Council Regulation (EC) No 744/2008 of 24 July 2008 instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis

COUNCIL REGULATION (EC) No 744/2008

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instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Whereas:

(1) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[(2)] lays down the rules regarding Community structural assistance in the fisheries sector. In particular, Chapter I of Title IV of that Regulation lays down the terms on which the Member States may receive a financial contribution from the European Fisheries Fund (EFF) for the measures for the adaptation of the Community fishing fleet.

(2) The EFF aims to contribute to the steps that have been taken since the 2002 reform of the common fisheries policy (CFP) in view of reducing pressure on fish stocks, whilst ensuring sustainable social and economic conditions for the sector concerned.

(3) In the context of the recent economic situation, following in particular the drastic increase in fuel prices, there is an impending need to take additional measures aiming for a more rapid adaptation of the Community fishing fleet to the current situation, addressing the need to ensure sustainable social and economic conditions for the sector concerned. Such measures should contribute to attaining the general objectives set out in Article 33 of the Treaty and the CFP objectives as laid down in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy[(3)]. In this context, those measures should address both the immediate situation of economic and social hardship while tackling systemic overcapacity.

(4) It is of importance to ensure that such measures will be equally available for all Member States and that they do not introduce any distortion of competition between Member States or fleets. They therefore need to be addressed and coordinated at Community level.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 744/2008. (See end of Document for details)*

(5) Consequently, there is a need for a Community initiative supplementing and allowing for temporary derogations from certain provisions of Regulation (EC) No 1198/2006 and to temporarily derogate from certain provisions of Regulations (EC) No 2371/2002 and (EC) No 1198/2006. This initiative should therefore provide for specific measures of general nature and for the implementation of Fleet Adaptation Schemes in the Member States, which effectively address the current economic difficulties, whilst ensuring the long-term viability of fisheries sector.

(6) In view of the exceptional nature of those measures and of the economic hardship they intend to address, the duration of these measures should be limited to the shortest possible period sufficient to achieve the expected aims.

(7) These measures should be implemented by the Member States in the context of their operational programme under the EFF and financed from the funds allocated to them in that framework.

(8) Moreover, Member States should be entitled to supplement the measures benefiting from such funds by financing certain measures through solely national funds with no financing from Community financial instruments. In view of the need to rapidly tackle the serious situation faced by the fisheries sector, those measures, aimed at bringing about structural improvement and long-term economic viability of the sector, should not be subject to the application of Articles 87, 88 and 89 of the Treaty. In order to limit possible distortions of competition and effects on the internal market, those measures should be subject to certain limitations.

(9) This Regulation should provide for a Community contribution to measures for permanent and temporary cessation of fishing activities, for investments on board aiming to reduce fuel dependency of fishing vessels, for socio-economic compensation as well as for certain actions of a more collective nature. In order to ensure the effectiveness of those measures, as well as to allow Member States to make use of the available funds to the fullest extent possible, the thresholds for private participation in the financing of the measures should be lowered.

(10) In order to contribute to restructuring, the temporary cessation of fishing activities should be made available. Temporary cessation of fishing activities should in particular be aimed at enhancing economic benefits by supporting stock recovery or by promoting more favourable marketing conditions. To that effect, Member States should be encouraged to link the period of temporary cessation with considerations of biological dynamics, seasonality and market dynamics. In the context of the economic crisis, it is also necessary to facilitate the compensation to be granted to fishers that have temporary ceased their activities prior to the adoption of this Regulation.

(11) In view of assisting the fishing sector to adapt to less fuel consuming fishing techniques, it is appropriate to facilitate the replacement of existing equipment on board fishing vessels in order to allow for new, less energy-consuming, fishing techniques. In this regard, additional possibilities for contributions to investments on board fishing vessels should be made available.

(12) A Community contribution should also be provided for collective actions aimed at delivering expertise to vessel owners in relation to energy audits for vessels, and expert advice on the development of restructuring and modernisation plans and Fleet Adaptation Schemes. Moreover, financing should be made available for pilot projects aiming at reducing energy consumption for vessels, engines, equipment or gear.

(13) In view of long-term viability of the fishing sector, a new instrument should be introduced allowing Member States to reduce capacity and to increase profitability of the fleets. This should take the form of Fleet Adaptation Schemes and concern fleets where the energy costs represent on average at least 30 % of the production costs. These Fleet Adaptation Schemes should result in a capacity reduction of the fleets concerned of at least 30 % expressed in GT and kW.

(14) Where measures are implemented by Member States in the context of Fleet Adaptation Schemes, with a view to ensuring the long-term viability of one or more of their fleets through capacity reduction, more favourable conditions should apply.

