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

COMMISSION REGULATION (EC) No 1010/2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[(1)], and in particular Articles 6(3), 8(3), 9(1), 12(4), 12(5), 13(1), 16(1), 16(3), 17(3), 20(4), 49(1), 52 thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) Regulation (EC) No 1005/2008 provides for the adoption of detailed rules and measures to implement the provisions it sets out.

(2) In accordance with Articles 6(3) and 16(1) of Regulation (EC) No 1005/2008 the period of three working days set out for the prior notification of landings or transhipments in port and for the submission of catch certificates before the estimated time of arrival of fishery products at the place of entry into the territory of the Community may be modified in the light of certain factors. These factors include: the type of fishery product; the distance between the fishing ground, landing places and ports where the vessels in question are registered or listed; the distance to the place of entry into the territory of the Community; the transport means used. Fresh fishery products and consignments arriving by air, road or rail require a shorter period than three working days.

(3) Consistency should be ensured in documents transmitted in relation to prior notification of landings and transhipments, landing and transhipment declarations and sighting reports. For that reason formats for these must be set out in accordance with Articles 6(1), 8(3) and 49(1) of Regulation (EC) No 1005/2008.

(4) Article 9(1) and Article 17(3) of Regulation (EC) No 1005/2008 provide that Member States shall carry out port inspections of at least 5 % of landing and transhipment operations by third country fishing vessels as well as verifications deemed necessary to ensure that the provisions of the Regulation are correctly applied, in accordance with benchmarks determined on the basis of risk management and on the basis of

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national or Community risk management criteria. It is appropriate to lay down common risk management criteria for checking, inspection and verification activities in order to allow timely risk analyses and global assessments of relevant control information. The common criteria aim at ensuring a harmonised approach to inspection and verification in all Member States and to establish a level playing field for all operators.

(5) Article 52 of Regulation (EC) No 1005/2008 provides that measures necessary for implementing the provisions of that Regulation are to be adopted in accordance with the Committee procedure. Given the fact that the Community should take account of possible capacity constraints for the proper implementation of the certification scheme, it is deemed necessary to adapt the scheme for some fishery products obtained by small fishing vessels, introducing the possibility of a simplified catch certificate. In the absence of a general definition of small scale fisheries certain specific criteria should be laid down under which the validation of a simplified catch certificate may be requested by the exporter. These criteria should take account in the first instance of the limited capacity of the fishing vessels concerned, in relation to which the obligation to apply the standard catch certification scheme would constitute a disproportionate burden.

(6) Article 13(1) of Regulation (EC) No 1005/2008 provides for the recognition of catch documentation schemes agreed and in force in the framework of regional fisheries management organisations (hereinafter referred to as RFMO) in so far as they comply with the requirements of the Regulation. Some of these schemes can be recognised as complying with the requirements of Regulation (EC) No 1005/2008, while others are subject to additional conditions.

(7) Economic operators who fulfil the conditions for obtaining the status of approved economic operator should be able to benefit from a simplified procedure when importing fishery products into the territory of the Community. It is necessary to establish common conditions in all Member States for the granting, amendment or withdrawal of approved economic operators' certificates, or for suspension or revocation of the status of approved economic operator, and rules on the application for and issuing of approved economic operators' certificates.

(8) Article 12(4) of Regulation (EC) No 1005/2008 provides for an administrative cooperation between the Commission and third countries in areas pertaining to the implementation of the catch certification provisions. Within the framework of Article 20(4) of Regulation (EC) No 1005/2008, the catch certificate may be established, validated or submitted by electronic means or may be replaced by electronic traceability systems ensuring the same level of control by authorities, in agreement with flag States. These administrative arrangements with flag States shall be regularly updated and Member States and the public shall be informed in due time.

(9) According to Article 51(2) of Regulation (EC) No 1005/2008 a system shall be established for mutual assistance between the Member States, with third countries and the Commission. Such administrative cooperation is essential to ensure that the Community catch certification scheme can be applied properly and that IUU fishing is properly investigated and sanctioned. Rules should therefore be drawn up for a systematic exchange of information either on request or spontaneously, and for the

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possibility to request enforcement measures and administrative notification by another Member State. Practical procedures should be laid down for exchanging information and requesting assistance. However, these provisions are not such as to affect the application in the Member States of rules on judicial cooperation in criminal cases.

(10) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(2)]. The protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(3)], in particular as regards to the requirements of confidentiality and security of processing, the transfer of personal data from the national systems of Member States to the Commission, the lawfulness of processing, and the rights of data subjects to information, access to and rectification of their personal data.

(11) Annex I of Regulation (EC) No 1005/2008, which lists the products excluded from the definition of 'fishery products', may be reviewed annually in accordance with Article 12(5), on the basis of information gathered under Chapters II, III, IV, V, VIII, X and XII. Hence, on the basis of the information gathered under the cooperation provided for in Article 20(4), Annex I shall be amended accordingly.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

TITLE I

INSPECTIONS OF THIRD COUNTRY FISHING VESSELS IN MEMBER STATES PORTS

CHAPTER I

Conditions for access to port by third country fishing vessels

Article 1

Prior notification

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

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Article 2

Prior notification form

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

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

Article 3

Procedures and forms for pre-landing and pre-transhipment declarations

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

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

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

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

a the official language of the Member State of landing or transhipment; or

b English if accepted by the Member State of landing or transhipment.

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

CHAPTER II

Port inspections

Article 4

Benchmarks for port inspections

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

(a) the species concerned are subject to a management or recovery plan;

(b) the fishing vessel is suspected of not implementing applicable provisions on VMS according to Chapter IV of Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems[(4)];

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(c) the fishing vessel has not been controlled at port in the port Member State in the last 3 months;

(d) the fishing vessel has not been controlled by the port Member State in the last 6 months;

(e) the fishing vessel is not on the list of establishments from which imports of specified products of animal origin are permitted, as set out in Article 12 of Regulation (EC) No 854/2004 of the European Parliament and of the Council[(5)];

(f) importation, exportation or trade in fishery products obtained from species of high commercial value;

(g) introduction of new kinds of fishery products or discovery of new trade patterns;

(h) inconsistencies between the trade patterns and the known fishing activities of a flag State in particular in respect of species, volumes or characteristics of its fishing fleet;

(i) inconsistencies between the trade patterns and the known fishing-related activities of a third country in particular in respect of the characteristics of its processing industry or its trade in fishery products;

(j) trade pattern not justified in terms of economic criteria;

(k) involvement of a newly established operator;

(l) significant and sudden increase in trade volume for a certain species;

(m) submission of copies of catch certificates accompanying processing statements according to Annex IV of Regulation (EC) No 1005/2008, for instance when the catch has been split during production;

(n) prior notification, required under Article 6 of Regulation (EC) No 1005/2008, not transmitted at the proper time or information incomplete;

(o) inconsistencies between catch data declared by the operator and other information available to the competent authority;

(p) vessel or vessel owner suspected of being or having been involved in IUU fishing activities;

(q) vessel having recently changed name, flag or registration number;

(r) flag State not notified according to Article 20 of Regulation (EC) No 1005/2008 or information available on possible irregularities in the validation of catch certificates by a given flag State (e.g. stamps or validation seal from a competent authority lost, stolen or forged);

(s) presumed deficiencies in the control system of a flag State;

(t) operators concerned who have already been involved in illegal activities constituting a potential risk in respect of IUU fishing**[**[F1];**]**

(u) **[**[F2]the fishing vessel has been denied entry or use of port in accordance with the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, concluded in the framework of the Food and Agriculture Organisation of the United Nations (FAO).**]**