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**PROPOSAL**

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from: European Commission  
dated: 22 October 2007

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Subject: Proposal for a COUNCIL REGULATION Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2007) 602 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.10.2007  
COM(2007) 602 final

2007/0223 (CNS)

Proposal for a

**COUNCIL REGULATION**

**Establishing a Community system to prevent, deter and eliminate  
illegal, unreported and unregulated fishing**

(presented by the Commission)

{SEC(2007) 1310}

{SEC(2007) 1312}

{SEC(2007) 1336}

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

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

The general objective of the Proposal is to review and enhance the contribution of the Community to the fight against Illegal, Unreported and Unregulated fishing in order to increase the efficiency of action against this international plague and its environmental, economic and social consequences.

- **General context**

Illegal, unreported and unregulated (IUU) fishing is one of the most serious threats worldwide to the sustainability of fish stocks and to marine biodiversity. There is a large consensus within the international community on the recognition of the particular gravity of this problem and the imperious need to adopt appropriate measures to prevent, deter and eliminate it. This consensus has been expressed in various international instruments and most notably in the voluntary International Plan of Action on this matter adopted under the auspices of the FAO in 2001.

The Community has been engaged in the fight against IUU for more than 10 years now. Its policy has been driven since 2002 by its own Action Plan. On this basis, the Community has been very active over the last years, promoting at Community, regional and international levels the implementation of an ambitious policy to deter, prevent and eliminate IUU fishing.

This policy entailed significant progress. The creation of new Regional Fisheries Management Organisations, whether at the initiative of or with the firm support of the EU, has extended the geographical coverage of high seas fishing grounds subject to international regulation. At the same time, extensive arrays of new measures adopted within existing RFMOs has reinforced control at sea and in ports and made possible better monitoring of trade flows. The adoption of black lists of IUU vessels has resulted in the introduction of dissuasive measures aimed at vessels identified as committing illegal activities. 2004 saw the entry into force of the new Partnership approach guiding the relations of the EU with developing countries with which it has concluded bilateral fisheries agreements. Reinforcing the management and control capacities of these countries is one of the cornerstones of the Partnership approach, and significant EU funding has been specifically allocated to this objective. At EU level, meanwhile, the reform of the Common Fisheries Policy agreed in 2002 has focused attention on the need to improve compliance with the rules which apply to EU fishermen and waters.

While much has been done, there is no doubt that IUU fishing is far from being eradicated. The Commission considers that the persistence of such practices despite Community and international action and their dramatic environmental and socio-economic consequences call for an urgent and firm reply by the Community.

The Community has one of the largest fishing fleet in the world and is the third catching power in the world. It is also the biggest market and the first importer for fisheries products. The value of fisheries products imported into the Community rose to

nearly 14 billion € in 2005. In addition, Community operators are believed to feature among those registering a large number of fishing vessels in States hosting flags of non compliance.

In line with its international commitments and its overall objective to improve management and avoid overexploitation of natural resources (as set out in the EU Sustainable development Strategy agreed at the European Council of June 2006), the Community has a specific responsibility in leading international efforts on the fight against IUU fishing.

The Commission considers that time has now come to complete the existing framework, to improve its efficiency and place the focus on the need for better enforcement and compliance with measures necessary to deter, prevent and eliminate IUU fishing.

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

In the current system, IUU fishing is addressed partly via Community provisions on control, inspection and enforcement applying within the Community (in particular Council Regulation (EEC) No 2847/93 and Council Regulation (EC) No 2371/2002) as well as in respect of areas subject to the rules agreed within Regional Fisheries Management Organisations (in particular Council Regulations (EC) No 1936/2001 and (EC) No 601/2004).

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

This proposal pursues the general aim of the Common Fisheries Policy to "ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions" and, more generally, contributes to the Sustainable Development Strategy agreed by the European Council in June 2006 via its focus on the protection of natural resources. It is also in line with the objectives set out at the World Summit on Sustainable Development in 2002 regarding fisheries management.

Striving for better ocean governance is also one of the main principles guiding the current reflections on a future Maritime Policy for the Community.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

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

A wide consultation process was held between January and March 2007, on the basis of a public document tabled by the Commission services and published on the Commission website. The consultation paper prepared by DG Fisheries and Maritime Affairs to guide the debate presented a brief analysis of the problem and was structured on nine possible fields of action: (1) improve control of the legality of the activities of third country fishing vessels and of their catches accessing fishing ports of the European Community, (2) improve control of compliance with conservation and management measures by third country fishery products imported into the Community

by other means than fishing vessels, (3) close the EU market to IUU fisheries products, (4) address IUU activities carried out by nationals from the European Community outside its territory, (5) improve the legal means to ascertain IUU fishing activities, (6) introduce an efficient regime of penalties aiming to deter serious infringements to fisheries measures, (7) Improve action against IUU fishing within Regional Fisheries Management Organisations, (8) support the policy and means of developing countries against IUU fishing and (9) increase synergies in the field of Monitoring, Control and Surveillance.

Numerous meetings were organised and several written contributions received by the Commission as a result of this consultation. The issue was debated within an informal Council of Fisheries Ministers on 17 April 2007. In addition, the European Parliament passed a resolution on that matter on 15 February 2007.

Contributions were received from a wide range of entities linked to the fisheries sector, notably the Advisory Committee for Fisheries and Aquaculture (ACFA), which gathers the main stakeholders involved in the fishing sector at Community level, European and national fishing organisations (France, Spain, Greece), processing industry, retailers, banks and consumers, trade unions, numerous NGOs, (specialised in environmental and development matters) public authorities from Germany, United Kingdom, a Member of a national Parliament (Netherlands), as well public authorities from Norway and the World Bank and one company specialised in traceability.

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

The initiative of the Commission received a very positive feedback from the participants of the consultation process. Almost all the contributions stressed the appropriateness for reinforcing the Community action in this field. They generally considered as the relevant the field of actions identified by the Commission in its consultation paper.

One divergent point amongst the stakeholders related to the scope of the initiative. A part of the fishing extractive sector considered that the initiative should not cover the Community fishing fleet, which is subject to a comprehensive control regime, and can not be considered as carrying out IUU fishing. Most of the respondents however supported the idea that the initiative should be broad and encompass fishing activities by all fishing fleets (Community and non Community).

There were also concerns expressed by some stakeholders about the problems which could result from the adoption by the Community of a uniform approach to the problem, ignoring the specificities of fisheries and regions affected by IUU fishing and producing unnecessary new constraints. The fact that the Community should focus its future action toward the most serious breaches of fisheries law was underlined.

Some stakeholders insisted that the priority should relate to a better implementation of the existing framework, and that new regulatory initiatives should only be introduced where needed.

Another important concern expressed was that the potential negative impacts of trade measures on developing countries and the need for an in-depth analysis on this issue was underlined.

An open consultation was conducted over the internet from 15 January 2007 to 12 March 2007. The Commission received around 30 written contributions. The results are available on The contributions received by the Commission are available at the following address:

[http://ec.europa.eu/fisheries/cfp/governance/consultations/consultation\\_150107\\_en.htm](http://ec.europa.eu/fisheries/cfp/governance/consultations/consultation_150107_en.htm)

The outcomes of the consultation process have been summarized in a document annexed to the Impact Assessment Report on the Proposal tabled by the Commission.

- **Collection and use of expertise**

Scientific/expertise domains concerned

The Commission services made use of external expertise to support some of the elements relating to the present Proposal.

The purpose of the Specific Convention no. 36/2006 was to analyse the usefulness and impact of trade measures envisaged by the Commission as an instrument against IUU fishing. The specific Contract no. 5/2007 was assigned to provide other necessary external elements and input that could be used by the Commission in the final preparation of the impact assessment pertaining to the measures that might be part of the future proposals of the Commission against IUU fishing.

Methodology used

The two Specific Conventions were concluded within the framework contracts (respectively FISH/2003/02 and FISH/2006/20) in force between the Commission and the external consultancy firm Océanic Développement.

Main organisations/experts consulted

External consultancy firm Océanic Développement.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

The first study provides information as to the current situation of the European Community as first actor in the trade of fisheries products, describes the vulnerability of the Community market to the imports of fisheries products stemming from IUU fishing and analyses the various means which could be set up by the Community to put an end to those imports.

The second study presents notably the problems generated by the insufficient level of sanctions applied by Member States towards serious infringements against the rules of the Common Fisheries Policy. It also stresses the wide variety of the levels of sanctions existing in the national legislations, resulting in the absence of level playing field at Community level and encouraging the continuation of illicit practices.

Means used to make the expert advice publicly available

The studies will be made available on the Internet web site of DG Fisheries and Maritime Affairs.

- **Impact assessment**

The Commission carried out an Impact assessment of the Proposal, resulting in a report which will be accessible on the web site of DG Fisheries and Maritime Affairs within the European Commission.

In this report, the following options were considered:

- Improve the implementation of the current framework within Community waters, and enhance the policy of the Community against IUU fishing within multilateral and bilateral bodies to address the external part of the problem. This option would not require the adoption of any new regulatory instrument. It would however not bring a sufficient reply to the urgency of the situation, as well as to the most serious problems which harm the current system, namely the vulnerability of the Community market against the importation of IUU products and the persistence of fishing activities by vessels flying flags of non compliance. Those two problems require the adoption of new legal tools. This option would simply mean that the Community places more emphasis on the need to fight against IUU fishing, but without putting in place the instruments required to this end. There is real risk that this option only results in declarations of good will, does not entail substantial changes and solely perpetuates the status quo;

- Develop a policy based on a case by case approach, which would be adapted to the specific features of the various fish species and areas subject to important levels of IUU fishing. Under this option, a targeted approach should be pursued, which would focus on the most tangible manifestations of IUU fishing, and provide for specific replies depending on the particularities of stocks or areas concerned.

The changing and clandestine nature of the IUU phenomenon renders the efficiency of this option uncertain. There is a high risk that this option delivers solutions which are no more adapted to the actual problem by the time of their adoption, and finally misses the real targets. It would also appear difficult to transpose this approach to IUU fishing in waters of developing countries. In addition, this option would not be cost-free. Its implementation would translate into the adoption of a set of regulatory instruments specific to each of the situations to be covered. Costs for compliance would also be high, and, in respect to the specific import certification schemes applying to a limited number of species, possibly even higher than the costs of a general certification scheme applying to imports of all fisheries products.

- Undertake a new and comprehensive initiative, covering both Community and non Community waters, relying on clear political principles and regulatory measures, which would complete the current framework and ensure better compliance with applicable rules, as well as allow the EC to adopt unilateral ambitious measures to fulfil its international commitments when multilateral measures are not able to achieve a satisfactory outcome. This option would require the adoption of an ambitious regulatory instrument answering the three main challenges which the Community has

to face in relation to IUU fishing: halt the importation of IUU fishing into the Community, address the problem posed by fishing vessels flying flags of non compliance outside Community waters and improve compliance with the rules of the CFP within Community waters.

The implementation of this option would be demanding and would require considerable changes. It implies in the first place that the Community adopts a substantial regulatory instrument. It would also generate new tasks and costs, which should however be mitigated through various mechanisms and accompanying measures. Those costs appear to be proportionate to the need for the Community to substantially improve the efficiency of its policy against IUU fishing.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The Proposal relies on the principle that an efficient strategy against IUU fishing should be comprehensive and cover all the facets of the problem, along the whole supply chain.

The Proposal puts in place a system designed to halt the import of fisheries products stemming from IUU fishing into the Community. To this end, a certification scheme would be established. According to this scheme, the import of all fisheries products (including processed products) into the Community would be made conditional upon the certification by the flag state concerned that they have been legally caught. As a complement to this measure, the monitoring of landing by third country fishing vessels should be improved via new conditions applying to access to Community ports and to transshipments.

The Proposal also foresees a set of measures designed to deter fishing operators from taking advantages of the failures by some states to ensure that their fishing fleet complies with rules on management and conservation of fisheries resources. In cases where no efficient solution can be found within RFMOs, the Community would be able to designate and implement penalties towards fishing vessels or states which act outside the international legality and undermine the sustainability of fisheries resources.

The Proposal establishes a system for approximating the maximum levels of sanctions to be applied by Member States in relation to serious infringements to the rules of the CFP. It also lays down provisions strengthening the responsibility of Member States towards their nationals when they are taking part in or supporting fishing activities outside the Community.

- **Legal basis**

Article 37 of the EC Treaty

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

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

Combating clandestine and illicit activities like IUU fishing require the adoption of measures commensurate to the scale and adapted to the nature of the activities concerned. The action contained in the Proposal will generate some costs for economic operators and national administrations in EU Member States and third countries. This is in particular the case for the establishment of a certification scheme applying to all imports of fisheries products into the Community. Those costs should however be relatively limited, and largely offset by the benefits resulting from the implementation of the measures.

To assist control authorities from Member States in their tasks, an alert system would be set up, designed to inform them about the doubts pertaining to the compliance with conservation measures of products from certain fishing vessels, operators or states. This will allow control authorities to define priorities in their action and alleviate the workload arising from other measures contained in the Proposal. The new strategy against IUU fishing proposed by the Commission also promotes a strengthening of cooperation between control authorities; those efforts, to be led by the Community Fisheries Control Agency, should help pooling control means and improving the overall efficiency of control action within the Community.

The additional control requirements imposed on administrations and operators should be appropriate and proportionate with respect to ensuring the correct application of the measures concerned.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The Common Fisheries Policy is an area of exclusive competence of the Community. The rules adopted at Community level should be uniform and binding in order to avoid the coexistence of different standards between Member States. It is therefore justified that the measures are contained in a Proposal for a Regulation.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

- **Simplification**

The proposal provides for simplification of legislation.

The proposal provides a simplification and an improvement of the control, inspection and enforcement framework derived from decisions adopted within RFMOs. The Community is member of a dozen of such organisations. Their provisions can vary

substantially from one organisation to the other. They are currently implemented into Community law via various Council Regulations. This triggers two difficulties. Firstly, the volume of the RFMOs provisions and the frequency of their adoption and revision make it often hard to ensure a timely transposition into Community law. Secondly, the coexistence of diverse rules stemming from different legal orders creates confusion among Community operators and Member States.

The Commission therefore suggests that the incorporation into Community law of the main provisions pertaining to control, inspection and enforcement adopted within RFMOs is ensured via the proposed Regulation. This Regulation would integrate the most ambitious standards adopted within the RFMOs to which the Community is party, and extend their scope to all waters subject to a RFMO. This would contribute to simplify the framework applying to Community operators and public authorities via a harmonization of rules according to the highest existing control, inspection and enforcement standards.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a review clause.

Proposal for a

**COUNCIL REGULATION**

**Establishing a Community system to prevent, deter and eliminate  
illegal, unreported and unregulated fishing**

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>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

Whereas:

- (1) The Community is a Contracting Party to the United Nations Convention on the Law of the Sea, has ratified the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (The 1995 UN Fish Stocks Agreement) and has accepted the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas. Those provisions set out notably the principle that all states have a duty to adopt appropriate measures to ensure sustainable management of marine resources and to cooperate with each other to this end.
- (2) The objective of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002, is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.
- (3) Illegal, Unreported and Unregulated (IUU) fishing constitutes one of the most serious threats against a sustainable exploitation of living aquatic resources which jeopardizes the very foundation of the Common Fisheries Policy and of international efforts to promote better ocean governance; IUU fishing also represents a major threat to marine biodiversity which needs to be addressed in accordance with the objectives set out in

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

the Communication from the Commission - Halting the loss of biodiversity by 2010 - and beyond (COM(2006) 216).

- (4) In line with its international commitments, and given the scale and urgency of the problem, the European Community should substantially enhance its action against IUU fishing and adopt new regulatory measures designed to cover all the facets of the phenomenon.
- (5) In accordance with the International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing, adopted in 2001 by the Food and Agriculture Organisation (FAO), IUU fishing means fishing activities considered as illegal, unreported or unregulated, where:
  1. Illegal fishing refers to activities:
    - conducted by national or foreign vessels in waters under the jurisdiction of a state, without the permission of that state, or in contravention of its laws and regulations;
    - conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the states are bound, or relevant provisions of the applicable international law; or
    - in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant regional fisheries management organization.
  2. Unreported fishing refers to fishing activities:
    - which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
    - undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
  3. Unregulated fishing refers to fishing activities:
    - in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a state not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
    - in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with state responsibilities for the conservation of living marine resources under international law.

- (6) The action by the European Community should be primarily targeted at the behaviours coming under the definition of IUU fishing which create the most serious damages to the marine environment, the sustainability of fish stocks and the socio-economic situation of fishermen abiding by the rules on conservation and management of fisheries resources.
- (7) In line with the definition of IUU fishing, the scope of this Regulation should extend to fishing activities carried out on the high seas and in maritime waters under the jurisdiction or sovereignty of coastal countries, including maritime waters under the jurisdiction or sovereignty of Member States of the European Community.
- (8) In order to properly address the internal dimension of IUU fishing, it is vital for the European Community to adopt the necessary measures to improve compliance with the rules of the Common Fisheries Policy; pending the revision of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy, provisions to this end should be inserted in the present Regulation.
- (9) Community rules, and in particular Title II of Regulation (EEC) No 2847/93, provide for a comprehensive system designed to monitor the legality of catches from Community fishing vessels; the current system applying to fisheries products caught by third country fishing vessels and imported into the Community does not ensure an equivalent level of control; this weakness constitutes an important incentive for foreign operators carrying out IUU fishing to trade their products into the Community and increase the profitability of their activities; as the world's largest market and importer of fisheries products, the Community has a specific responsibility in making sure that fisheries products imported into its territory do not originate from IUU fishing; a new regime should therefore be introduced to ensure a proper control of the supply chain for fisheries products imported into the Community.
- (10) Community rules governing access to Community ports of fishing vessels flying the flag of a third country should be strengthened with a view to ensuring an adequate control over the legality of the fisheries products landed by fishing vessels flying the flag of a third country; this should notably imply that access to Community ports is only authorised to fishing vessels flying the flag of a third country which are able to provide accurate information on the legality of their catches and to have this information validated by their flag state.
- (11) Transshipments at sea escape any proper control by flag or coastal states and constitute a usual way for operators carrying out IUU fishing to dissimulate the illegal nature of their catches; it is therefore justified for the Community to authorise only transshipments operations if they occur within designated port of Member States, or, as far as transshipments involving Community fishing vessels are concerned, within Community waters or in ports of third countries.
- (12) It is appropriate to lay down the conditions, procedure and frequency according to which inspections at port pertaining to fishing vessels flying the flag of a third country shall be carried out by Member States.
- (13) The importation into the Community of fisheries products stemming from IUU fishing shall be prohibited; in order to make this prohibition effective and ensure that all

imported products have been harvested in compliance with international conservation and management measures and, where appropriate, other relevant rules applying to the fishing vessel concerned, a certification scheme applying to all imports of fisheries products into the Community shall be put in place.

- (14) The Community shall take into account the capacity constraints of developing countries in the implementation of the certification scheme.
- (15) It is appropriate that, under this scheme, a certificate is required as a pre-condition for the import of fisheries products into the Community. Such certificate should contain information allowing to demonstrate the legality of the products concerned; it should be validated by the flag state of the fishing vessels which caught the fish concerned, in line with its duty under international law to ensure that vessels flying its flag comply with international rules on conservation and management of fisheries resources.
- (16) It is essential that this certification scheme applies to all imports of fisheries products into the Community, including those products which have been transported or processed in a country other than the flag state before reaching the territory of the Community. Specific requirements shall therefore apply with respect to those products, in order to guarantee that the products arriving into the territory of the Community are not different from those the legality of which has been validated by the flag state.
- (17) The exportation of catches from vessels flying the flag of Member State for processing purpose should also be subject to the certification scheme.
- (18) Member States in which the products is intended to be imported should be able to verify the validity of the catch certificates accompanying the consignment and be entitled to refuse the importation where the conditions laid down in the Regulation with respect to the catch certificate are not met.
- (19) In order to assist control authorities within Member States in their tasks to monitor the legality of fisheries products imported into the Community, as well as to warn Community operators, a Community alert system should be established, designed to spread information about reasonable doubts as to compliance from certain third countries with applicable conservation and management rules.
- (20) It is essential that the Community adopts dissuasive measures towards fishing vessels carrying out IUU fishing and which are not subject to appropriate action by their flag state in response to those activities.
- (21) To this end, the Commission, in collaboration with Member States, the Fisheries Control Agency, third states and other bodies, should identify fishing vessels suspected of carrying out IUU fishing, and the Commission should seek information from the competent flag state as to the accuracy of the findings.
- (22) In order to facilitate enquiries pertaining to fishing vessels presumed to have carried out IUU fishing and prevent the continuation of the alleged infringement, those vessels shall be subject to specific control and inspection requirements by Member States.

- (23) When, on the basis of the information obtained, there are sufficient grounds to consider that fishing vessels have been engaged in IUU fishing and that the competent flag states has not taken effective action in response to those activities, it is appropriate for the Commission to place those vessels on a List of IUU vessels.
- (24) With a view to remedying the absence of effective action by flag states towards fishing vessels flying their flags and placed on the List of IUU vessels, and to restrict the continuation of fishing activities by those vessels, Member States should apply specific measures towards those vessels.
- (25) To safeguard the rights of the vessels placed on the List of IUU vessels and of their flag states, the procedure for the listing should give the flag state and, where possible, the owner or operators concerned the possibility of being heard at each stage of the procedure and allow for the delisting of a vessel when the criteria for its listing are no longer met.
- (26) In order to provide for a single framework within the Community and avoid proliferation of lists pertaining to fishing vessels involved in IUU fishing, fishing vessels included in the IUU lists adopted by Regional Fisheries Management Organisations should automatically be included in the corresponding list drawn up by the Commission.
- (27) The failure by some states to discharge their duty incumbent on them under international law as Flag, Port, coastal or market state, to take appropriate measures to ensure compliance by their fishing vessels or nationals with rules on the conservation and management of fisheries resources is one of the main drivers of IUU fishing and should be addressed by the Community.
- (28) To this end, in addition to its action at international and regional levels, the Community should be entitled to identify those non-cooperating states, on the basis of transparent, clear and objective criteria relying on international standards, and, after giving them the possibility of being heard, adopt non-discriminatory, legitimate and proportionate measures with respect to those states, including trade measures.
- (29) It is essential that Community nationals are effectively deterred from engaging in or supporting IUU fishing by fishing vessels flying the flag of third countries and active outside the Community; without prejudice to the primacy of the responsibility of the flag state, Member States should therefore put in place the necessary measures and cooperate with other Member States and third states to identify their nationals carrying out those activities, make sure that they are adequately sanctioned and verify the activities of their nationals involved with third country vessels outside the Community.
- (30) The persistence of a high number of serious infringements against the rules of the CFP within Community waters or by Community operators lies to a large extent in the non-deterrent level of penalties prescribed within Member States' legislation in relation to serious infringements to those rules; this weakness is compounded by the wide variety in the levels of sanctions across Member States, which encourages illegal operators to operate in waters or the territory of the Member States where these are the lowest; to address this weakness, building upon the provisions set out in Regulations (EC) No 2371/2002 and (EEC) No 2847/93 in this area, it is appropriate to approximate within

the Community the maximum levels of penalties foreseen in relation to serious infringements against CFP rules as well as to foresee complementary measures.

- (31) In addition to behaviours constitutive of serious infringements against rules on fishing activities, the conduct of commercial or trade business related to fisheries products stemming from IUU fishing or vessels identified as carrying out IUU fishing, should also be considered as serious infringements requiring the adoption of sanctions by Member States.
- (32) Serious infringements against the rules of the CFP should be punishable by effective, proportionate and dissuasive sanctions, which should also apply to legal persons throughout the Community, because those infringements are committed, to a large extent, in the interest of legal persons or for their benefit.
- (33) Provisions pertaining to sightings of vessel at seas adopted within certain RFMOs should be implemented in a harmonized manner within the Community.
- (34) Cooperation between Member States, the Commission, and with third states is essential to ensure that IUU fishing is properly investigated and that the measures laid down in the present Regulation can be applied; a system for mutual assistance shall be established to enhance such cooperation.
- (35) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of eliminating IUU fishing to lay down rules on the measures foreseen in the present Regulation. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (36) The measures necessary 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.
- (37) This regulation identifies IUU fishing as violations of applicable laws, rules or regulations of particular gravity, as they seriously undermine the attainment of the objectives of the violated rules and put the sustainability of the stocks concerned or the conservation of the marine environment in jeopardy. Given its restricted scope, the implementation of this Regulation must rely on, and be complementary to, that of Council Regulation (EEC) No 2847/93, which establishes the basic framework for the control and monitoring of fishing activities under the Common Fisheries Policy. Accordingly, this Regulation reinforces the rules of Regulation (EEC) No 2847/93 in the area of port inspections of third country vessels (Article 28e, 28f and 28g), which are now abrogated and replaced by the port inspection regime established in Chapter II of this Regulation. In addition, this Regulation provides for a regime of sanctions in Chapter X that applies specifically to IUU fishing activities. The provisions of Regulation (EEC) No 2847/93 relating to sanctions (Article 31) remain thus applicable to violations of the rules of the Common Fisheries Policy other than those addressed by this Regulation.
- (38) The protection of individuals with regard to the processing of personal data 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, which is fully applicable to the processing of personal data for the purposes of this Regulation, in particular as regards the rights of data subjects to access, rectification, blocking and erasure of data and notification to third parties, which have not in consequence been further particularised in this Regulation.

- (39) The entry into force of new provisions on matters covered by Council Regulations (EEC) No 2847/93, (EC) No 1093/94, (EC) No 1447/1999, (EC) No 1936/2001 and (EC) No 601/2004 should result in the repeal of some parts or the entirety of those Regulations.

HAS ADOPTED THIS REGULATION:

## **Chapter I** **General provisions**

### *Article 1 – Subject matter and scope*

1. This Regulation establishes a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
2. To this end, each Member State shall take appropriate measures, in accordance with Community law, to ensure the effectiveness of the system. It shall place sufficient means at the disposal of its competent authorities to enable them to perform their tasks as laid down in this Regulation.
3. The system shall apply to all IUU fishing activities and to all associated activities carried out within the territory or within the maritime waters subject to the sovereignty or jurisdiction of the Member States or by Community fishing vessels or nationals. It shall also apply, without prejudice to the jurisdiction of the flag state or coastal state concerned, in relation to IUU fishing activities carried out by non Community vessels on the high seas or in the waters under the jurisdiction of a third country.
4. The Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing shall be implemented in conjunction with Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy.

### *Article 2 – Definitions*

For the purposes of this Regulation:

- a) "*Fishing vessel*" means any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, carrier vessels, fish processing vessels and vessels engaged in transshipment;

- b) "*Fishery products*" mean any products taken from the sea which fall under Chapter 03 and Tariff headings 1604 and 1605 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs tariff ;
- c) "*Conservation and management measures*" mean measures to conserve one or more species of living marine resources that are adopted and applied consistently with the relevant rules of international or Community law;
- d) "*Transshipment*" means the unloading of all or any of the fish on board a fishing vessel to another vessel;
- e) "*Importation*" means the introduction of fishery products in their harvested or processed form into the territory of the European Community, including for transshipment purposes at ports in its territory;
- f) "*Exportation*" means any movement of fishery products harvested by vessels flagged to a Member State, including from the territory of the European Community, from third countries or from fishing grounds, to a third country;
- g) "*Re-exportation*" means any movement of fishery products in their harvested or processed form from the territory of the European Community, which had been previously imported into the territory of the European Community;
- h) "*Regional fisheries management organisation*" means a subregional or regional organisation or arrangement with competence, as recognised under international law, to establish conservation and management measures for straddling fish stocks or highly migratory stocks occurring in the area of the high seas placed under its responsibility by virtue of its establishing convention or agreement;
- i) "*Contracting party*" means a Contracting party to the international convention or agreement establishing a Regional Fisheries Management Organisation, as well as States, Entities or Fishing Entities that cooperate with such Organisation and have been granted Cooperating Non-Contracting Party status in its respect;
- j) "*Sighting*" means any observation by a Member State's vessel, aircraft or competent authority responsible for inspection at sea, or by the master of a Community fishing vessel of a fishing vessel that may fall under one of more of criteria referred in Article 3;
- k) "*Joint fishing operation*" means any operation between two or more vessels where catch is transferred from the fishing gear of one vessel to another;
- l) "*legal person*" means any entity having such status under the applicable national law, except for states or public bodies in the exercise of state authority and for public organisations.

*Article 3 – Fishing vessels engaged in IUU fishing activities*

A fishing vessel is considered to have carried out IUU fishing activities if it is shown that it has, contrary to the conservation and management measures applicable in the area where it has carried out those activities:

- a) fished without a valid licence, authorisation or permit issued by the flag state or the relevant coastal state, or
- b) seriously misrecorded or misreported catch or catch-related data, or
- c) fished in a closed area, during a closed season, or without or after attainment of a quota, or
- d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited, or
- e) used prohibited fishing gear, or
- f) falsified or concealed the markings, identity or registration of the vessel, or
- g) concealed, tampered with or disposed of evidence relating to an investigation, or
- h) obstructed the work of fisheries inspectors in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures, or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules, or
- i) failed to comply with Vessel Monitoring Systems (VMS) requirements, or
- j) taken or landed undersized fish or
- k) transhipped or participated in joint fishing operations with, supported or re-supplied other vessels identified as having engaged in IUU fishing activities in accordance with this Regulation, in particular those included in the European Community IUU vessels list or in the IUU list of a Regional Fisheries Management Organisation;

or if it has:

- a) carried out fishing activities in the area of a Regional Fisheries Management Organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a state not party to that organisation, or
- b) no nationality and is therefore a stateless vessel.

## **Chapter II**

### **Port control of third country fishing vessels**

#### **SECTION I - CONDITIONS FOR ACCESS TO PORT BY THIRD COUNTRY FISHING VESSELS**

##### *Article 4 – Port state control scheme*

1. This Chapter lays down general rules and conditions to maintain an effective scheme of port state control for third country fishing vessels calling at the ports of Member States, with a view to prevent, deter and eliminate IUU fishing.
2. Except in cases of force majeure, access to ports of Member States, the provision of port services, and the conduct of landing, transshipment or on-board processing operations in such ports shall be prohibited for third country fishing vessels unless they meet the requirements set forth in this Chapter and other relevant provisions of this Regulation.
3. Transshipments between third country fishing vessels or between the latter and vessels flying the flag of a Member State shall be prohibited in Community waters and shall take place only in port, in accordance with the provisions of this Chapter.
4. Vessels flying the flag of a Member State shall not be authorised to tranship at sea catches from third country fishing vessels outside Community waters.

##### *Article 5 – Designated ports*

1. Member States shall designate a place to be used for landings or a place close to the shore (designated ports) where landings or transshipment operation of fish referred to in paragraph 2 are permitted.
2. Access to port services and the conduct of landing, transshipment or on-board processing operations by third country fishing vessels shall be authorised only in designated ports.
3. Member States shall transmit to the Commission no later than 15 January of each year a list of designated ports. Any subsequent changes to this list shall be notified to the Commission at least 15 days before the change takes effect.
4. The Commission shall publish the list of designated ports and any change thereto in the *Official Journal of the European Union* (C series) and shall place it on its website.