(15) There is a need to encourage Member States to further extend their permanent cessation schemes in order to adjust their fleets to the available resources. Consequently, it is appropriate to allow for further contribution possibilities to permanent cessation. In order to facilitate restructuring, further possibilities for temporary cessation of fishing activities should be allowed for fishers and vessel owners concerned by Fleet Adaptation Schemes.

(16) Furthermore, Member States having adopted a Fleet Adaptation Scheme should also be allowed to implement partial decommissioning measures ensuring a more cost-efficient use of funds available for reducing capacity and energy consumption of the fleet concerned. Within such partial decommissioning measures, vessel owners withdrawing one or more of their vessels from the fleet should be allowed to re-use part of the capacity withdrawn for a new smaller and less energy consuming vessel. In addition, Member States should be allowed to allocate a limited amount of the total capacity withdrawn under the Fleet Adaptation Scheme to new vessels. In such case, funds should be made available only for the part of the capacity which is permanently withdrawn.

(17) The obligations of Member States regarding management and control pursuant to Article 70 of Regulation (EC) No 1198/2006 and the mechanism for corrections pursuant to Article 97 of Regulation (EC) No 1198/2006 should apply in the framework of this Regulation.

(18) Failure to achieve the 30 % minimum reduction in capacity laid down in a Fleet Adaptation Scheme or failure to comply with the rules on temporary cessation, permanent cessation or partial decommissioning should be regarded as irregularities within the meaning of Article 97 of Regulation (EC) No 1198/2006.

(19) In view of the urgency of the situation and the need for immediate action in all Member States, it is appropriate to increase the percentage of Community co-financing under the EFF of the measures under this initiative to 95 %. In the same context, it is important that these funds are available to Member States within shorter delays than normally

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applicable and that expenditure is eligible from the date of the entry into force of this Regulation.

(20) Given the urgency of the situation, there is a compelling need to allow an exception to the six-week period referred to in Section I.3 of the Protocol on the role of national parliaments in the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1 This Regulation establishes a specific Community action designed to provide for exceptional and temporary support for the persons and enterprises active in the fisheries sector affected by the economic crisis induced by the increase of oil prices in 2008, as a special regime under the European Fisheries Fund (hereinafter referred to as EFF).

2 This specific action shall consist of:

a general measures supplementing and derogating from certain provisions of Regulation (EC) No 1198/2006, and

b special measures supplementing and derogating from certain provisions of Regulations (EC) No 2371/2002 and (EC) No 1198/2006 that are conditional upon the implementation of a Fleet Adaptation Scheme as referred to in Article 12.

Article 2

Scope

This Regulation shall apply only to public aid which has been the subject of an administrative decision by the relevant national authorities by 31 December 2010.

Article 3

Financial framework

1 The measures provided for under this Regulation may receive financial support from the EFF within the limits of the commitment appropriations defined for the period 2007-13.

2 Public aid granted under this specific action may not be cumulated with another public aid having the same purpose, and in particular that granted by the European Agricultural Fund for Rural Development (EAFRD), the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, other Community financial instruments and national funds.

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Article 4

Application of State aid rules

1 Without prejudice to paragraph 2 of this Article, Articles 87, 88 and 89 of the Treaty shall not apply to aid granted by Member States, pursuant to and in conformity with this Regulation within the scope of Article 36 of the Treaty.

2 Aid granted by Member States with no financing from Community financial instruments and exceeding the limits laid down in Article 1(3) of Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products[(4)] shall be subject to the application of Articles 87, 88 and 89 of the Treaty.

3 Where aid is granted by Member States with no financing from Community financial instruments within the limits laid down in Article 1(3) of Regulation (EC) No 736/2008, they shall forward to the Commission a summary of the information regarding such aid prior to its implementation. Moreover, each year, by 1 July at the latest, Member States shall submit to the Commission a report on the aid granted under this paragraph.

CHAPTER II

GENERAL MEASURES

Article 5

General measures

Public aid to the persons and enterprises referred to in Article 1 may be granted until 31 December 2010 according to the rules set out in this Chapter.

Article 6

Temporary cessation of fishing activities

1 In addition to the measures provided for in Article 24 of Regulation (EC) No 1198/2006, the EFF may contribute to the financing of aid measures for the temporary cessation of fishing activities for fishers and owners of fishing vessels for a maximum duration of three months implemented during the period from 1 July 2008 to 31 December 2009, provided that:

a the temporary cessation of fishing activities commenced before 31 December 2008, and

b the beneficiary enterprises become subject until 31 January 2009 to restructuring measures such as Fleet Adaptation Schemes, fishing effort adjustment plans, national decommissioning schemes, catch plans, other restructuring/modernisation measures.

The management plans provided for in Articles 9 and 10 of Regulation (EC) No 2371/2002 shall be covered by this paragraph, insofar as they involve fishing effort adjustment plans pursuant to Article 21 of Regulation (EC) No 1198/2006.

2 The measures provided for in paragraph 1 may cover the following costs: