1, the Member States shall notify through electronic transmission to the Commission a list of vessels interested in making use of the fishing opportunities allocated to the Community by that agreement, containing the Community fleet register identification number and international radio call sign of the vessel and any other data required under the agreement or prescribed in accordance with the procedure referred to in Article 33(2).

#### *Article 5*

### **Communication of the fishing plan**

At least one month before the deadline for transmission of applications laid down in the agreement, Member States shall submit through electronic transmission to the Commission a fishing plan, containing the number of vessels for which they intend to apply for fishing authorisations, accompanied by planned fishing effort information.

#### *Article 6*

### **Submission of requests for transmission of applications**

1. At the latest 10 working days before the deadline for transmission of applications laid down in the agreement, or in the absence of a deadline in the agreement, at the latest 10 working days before the deadline established by the Commission, Member States shall submit to the Commission through electronic transmission, the request for fishing authorisations for the fishing vessels concerned in accordance with the fishing plan referred to in Article 5.
2. The requests referred to in paragraph 1 shall contain at least the Community fleet register identification number and international radio call sign of the vessel and any other data required under the agreement or prescribed in accordance with the procedure referred to in Article 33(2).

#### *Article 7*

### **Eligibility criteria**

1. Member States shall not submit to the Commission requests for a fishing authorisation for fishing vessels flying their flag:
  - (a) that are not eligible for a fishing authorisation under the agreement concerned or are not included in the list of vessels notified in accordance with Article 4;
  - (b) that during the previous 12 months of fishing activities under the agreement concerned or, in case of a new agreement, of fishing activities of the agreement that preceded that agreement, have committed a serious infringement, or,

where appropriate, have not yet fulfilled the conditions under that agreement for that period;

- (c) that are included in an IUU list;
  - (d) for which the data contained in the Community fleet register and the Community fishing authorisation information system within the meaning of Article 16 is incomplete or inaccurate;
  - (e) that do not have a valid fishing licence as referred to in Commission Regulation (EC) No 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein<sup>14</sup>;
  - (f) for which the data required under the agreement is not available nor accessible for the authorising authority;
  - (g) for which the requests for a fishing authorisation are not in accordance with the provisions of the agreement concerned and this Regulation.
2. Each Member State shall ensure that the number of applications for fishing authorisations for which it requests transmission is commensurate with the fishing opportunities available to that Member State under the agreement.

#### *Article 8*

##### **Transmission by the Commission**

1. The Commission shall transmit the applications to the authorising authority concerned within 10 working days after receipt of the request from the Member State and in accordance with the provisions laid down in this Article.
2. The Commission shall examine the fishing plans and requests for transmission of applications, taking into account:
  - (a) the fishing opportunities allocated to each Member State by the Council on the basis of Article 20 of Regulation (EC) No 2371/2002 or pursuant to Article 300 of the Treaty and
  - (b) the conditions laid down in the agreement.
3. The Commission shall verify:
  - (a) that the conditions laid down in Article 7 are complied with and
  - (b) that the number of applications for fishing authorisations for which transmission is requested by the Member States concerned is consistent with the fishing opportunities available under the agreement, taking into account the requests of all Member States, and where appropriate, the fishing plans.

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<sup>14</sup>

OJ L 203, 4.8.2005, p. 3.

## *Article 9*

### **Non transmission of individual applications**

1. The Commission shall not transmit to the authorising authority applications, with regard to which:
  - (a) the data provided by the Member State is incomplete;
  - (b) the fishing opportunities for the Member State concerned are insufficient with regard to the number of applications submitted by the Member State;
  - (c) the conditions laid down in the agreement and this Regulation are not complied with.
2. In case of non-transmission of one or more applications, the Commission shall without delay inform the Member State concerned, stating its reasons.

## *Article 10*

### **Non transmission of all applications submitted by a Member State**

Where the Commission has reason to believe that a Member State has not complied with the obligations referred to in Annex I with regard to a specific agreement, it shall inform the Member State thereof and give that Member State the opportunity to submit its observations. Should the Commission determine, in the light of any observations submitted by the Member State, that a breach of those obligations has occurred, then it shall decide, having due regard to the principles of legitimate expectation and proportionality, to exclude the vessels of that Member State from further participation under that agreement.

## *Article 11*

### **Information**

1. The Commission shall inform the flag Member State without delay, by electronic transmission, of the authorisation for fishing granted by the authorising authority or the decision of the authorising authority not to authorise fishing for a certain fishing vessel. Where required under or pursuant to the agreement, the accompanying and original paper documents shall be sent by paper transmission.
2. The flag Member States shall immediately inform the owners of the fishing vessels concerned of the information received in accordance with paragraph 1.
3. If an authorising authority informs the Commission that it has decided to suspend or to withdraw a fishing authorisation issued for a Community fishing vessel under an agreement, the Commission shall immediately inform by electronic transmission the flag Member State of that vessel. The flag Member State shall immediately transmit that information to the owner of that vessel.

4. The Commission shall carry checks to establish the compatibility with the agreement in consultation with the flag Member State and with the authorising authority concerned and inform them both of the outcome.

#### *Article 12*

##### **Provisional allocation**

If the Council has not yet adopted the decision on the temporary application of a new protocol to a bilateral fisheries agreement with a third country allocating fishing opportunities between the Member States, the Commission shall transmit the applications for a fishing authorisation to the third country concerned in accordance with this Regulation, without prejudice to the provisions subsequently adopted by the Council. For the purposes of this transmission, the Commission shall apply the method of allocating fishing opportunities in force in the previous protocol. **[Text in accordance with doc COM (2005) 238 final, shall be amended accordingly after adoption of that Regulation]**

#### *Article 13*

##### **Underutilisation of fishing opportunities**

1. If, on the basis of the fishing plan referred to in Article 5 or the request for transmission of applications referred to in Article 6, it appears that the number of fishing authorisations or the amount of fishing opportunities allocated to the Community under an agreement are not fully used, the Commission shall inform the Member States concerned and request them to confirm not making use of those fishing opportunities. Absence of a reply within the deadline set by the Commission shall be considered as confirmation that the vessels of the Member State concerned are not making full use of their fishing opportunities.
2. After confirmation by the Member State concerned, the Commission shall assess the total of unused fishing opportunities and shall make that assessment available to the Member States.
3. Member States wishing to make use of the unused fishing opportunities referred to in paragraph 2, shall submit to the Commission in accordance with Article 5, within the deadline set by the Commission, a list of all vessels for which they intend to request a fishing authorisation, as well as the request for transmission of applications for each of those vessels in accordance with Article 6.
4. The Commission shall decide on the reallocation in accordance with the procedure laid down in 33(2), endeavouring to find a common agreement between the Member States concerned or, in absence of such agreement, taking into account the criteria laid down in Annex II, and shall notify the Member States concerned thereof.
5. After 10 working days of the notification referred to in paragraph 4, the Commission shall transmit the applications concerned to the authorising authority in accordance with Article 8.



6. Transmission of applications in accordance with this article shall not in any way affect the future allocation of fishing opportunities amongst Member States.

### **SECTION III**

#### **FISHING ACTIVITIES NOT FALLING UNDER THE SCOPE OF AN AGREEMENT**

##### *Article 14*

##### **General provisions**

1. Member States shall obtain information on the existence of any arrangements between nationals of a Member State and a third country, allowing fishing vessels flying their flag to engage in fishing activities in waters under the jurisdiction or sovereignty of a third country and shall inform the Commission thereof by submission of a list of the vessels concerned.
2. Where the fishing activities referred to in paragraph 1 are targeting stocks that are deemed to be outside safe biological limits, as defined in Article 3(1) of Regulation (EC) No 2371/2002, the Commission may request the Member State concerned to submit an evaluation of the stocks and may, where necessary for the protection of the stocks and after having obtained the advice from the Scientific, Technical and Economic Committee for Fisheries (STECF) as referred to in Article 33 of Regulation (EC) No 2371/2002, impose restrictions on the fishing activities concerned.

##### *Article 15*

##### **Authorisation by Member States**

1. Community fishing vessels shall only be entitled to engage in fishing activities outside Community waters which are not covered by an agreement if they have been issued with an authorisation from their flag Member State in accordance with national provisions.
2. Community fishing vessels that have committed serious infringements during the 12 months preceding the date on which the authorisation is to take effect or that are included in an IUU list shall not be authorised to engage in the fishing activities referred to in paragraph 1.
3. Member States shall inform the Commission 30 days before the start of fishing activities referred to in paragraph 1 of the vessels authorised to fish in accordance with paragraph 1, specifying the period and the area for which the authorisation applies.

## SECTION IV

### REPORTING OBLIGATIONS AND CLOSURE OF FISHING ACTIVITIES

#### *Article 16*

##### **Fishing authorisation information system**

1. The Commission shall set up a Community fishing authorisation information system, containing the data relating to the authorisations issued in accordance with this Regulation. The Commission may establish a website for this purpose.
2. Member States shall ensure that the data required under an agreement with respect to fishing authorisations are contained in the Community fishing authorisation information system. They shall ensure that this data is kept up to date at all times.

#### *Article 17*

##### **Reporting of catches and fishing effort**

1. Without prejudice to the provisions laid down in Titles II and IIa of Regulation (EC) No 2847/93, Community fishing vessels for which a fishing authorisation has been issued under Section II or Section III shall transmit on a daily basis to their competent national authority the data concerning their catches and fishing effort.
2. Member States shall collect the data referred to in paragraph 1 and shall before the 15<sup>th</sup> of each calendar month transmit through electronic transmission to the Commission, or a body designated by the Commission for that purpose, for each stock, group of stocks or fishing category, the quantities caught, and where required under the agreement or any regulation implementing that agreement the effort deployed, in the previous month by vessels flying their flag in the waters falling under the scope of an agreement and during fishing activities outside Community waters not falling under the scope of an agreement.

#### *Article 18*

##### **Control of catches and fishing effort**

1. Without prejudice to the provisions laid down in Chapter V of Regulation (EC) No 2371/2002, Member States shall ensure compliance with the obligations regarding the reporting of catches and fishing effort as laid down in the agreement concerned.
2. Member States shall notify to the Commission the measures taken to prevent over-utilisation of fishing opportunities by the vessels flying their flag for which fishing authorisations have been issued in accordance with this Regulation.

## *Article 19*

### **Closing of fisheries**

1. Without prejudice to Article 26(4) of Regulation (EC) No 2371/2002 and Article 21(3) of Regulation (EC) No 2847/93, when a Member State considers that the fishing opportunities which have been allocated to it have been exhausted, it shall immediately prohibit fishing activities for the respective area, stock or group of stocks.
2. Where the fishing opportunities allocated to a Member State are expressed both in terms of catch and effort limits, the Member State shall prohibit fishing activities for the respective area, stock or group of stocks as soon as one of these opportunities is deemed to be exhausted.
3. Where fishing authorisations have been issued for mixed fisheries and one of the stocks or group of stocks concerned is deemed to be exhausted, the Member State shall prohibit all fishing activities that are part of the mixed fisheries.
4. Member States shall notify to the Commission without delay of any prohibition of fishing activities decided in accordance with this Article.
5. Where the Commission finds that fishing opportunities allocated to the Community or a Member State are deemed to be exhausted, the Commission shall inform the Member States concerned thereof and shall request them to prohibit fishing activities in accordance with the provisions laid down in paragraphs 1 to 4.

## *Article 20*

### **Suspension of fishing authorisations**

1. If a Community fishing vessel has committed a serious infringement, the Member State shall ensure that the vessels will no longer be allowed to make use of the fishing authorisation issued under the agreement concerned for the remaining duration of that authorisation and shall inform the Commission thereof without delay by electronic transmission.
2. After receipt of the data in accordance with paragraph 1, the Commission shall inform the authorising authority concerned and shall request it to withdraw the fishing authorisation.
3. Inspection and surveillance reports drawn up by Commission inspectors, Community inspectors, inspectors of the Member States or inspectors of a third country, which is party to the agreement concerned, shall constitute admissible evidence in administrative or judicial proceedings of any Member State. For establishing facts they shall be treated equally to inspection and surveillance reports of the Member State.

## SECTION V

### ACCESS TO DATA

#### *Article 21*

##### **Access to data**

1. Without prejudice to the obligations under Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC<sup>15</sup>, the data submitted to the Commission, or a body designated by the Commission, by Member States in accordance with this Chapter shall be made available:
  - (a) For all concerned users of the Member States and concerned authorising authorities on the website linked to the Community fishing authorisation information system. The data accessible to these persons shall be limited to that data they need in the framework of the fishing authorisation process.
  - (b) For all concerned users of the competent inspection authorities on the website linked to the Community fishing authorisation information system. The data accessible to these persons shall be limited to that data they need in the framework of their inspection activities.
2. The owner or agent of the vessels registered in the Community fishing authorisation information system may receive an electronic copy of the data contained in the register by transmitting an official request to the Commission via their National Administration.

## CHAPTER III

### **FISHING ACTIVITIES OUTSIDE COMMUNITY WATERS BY VESSELS FLYING THE FLAG OF A MEMBER STATE OTHER THAN COMMUNITY FISHING VESSELS**

#### *Article 22*

##### **Fishing activities in the framework of an agreement**

In so far as required by or pursuant to the agreement, Sections II and IV of Chapter II shall also apply to vessels flying the flag of a Member State other than Community fishing vessels, which engage in fishing activities outside Community waters in the framework of an agreement.

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<sup>15</sup> OJ L 41, 14.2.2003, p. 26.

## CHAPTER IV

### FISH FARMING OUTSIDE COMMUNITY WATERS

#### *Article 23*

##### **Fish farming in the framework of an agreement**

In so far as required by or pursuant to the agreement, Sections II and IV of Chapter II shall also apply to Community installations, vessels and facilities assigned to fish farming activities outside Community waters in the framework of an agreement.

## CHAPTER V

### FISHING ACTIVITIES OF THIRD COUNTRY VESSELS IN COMMUNITY WATERS

#### *Article 24*

##### **General provisions**

1. Third country vessels are entitled to:
  - (a) engage in fishing activities in Community waters provided that they have been issued with a fishing authorisation in accordance with this Chapter;
  - (b) tranship or process provided that they have been issued with a prior authorisation from the Member State in whose waters the operation will take place.
2. Third country vessels authorised to engage in fishing activities under the following agreements on 31 December of any given calendar year may continue to fish under those agreements as from 1 January of the following year until the Commission has decided on the issuing of a fishing authorisation for that vessels for the latter year in accordance with Article 26:
  - **[To include list of agreements]**
3. The Commission may amend the list of agreements laid down in paragraph 2 in accordance with the procedure referred to in Article 33(2).

#### *Article 25*

##### **Transmission of applications**

1. The third country concerned shall, at the date of entry into force of the agreement granting fishing opportunities in Community waters to that country, submit to the Commission by electronic transmission a list of vessels flying its flag and/or registered in it which intend to make use of those opportunities.
2. Within the deadline established in the agreement or by the Commission, the competent authorities of the third country shall submit to the Commission, by electronic transmission, the applications for fishing authorisations for the fishing vessels flying its flag and/or registered in it contained in that list, containing the international radio call sign of the vessel and any other data required under the agreement or decided in accordance with the procedure referred to in Article 33(2).

#### *Article 26*

#### **Issuing of fishing authorisations**

1. The Commission shall examine the applications taking into account the fishing opportunities granted to the third country and shall issue fishing authorisations in accordance with the measures adopted by the Council and the provisions contained in the agreement concerned.
2. The Commission shall inform the competent authorities of the third country and the Member States of the fishing authorisations issued.

#### *Article 27*

#### **Eligibility**

The Commission shall only issue a fishing authorisation for third country vessels:

- (a) that are eligible for a fishing authorisation under the agreement and, where appropriate, are included in the list of vessels notified to fish under that agreement;
- (b) that during the previous period of 12 months of fishing activities under the agreement concerned or, in case of a new agreement, of fishing activities of the agreement that preceded that agreement, have not committed a serious infringement;
- (c) that are not included in an IUU list;
- (d) for which the data required under the agreement is available;
- (e) for which the applications are in accordance with the provisions of the agreement concerned and the provisions of this Chapter.

#### *Article 28*

#### **General Obligations**

Third country vessels for which a fishing authorisation has been issued in accordance with this Chapter shall comply with provisions of the Common Fisheries Policy concerning the conservation and control measures and other provisions governing fishing by Community fishing vessels in the zone in which they operate, and the provisions laid down in the agreement.

#### *Article 29*

##### **Control on catches and fishing effort**

1. Third country vessels engaging in fishing activities in Community waters shall transmit on a daily basis to their national authorities and to the Commission, or a body designated by the Commission, the data
  - (a) required under the agreement,
  - (b) established by the Commission in accordance with the procedure laid down in the agreement, or
  - (c) established in accordance with the procedure referred to in Article 33(2).
2. As far as required under the agreement concerned, third countries shall collect the catch data transmitted by their vessels in accordance with paragraph 1 and shall, before the 15<sup>th</sup> of each calendar month, transmit by electronic transmission to the Commission, or a body designated by the Commission, the quantities for each stock, group of stocks or fishing category, caught in the previous month by all vessels flying its flag in the Community waters.