##### *Article 6 – Prior notice*

1. Masters of third country fishing vessel or their representatives shall notify the competent authorities of the Member State whose port or landing facilities they wish

to use at least 72 hours before the estimated time of arrival at the port, of the following information:

- a) vessel identification;
  - b) name of the designated port of destination and the purposes of the call, landing, transshipment, on-board processing, access to services;
  - c) fishing authorisation;
  - d) trip information;
  - e) estimated time of arrival at the port;
  - f) catches retained on board;
  - g) the zone or zones where the catch was made, whether in the Community fishing zone, in zones under the jurisdiction or sovereignty of a third country or on the high seas.
2. The notice referred to in paragraph 1 shall be accompanied by a catch certificate validated in accordance with Chapter III if the third country vessel carries on board fishery products. The provisions laid down in Article 14 on the recognition of catch documents or port state control forms which are part of catch documentation or port control schemes adopted by Regional Fisheries Management Organisations shall apply *mutatis mutandis*.
  3. The Commission, in accordance with the procedure laid down in Article 52, may exempt certain categories of third country fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, *inter alia*, the distance between the fishing grounds, landing places and ports where the vessels in question are registered or listed.
  4. This Article shall apply without prejudice to special provisions set forth in fisheries agreements concluded between the Community and a third country.

#### *Article 7 – Authorisation*

1. Member States shall verify the accuracy of the information transmitted by third country fishing vessels in the prior notice under Article 6(1), and the accuracy of the information provided in the catch certificate referred to in Article 6(2).
2. The third country fishing vessel shall be granted authorisation to access the port only if the information referred to in paragraph 1 is complete and has been verified on the basis of elements available before access to port has taken place.
3. Authorisation to carry out landing, transshipment or on-board processing operations in port shall be subject to verification of submitted information as prescribed in paragraph 1 and, where appropriate, to the completion of an inspection carried out in accordance with Section 2.

4. By way of derogation to paragraphs 2 and 3 the port Member State may authorise port access and all or part of a landing in cases where the information referred to in paragraph 1 is not complete or its verification is pending, but shall in such cases keep the fish concerned in storage under the control of the competent authorities. The fish shall only be released to be sold, taken over or transported once the information referred to in paragraph 1 has been received or the verification process is completed. If this process is not completed within 14 days of the landing, the port Member State may confiscate and dispose of the fish in accordance with national rules.

*Article 8 – Recording of landings, transhipments, and on-board processing operations*

1. Member States shall ensure that all landing, transhipment and on-board processing operations by third country fishing vessels in their ports are recorded.
2. Member States shall notify the Commission by computer transmission before the end of the first month of each calendar quarter of the quantities landed by third country fishing vessels in their ports during the previous quarter.

**SECTION 2 – PORT INSPECTIONS**

*Article 9 – General principles*

1. Member States shall carry out inspections in their ports of at least 15% of landings, transhipments and on-board processing operations by third country fishing vessels each year.
2. The following fishing vessels shall be inspected in all cases:
  - a) fishing vessels sighted in accordance with Article 47;
  - b) fishing vessels reported in the framework of a notification made under the Community Alert System in accordance with Chapter IV;
  - c) fishing vessels identified by the Commission as presumed to have engaged in IUU fishing in accordance with Article 25 ;
  - d) fishing vessels appearing in a list of presumed IUU vessels adopted by a Regional Fisheries Management Organisation notified in accordance with Article 29.
3. The inspection of the vessels referred to in paragraph 2 shall include the fishing vessel's documents, logbook, fishing gear, catch onboard and any other possible evidence that might be of relevance in relation to its alleged IUU fishing activities. Information on the result of the inspections shall immediately be transmitted to the Commission or to a body designated by it.

### *Article 10 – Inspectors*

1. Member States shall issue an identity document to each inspector. Inspectors shall carry and produce this document when inspecting a fishing vessel.
2. Member States shall ensure that inspectors carry out their duties in accordance with the rules laid down in this section.

### *Article 11 – Inspection procedure*

1. Member States shall ensure that their inspectors:
  - a) in making their inspections, cause minimum disturbance to the vessels activities and cause no deterioration in fish quality;
  - b) draw up an inspection report and forward it to their authorities.
2. Inspectors shall have the ability to examine all zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and any documentation deemed necessary to check compliance with applicable laws, regulations or international management and conservation measures, including the logbook and the loading paper in the case of mother ships and carriers. Inspectors shall also have the ability to question the master or a person designated by him.
3. Inspections shall involve the monitoring of the entire landing or transshipment operations and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped.
4. Inspectors shall sign their report in the presence of the master, who shall have the right to add or cause to be added any information that he considers relevant and sign it. The inspector shall indicate in the logbook that an inspection has been made.

### *Article 12 – Procedure in the event of infringements*

1. If an inspector has serious reason to believe that a fishing vessel has engaged in IUU fishing activity in accordance with the criteria set out in Article 3, he shall:
  - a) note the infringement in the inspection report;
  - b) take all necessary action to ensure safekeeping of the evidence pertaining to such infringement;
  - c) immediately send the inspection report to his/her authority.
2. If the results of the inspection provide reasonable evidence that a third country fishing vessel did engage in IUU fishing activity in accordance with the criteria set out in Article 3, the competent authorities in the port Member State shall not authorise such vessels to land, tranship or process its catch on board.

3. The inspecting Member State shall immediately notify its decision not to authorise landing, transshipment or on-board processing operations taken in accordance with paragraph 2, accompanied by the original inspection report, to the Commission or to a body designated by it, which shall immediately transmit it to the competent authority of the flag state of the inspected fishing vessel with copy to the flag state or states of donor vessels where the inspected fishing vessel has engaged in transshipment operations. Where appropriate, the notification shall be also copied to the Executive Secretary of the Regional Fisheries Management Organisation in whose area of competence the catch was made.
4. The port Member State shall cooperate with the flag state in carrying out an investigation into the suspected breach and, where appropriate, in applying the penalties provided for under national law. In addition, where the suspected breach has taken place in the waters of a third country, the port Member State shall also cooperate with the coastal state concerned.

### **Chapter III**

## **Conditions governing access of third countries fisheries products to the EU territory**

#### *Article 13 – Catch certificates*

1. The importation into the Community of fishery products obtained from illegal, unreported or unregulated fishing shall be prohibited.
2. In order to make effective the prohibition established in paragraph 1, fishery products shall only be imported into the Community when accompanied by a catch certificate validated and verified in conformity with this Regulation.
3. The catch certificate referred to in paragraph 2 shall be validated by the flag state of the vessel or vessels which made the catches from which the fishery products have been obtained. It shall be used to certify that such catches have been made in accordance with applicable laws, regulations and international conservation and management measures.
4. The catch certificate shall contain all the information specified in the specimen shown in Annex I, and shall be validated by a public authority of the flag state with the necessary powers to attest the accuracy of the information.

#### *Article 14 – Catch documentation schemes agreed and in force in the framework of a Regional Fisheries Management Organisation*

1. Catch documents, and any related documents, validated in conformity with catch documentation schemes adopted by a Regional Fisheries Management Organisation, which are recognised by the Commission as complying with the requirements set forth in this Regulation, shall be accepted as catch certificates in respect of the products from species to which such catch documentation schemes apply and shall

be subject to the verification requirements incumbent upon the Member State of importation in accordance with Article 17 and to the provisions on refusal of importation laid down in Article 18.

2. Paragraph 1 applies without prejudice to the specific regulations in force whereby such catch documentation schemes are implemented into Community law.

*Article 15 – Indirect importation of fishery products*

1. Products constituting one single consignment, which are transported through other territories than the territory of the flag state and which have undergone transshipment, transit or temporary warehousing in such territories, may only be imported into the Community when accompanied by a catch certificate or certificates validated by the flag state, and on condition that the operator responsible for the importation operation provides to the authorities of the Member State of importation documented evidence that the products remained under the surveillance of the customs authorities in the state of transshipment, transit or warehousing and did not undergo operations other than unloading, reloading or any operation designed to preserve them in good and genuine condition. Verifiable evidence to this effect shall be provided by means of:
  - a) a single transport document covering the passage from the territory of the flag state through the state of transshipment, transit or warehousing; or
  - b) a certificate issued by the competent authorities of the state of transshipment, transit or warehousing:
    - (i) giving an exact description of the products;
    - (ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; or
  - c) a re-export certificate, validated in accordance with a catch documentation scheme adopted by a Regional Fisheries Management Organisation, recognised for the purposes of this Regulation pursuant to Article 14, provided that the state of transshipment, transit or warehousing has fulfilled its notification requirements on the validation of re-export certificates.
2. Products constituting one single consignment, which have been processed in another territory than the territory of the flag state, may be imported into the Community when accompanied by the catch certificate or certificates validated by the flag state in respect of the catches used to manufacture the products contained in the consignment, on condition that the operator responsible for the importation operation provides to the authorities of the Member State of importation documented evidence that the products have been exclusively processed from the catches referred to on the catch certificate. Verifiable evidence to this effect shall be provided by means of:
  - a) a certificate issued by the customs authorities of the state of processing:

- (i) giving an exact description of the unprocessed and processed products and their respective quantities;
  - (ii) certifying that the processed products have been exclusively processed from the unprocessed products referred to on the catch certificate(s) in the state of processing; or
- b) a re-export certificate, validated in accordance with a catch documentation scheme adopted by a Regional Fisheries Management Organisation, recognised for the purposes of this Regulation pursuant to Article 14, provided that the state of processing has fulfilled its notification requirements on the validation of re-export certificates.

*Article 16 – Exportation of catches made by vessels flying the flag of a Member State*

1. The exportation of catches made by vessels flying the flag of a Member State shall be subject to the validation of a catch certificate by the competent authorities of the flag Member State, as established in Article 13(4).
2. Flag Member States shall notify to the Commission their competent authorities for the validation of the catch certificates referred to in paragraph 1.

*Article 17 – Verification of catch certificates*

1. The validated catch certificate shall be submitted to the competent authorities of the Member State in which the product is intended to be imported at least 72 hours before the estimated time of arrival at the place of entry into the territory of the European Community. The deadline of 72 hours may be reduced in the case of fisheries products imported into the Community via other transport means than transport or fishing vessels. Such authorities shall verify the accuracy of information contained in the catch certificate.
2. The competent authorities of the Member States may carry out all of the controls they deem necessary for the purposes of paragraph 1 and, in any case, where a reasonable doubt exists. These controls may in particular consist in examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of economic operators and other records, inspecting means of transport and storage places of the products and carrying out official enquiries and other similar acts, in addition to the inspection of fishing vessels at port under Chapter II.
3. The following circumstances shall, inter alia, provide grounds for reasonable doubt pursuant to paragraph 2:
  - a) where the verifying authority of the Member State has grounds to question the authenticity of the catch certificate itself or of the validation seal or signature of the relevant authority of the flag state;
  - b) where the verifying authority of the Member State is in possession of information that questions the compliance by the fishing vessel with applicable

laws, regulations or conservation and management measures, or the fulfilment of other requirements set forth in this Regulation;

- c) where fishing vessels, fishing companies or any other economic operators have been reported in connection with presumed IUU fishing activities, including those vessels which have been reported to a Regional Fisheries Management Organisation under the terms of an instrument adopted by such Organisation to establish lists of vessels presumed to have carried out illegal, unreported and unregulated fishing activities;
  - d) where flag states or re-exporting countries have been reported to a Regional Fisheries Management Organisation under the terms of an instrument adopted by such Organisation to implement trade measures vis-à-vis flag states; and
  - e) where a notice has been published under Chapter IV in the framework of the Community's Alert System.
4. For the purpose of verification, the competent authorities of the Member States may request the assistance of the competent authorities of the flag state or of the state whose authorities have validated a re-export certificate in accordance with Article 15(1)(c) or (2)(b), in which case:
- a) the request for assistance shall state the reasons why they have reasonable doubt on the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and any information or documents suggesting that the information on the certificate is inaccurate shall be forwarded in support of the request for assistance. Such request shall be sent without delay to the competent authorities of the flag state or the re-exporting state;
  - b) the procedure for verification shall be completed within 15 days of the date of the verification request. In the event that the competent authorities of the flag state concerned cannot meet the deadline, the verifying authorities in the Member State may, on request by the flag or the re-exporting state, grant an extension of the deadline to reply, which shall not exceed a further 15 days.
5. The release of the products shall be suspended while awaiting the results of the examination and the verification procedures referred to in paragraphs 1 to 4.
6. Member States shall notify to the Commission their competent authorities for the verification of the catch certificates referred to in paragraph 1.

#### *Article 18 – Refusal of importation*

1. The authorities of the Member States referred to in Article 17(1) shall refuse the importation into the Community of fishery products without having to request any additional evidence or send a request for assistance to the flag state where:
- a) the operator has not been able to submit a catch certificate for the products concerned;

- b) the products intended for importation are not the same as those mentioned on the catch certificate;
  - c) the catch certificate is not validated by the public authority of the flag state referred to in Article 13(3);
  - d) the catch certificate does not indicate all the required information;
  - e) The operator is not in a position to prove that the fishery products comply with the conditions of Article 15(1) or (2);
  - f) a fishing vessel figuring on the catch certificate as vessel of origin of the catches is included on a list of IUU vessels referred to in Articles 26 or 29;
  - g) the catch certificate has been validated by the authorities of a flag state identified as a non-cooperating state in accordance with Article 32.
2. The authorities of the Member States referred to in Article 17(1) shall refuse the importation of any fishery products into the Community, following a request for assistance pursuant to Article 17(4), where:
- a) they have received a reply according to which the exporter was not entitled to request the validation of a catch certificate;
  - b) they have received a reply according to which the products do not comply with the conservation and management measures or other conditions under this Chapter are not met;
  - c) they have received no reply within the stipulated deadline;
  - d) they have received a reply which does not provide pertinent answers to the questions raised in the request.
3. When the importation of fishery products is refused pursuant to paragraph 1 or 2, Member States may confiscate and dispose of those products in accordance with national rules.
4. Any person shall have the right to appeal against decisions taken by the competent authorities pursuant to paragraph 1 or 2 which concern him directly and individually. The right of appeal shall be exercised according to the provisions in force in the Member State concerned.
5. The authorities of the Member States shall notify refusals of importation to the flag state and, where appropriate, to the state whose authorities have validated a re-export certificate pursuant to Article 15. A copy of the notification shall be sent to the Commission.

*Article 19 – Flag state notifications; audit and cooperative arrangements*

1. The acceptance of catch certificates validated by a given flag state for the purposes of this Regulation shall be subject to the condition that the Commission has received a notification from the flag state concerned certifying that:
  - a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels;
  - b) that its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities.
2. The Commission shall, where appropriate, establish cooperative administrative arrangements with flag states in order to facilitate the accomplishment by the latter of the formalities linked to the access to ports of fishing vessels, to the importation of fishery products into the Community and to the verification requirements established in this Regulation. Such arrangements shall provide a framework for the exchange of information and mutual assistance, and the conduct of audits by the Commission, in all areas falling within the scope of this Regulation. However, the establishment of a cooperative arrangement shall not be construed as a precondition for the application of this Chapter to imports originating from catches made by vessels flying the flag of any state.
3. The information to be given in the notification referred to in paragraph 1 and the principles and elements of the cooperative administrative arrangements are set forth in Annex III to this Regulation.
4. The Commission shall inform the flag state of the receipt of the notification sent pursuant to paragraph 1. If all elements mentioned in paragraph 1 are not provided by the flag state to the Commission, the Commission shall indicate to the flag state which are the elements missing and request that it provides a new notification.

*Article 20 – Re-exportation*

1. The re-exportation of products imported under a catch certificate in accordance with this chapter shall be authorised through the validation of a re-export certificate by the competent authorities of the Member State from which the re-exportation is to take place, on request by the re-exporter.
2. Re-export certificates shall contain all the information required in the form attached in Annex II and shall be accompanied by a copy of the catch certificates which have been accepted for the importation of the products.
3. Member States shall notify to the Commission their competent authorities for the validation and the verification of re-export certificates.

#### *Article 21 – Record keeping and dissemination*

1. The Commission shall keep a record of states and their competent authorities notified in accordance with this Chapter which shall include:
  - a) Member States which have notified their competent authorities to validate and verify catch certificates and re-export certificates in accordance with this Regulation, respectively, Article 16(2), Article 17(6) and Article 20(3);
  - b) flag states for which notifications have been received in accordance with Article 19(1), indicating those for which a cooperative administrative arrangement has been established in accordance with Article 19(2).
2. The Commission shall publish on its website and in the *Official Journal of the European Union* (C series) the list of states and their relevant national authorities referred to in paragraph 1, and shall regularly update this information. The Commission shall notify the details of the flag states authorities in charge of the validation and the verification of catch certificates to the national authorities in the Member States responsible for the verification of catch certificates.
3. The Commission shall publish on its website and in the *Official Journal of the European Union* (C series) the list of the catch documentation schemes which are recognised in accordance with Article 14 and shall update it on a regular basis.

## **Chapter IV Community Alert System**

#### *Article 22 – Issuance of alerts*

1. Where information obtained in accordance with chapters II, III, V, VI, VII, VIII, X or XII raises reasonable doubt as to the compliance with applicable laws, regulations or international conservation and management measures in respect of fishing vessels or fishery products from certain third countries, the Commission shall publish on its website and in the *Official Journal of the European Union* (C series) an alert notice to warn operators and to ensure that Member States take appropriate measures in respect of the third countries concerned pursuant to this Chapter.
2. The Commission shall communicate this information without delay to the Member States' authorities and to the flag state concerned and, where appropriate, the state of re-exportation.

#### *Article 23 – Action following issuance*

1. Upon receipt of the information referred to in Article 22(2), Member States shall:
  - a) identify the consignments of fishery products previously imported which fall within the scope of the notice to operators and carry out a verification

procedure of the catch certificate and, where appropriate, the re-export certificate, in accordance with the provisions laid down in Articles 17 and 20;

- b) carry out a verification procedure of the catch certificate, and, where appropriate, of the re-export certificate in accordance with the provisions of Articles 17 and 20, in respect of all consignments of fishery products intended for importation which fall within the scope of the notice;
  - c) identify all previous movements of the fishing vessels which fall under the scope of the notice and carry out the appropriate verifications, including the verification of previously submitted catch certificates;
  - d) subject the fishing vessels which fall within the scope of the notice, in accordance with the rules of international law, to the necessary enquiries, investigations or inspections at sea, in ports or any other landing places.
2. Member States shall report to the Commission the conclusions of their verifications and requests for verification and the actions taken where non compliance with applicable laws, regulations or international conservation and management measures has been established.
  3. Where the Commission decides that in light of the conclusions of verifications carried out pursuant to paragraph 1, the reasonable doubt no longer exists, it shall, without delay:
    - a) publish a notice to that effect on its website and in the *Official Journal of the European Union* (C series) annulling the earlier notice;
    - b) advise the flag state and, where appropriate, the state of re-exportation of the annulment; and
    - c) advise Member States, through appropriate channels.
  4. Where the Commission decides that in light of the conclusions of enquiries, inspections and verifications carried out pursuant to paragraph 1, reasonable doubt remains, it shall, without delay:
    - a) update the notice to operators, by a new publication on its website and in the *Official Journal of the European Union* (C series);
    - b) advise the flag state and, where appropriate, the state of re-exportation;
    - c) advise Member States, through appropriate channels; and
    - d) where appropriate, refer the matter to the Regional Fisheries Management Organisation whose conservation and management measures might have been violated.
  5. Where the Commission decides that in light of the conclusions of enquiries, inspections and verifications carried out pursuant to paragraph 1, there are sufficient grounds to consider that the facts established might constitute a case of non

compliance with applicable laws, regulations or international conservation and management measures, it shall, without delay:

- a) publish a new notice to operators on its website and in the *Official Journal of the European Union* (C series), to inform them on these findings;
- b) advise the flag state and undertake the appropriate proceedings and demarches in accordance with Chapters V and VI;
- c) where appropriate, advise the state of re-exportation;
- d) advise Member States, through appropriate channels;
- e) where appropriate, refer the matter to the Regional Fisheries Management Organisation whose conservation and management measures might have been violated.

## **Chapter V**

### **Identification of vessels engaged in IUU fishing activities**

#### *Article 24 – Alleged IUU fishing activities*

1. The Commission, or a body designated by it, shall compile and analyse all information on IUU fishing activities:
  - a) obtained in accordance with chapters II, III, IV, VIII, X and XII, or
  - b) as appropriate, any other relevant information, such as :
    - the catch data;
    - trade information obtained from National Statistics and other reliable sources;
    - vessel registers and databases;
    - Regional Fisheries Management Organisation catch document or statistical document programmes;
    - reports on sightings or other activities on presumed IUU vessels and IUU vessel lists reported or adopted by Regional Fisheries Management Organisations;
    - any other relevant information obtained *inter alia* in the ports and on the fishing grounds.
2. Member States shall at any time submit to the Commission any additional information which might be relevant for the establishment of the European Community IUU Vessels List. The Commission, or a body designated by it, shall

circulate the information, together with all the evidence provided, to the Member States and to the flag states concerned.

3. The Commission, or a body designated by it, shall keep a file in respect of each vessel reported as allegedly involved in IUU fishing activities which shall be updated as new information is obtained.

#### *Article 25 – Presumed IUU fishing activities*

1. The Commission shall identify the vessels for which sufficient information has been obtained in accordance with Article 24 to presume that such vessels may be engaged in IUU fishing activities, warranting an official enquiry with the flag state concerned.
2. Flag states whose vessels are identified pursuant to paragraph 1 shall be notified by the Commission with an official request for an enquiry into the alleged IUU activities of their flagged vessels concerned. The notification shall:
  - a) issue an official request to the flag state that it takes all the necessary measures to investigate the alleged IUU fishing activities and timely share the results of this investigation with the Commission;
  - b) issue an official request to the flag state to take immediate enforcement action should the allegation formulated against the fishing vessel concerned be proven founded, and to inform the Commission of the measures taken;
  - c) notify the owner or, where appropriate, the operator of the vessels of the consequences which would result should the vessel be included in the European Community IUU Vessels List, as laid down in Article 36. Flag states shall also be requested to provide information to the Commission as to the vessel's owners or, where appropriate, operators so as to ensure that such persons can be heard if need be, in accordance with Article 26(3).
3. The Commission shall circulate the information on vessels presumed to be engaged in IUU activities to all Member States in order to facilitate the implementation of systematic port controls on these vessels in accordance with Article 9(2)(c).

#### *Article 26 – Establishment of the European Community IUU vessel list*

1. The Commission shall establish the European Community IUU vessel list. This List shall include the vessels in relation to which, further to the steps taken pursuant Articles 24 and 25, the information obtained in accordance with this Regulation establishes that they are engaged in IUU fishing activities and whose flag states have taken no effective action in response to those activities.
2. The Commission shall request flag states with vessels on the European Community IUU vessels list to:
  - a) notify the owner of the vessels of its inclusion on the European Community IUU vessels list, of the reasons justifying this inclusion and of the

consequences which result from being included in the list, as laid down in Article 36 and

- b) take all the necessary measures to eliminate these IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licences of these vessels, and to inform the Commission of the measures taken.
3. Before placing any vessel on the European Community IUU vessel list, the Commission shall provide the owner, and, where appropriate, the operators of the vessel concerned with all elements supporting the suspicion that the vessel has carried out IUU fishing, and give the owner, and, where appropriate, the operators the possibility of being heard.
  4. When a decision is taken to place a vessel on the European Community IUU vessel list, the Commission shall notify that decision, and the reasons for it, to the owner and, where appropriate, the operator of the vessel.
  5. The obligations imposed on the Commission by paragraphs 3 and 4 apply without prejudice to the primary responsibility of the flag state over the vessel, and only insofar as the relevant information on the identification of the vessel owner and operators is at the disposal of the Commission.