#### *Article 30*

##### **Closure of fisheries**

1. Where the fishing opportunities granted to the third country concerned are deemed to be exhausted, the Commission shall immediately inform the third country concerned and the competent inspection authorities of the Member States thereof.
2. From that date the fishing authorisations issued for the vessels flying the flag of that country shall be considered to be suspended for the fishing activities concerned and the vessels shall no longer be authorised to engage in the fishing activities concerned.
3. Where fishing authorisations have been issued for mixed fisheries and one of the stocks concerned is deemed to be exhausted, paragraph 2 shall apply for all fishing activities that are part of the mixed fisheries.
4. Where a suspension of fishing activities applicable in accordance with paragraph 2 or 3 concerns all the activities for which the fishing authorisations have been granted, these fishing authorisations shall be considered to be withdrawn.
5. The third country shall ensure that the fishing vessels concerned shall be informed immediately of the application of this Article and that they stop all fishing activities concerned.

*Article 31*

**Suspension and withdrawal in case of infringements**

1. The Member States shall immediately notify the Commission of any recorded infringement concerning a third country fishing vessel with regard to the fishing activities in Community waters under the agreement.
2. Following these notifications the Commission may suspend or withdraw the fishing authorisations issued in accordance with this Chapter. The Commission's decision shall be notified to the third country.
3. The third country shall ensure that the vessel concerned is informed without delay of the application of this Article and that it stops all fishing activities concerned.
4. The Commission shall notify the inspection authorities of the Member States of the measures taken pursuant to paragraph 2.

**CHAPTER VI**

**IMPLEMENTING MEASURES**

*Article 32*

**Detailed rules**

Detailed rules for the application of this Regulation may be adopted in accordance with the procedure referred to in Article 33(2). Those rules may also provide for exemptions from the obligations laid down in this Regulation, where those exemptions may be justified with regard to the obligations laid down in the agreements or where the obligations laid down in this Regulation would create a disproportionate burden compared to the economic importance of the activity.

*Article 33*

**Committee procedure**

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture referred to in Article 30 of Regulation (EC) No 2371/2002.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 20 working days.



# CHAPTER VII

## COMMON AND FINAL PROVISIONS

### *Article 34*

#### **International obligations**

This regulation is without prejudice to provisions established in the agreements concerned and Community provisions implementing those provisions.

### *Article 35*

#### **Amendments and repeal**

1. In Regulation (EC) No 1627/94, Articles 3(2), 4(2), 9, 10 are deleted.
2. In Regulation (EC) No 2847/93, Articles 18, 28b, 28c and 28d are deleted.
3. Regulation (EC) No 3317/94 is repealed.
4. References to the repealed or deleted provisions shall be construed as references to the provisions of this Regulation and shall be read in accordance with the correlation table in Annex III to this Regulation.

### *Article 36*

#### **Entry into force**

This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

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

Done at Brussels,

*For the Council*  
*The President*

## ANNEX I

### **List of obligations referred to in Article 10**

- Communication of complete catch and fishing effort data within the appropriate deadlines by the national authority of the Member State competent for reporting of such data;
- Closing of fisheries in accordance with Article 19 and proper enforcement of this closure;
- Prohibition of fishing activities in accordance with Article 20;
- Obligations regarding satellite-based Vessel Monitoring Systems as laid down in Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems<sup>16</sup> or in the agreement concerned.
- Obligations regarding electronic recording and reporting of fishing activities and remote sensing as laid down in Council Regulation (EC) No 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing<sup>17</sup> and its implementing provisions.

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<sup>16</sup> OJ L 333, 20.12.2003, p. 17.

<sup>17</sup> OJ L 409, 30.12.2006, p.1.

## **ANNEX II**

### **Criteria for reallocation referred to in Article 13**

For the reallocation of fishing possibilities the Commission shall take, in particular, into account:

- the date of each of the requests received;
- the fishing opportunities available for reallocation;
- the number of requests received;
- the number of requesting Member States;
- in case the fishing possibilities are fully or partly based on amounts of fishing effort or catches: the fishing effort expected to be deployed or catches to be made by each of the vessels concerned.

**ANNEX III**

| <b>Regulation (EC) No 1627/94</b> | <b>Corresponding provision in this Regulation</b> |
|-----------------------------------|---|
| Article 3(2)                      | Chapter V   |
| Article 4(2)                      | Chapter V   |
| Article 9                         | Articles 25 – 27                                  |
| Article 10                        | Article 31  |
| <b>Regulation (EC) No 2847/93</b> | <b>Corresponding provision in this Regulation</b> |
| Article 18                        | Article 17  |
| Article 28b                       | Article 24  |
| Article 28c                       | Article 28  |
| Article 28 d                      | Article 30  |