*Article 27 – Removal of vessels from the European Community IUU vessels list*

1. The Commission shall remove a vessel from the European Community IUU vessel list if the vessel's flag state demonstrates that:
  - a) the vessel did not engage in any of the IUU fishing activities for which it was placed on the list, or
  - b) effective action has been taken in response to the IUU fishing activities in question, including, inter alia, prosecution, and imposition of sanctions of adequate severity.
2. The owner or, where appropriate, the operator of a vessel placed on the European Community IUU vessels list may submit a request to the Commission to review the status of such vessel in case of inaction by the flag state under paragraph 1. The Commission shall only consider removing the vessel from the list if the following conditions are fulfilled:
  - a) at least two years have elapsed since the vessel's listing during which no further reports of alleged IUU fishing activities by the vessel have been received by the Commission in accordance with Article 24;
  - b) the owner submits information relating to the current operation of the vessel that demonstrates that it is operating in full conformity with laws, rules and/or conservation measures that apply to any fisheries in which it is participating;
  - c) the Commission is satisfied that the vessel concerned, its owner or operators, maintain no links, whether direct or indirect, with any other vessels or operators presumed or confirmed to be engaged in IUU fishing activities.

*Article 28 – Content, publicity and maintenance of the European Community IUU vessels list*

1. The European Community IUU vessels list shall contain the following details for each vessel:
  - a) name and previous names, if any;
  - b) flag and previous flags, if any;
  - c) owner and previous owners, including beneficial owners, if any;
  - d) operator and previous operators, if any;
  - e) call sign and previous call signs, if any;
  - f) Lloyds/IMO number (where available);
  - g) photographs, where available;
  - h) date of first inclusion on the IUU Vessel List;
  - i) summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities.
2. The Commission shall take any measure necessary to ensure publicity of the European Community IUU vessels list, including by placing it on the DG Fisheries website.
3. The list shall be regularly updated and provide for a system to automatically notify updates to Member States, Regional Fisheries Management Organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit the list to the Food and Agriculture Organisation of the United Nations and to Regional Fisheries Management Organisations for the purposes of enhancing co-operation between the European Community and these organisations aimed at preventing, deterring and eliminating IUU fishing.

*Article 29 – IUU vessel lists adopted by Regional Fisheries Management Organisations*

1. In addition to the vessels referred to in Article 26, vessels included in the IUU vessel lists adopted by Regional Fisheries Management Organisations shall automatically be included in the European Community IUU Vessel List. Removal of such vessels from the European Community IUU vessels list shall be governed by the decisions taken in their respect by the relevant Regional Fisheries Management Organisation.
2. The Commission shall each year, on receiving from Regional Fisheries Management Organisation the lists of vessels presumed and confirmed as involved in IUU fishing activities, notify them to the Member States.
3. The Commission shall promptly notify to the Member States any addition to, any deletion from and/or any modification of the lists referred to in paragraph 2 at any

time such changes occur. Article 36 shall apply in respect of the vessels appearing on the RFMO IUU lists so modified as of the time of their notification to Member States.

## **Chapter VI**

### **Non-cooperating third states**

#### *Article 30 – Identification of non-cooperating third states*

1. The Commission, in accordance with the procedure established in Article 52, shall identify the third states that it considers as non-cooperating states in fighting IUU fishing activities.
2. This identification shall be based on the review of all information obtained pursuant to chapters II, III, IV, V, VIII, X and XII, or, as appropriate, any other relevant information, such as the catch data, trade information obtained from National Statistics and other reliable sources, vessel registers and databases, Regional Fisheries Management Organisation catch documents or statistical document program and lists of IUU vessels adopted by Regional Fisheries Management Organisations as well as any other information obtained in the ports and on the fishing grounds.
3. A state may be identified as a non-cooperating state if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal or market states, to take action to prevent, deter and eliminate IUU fishing activities.
4. For the purposes of paragraph 3, the Commission shall primarily rely on an examination of measures taken by the state concerned in respect:
  - a) of recurrent IUU fishing activities suitably documented as carried out or supported by vessels flying its flag or by its nationals, or by vessels operating in its waters or using its ports, or
  - b) of access of fisheries products stemming from IUU fishing activities to its market.
5. To this end, the Commission shall take into account:
  - a) whether the state concerned effectively cooperates with the Community, by providing a response to requests made by the Commission to investigate, provide feedback or follow-up to IUU fishing and related activities;
  - b) whether the state concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing activities, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from these activities have been applied;

- c) the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing activities considered;
  - d) for developing countries, the existing capacity of their competent authorities.
6. The following elements shall also be considered:
- a) the ratification of or accession of the states concerned to international fisheries instruments, and in particular the United Nations Convention on the Law of the Sea of 10 December 1982, the United Nations 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the FAO 1993 Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas;
  - b) the status of the state concerned as party or cooperating non-party to Regional Fisheries Management Organisations, or its agreement to apply the conservation and management measures established by such organisations;
  - c) any acts or omissions by the state concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.
7. Where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities, shall be duly taken into consideration in the implementation of this Article.

*Article 31 – Demarches in respect of states identified as non-cooperating third states*

1. The Commission shall, without delay, notify states which may be identified as non-cooperating states in accordance with the criteria laid down in Article 30, including in this notification:
  - a) the reason or reasons for the identification with all available supporting evidence;
  - b) the opportunity to respond to the Commission in writing with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action for improvement and the steps taken to rectify the situation;
  - c) the consequences of its identification as non-cooperating state, as provided in Article 37.
2. The Commission shall also include in the notification referred to in paragraph 1 a request that the state concerned take any necessary measures for the cessation of the IUU fishing activities in question and the prevention of any future such activities, and rectify any act or omission referred to in Article 30(6)(c).

3. The Commission shall, by more than one means of communication, transmit its notification and request to the state concerned. The Commission shall seek to obtain confirmation from such state that it has received the notification.

*Article 32 – Establishment of a list of non-cooperating states*

1. In light of the results of the demarches prescribed in Article 31, the Commission shall adopt, in accordance with the procedure established in Article 52, a list of non-cooperating states.
2. The Commission shall without delay notify to the state concerned its identification as non-cooperating state and the measures applied in accordance with Article 37 and request it to rectify the current situation and to advice on the measures taken to ensure compliance with conservation and management measures by its vessels.
3. The Commission shall also notify without delay Member States of its decision and request them to ensure the immediate implementation of the measures decided in Article 37. Member States shall notify the Commission of any measures they have taken in response to this request.

*Article 33 – Removal from the list of non-cooperating states*

1. The Commission, in accordance with the procedure established in Article 52, shall remove a state from the list of non-cooperating states if the state concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified states concerned have taken concrete measures capable of achieving a lasting improvement of the situation.
2. Following a decision taken pursuant to paragraph 1, the Commission shall notify without delay Member States of the lifting of the measures referred to in Article 37 in respect of the state concerned.

*Article 34 – Publicity of the list of non-cooperating states*

The Commission shall take any measure necessary to ensure publicity of the list of non-cooperating states, in a manner consistent with any applicable confidentiality requirements, including placing it on the DG Fisheries website. The list shall be regularly updated and the Commission shall provide for a system to automatically notify updates to Member States, Regional Fisheries Management Organisations and any member of the civil society that should so request. Furthermore, the Commission shall transmit list of non-cooperating states to the Food and Agriculture Organisation of the United Nations and to Regional Fisheries Management Organisations for the purposes of enhancing co-operation between the European Community and these organisations aimed at preventing, deterring and eliminating IUU fishing.

### *Article 35 – Emergency measures*

1. If there is evidence that the measures adopted by a state undermine the conservation and management effort led by a Regional Fisheries Organisation, the Commission shall be entitled to adopt emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.
2. The emergency measures may include, inter alia, that:
  - a) vessels flying the flag of the state concerned shall not be granted access to the ports of Member States, except in case of force majeure;
  - b) vessels flying the flag of a Member State shall not be authorised to engage in joint fishing operations with vessels flying the flag of the state concerned;
  - c) vessels flying the flag of a Member State shall not be authorised to fish in waters under the jurisdiction of the state concerned;
  - d) provision of live fish for fish farming in the waters under the jurisdiction of the state concerned shall not be authorised;
  - e) live fish caught by vessels flying the flag of the state concerned shall not be accepted for the purposes of fish farming in the waters under the jurisdiction of a Member State.
3. The emergency measures shall have immediate effect. They shall be notified to the Member States and to the state concerned and published in the *Official Journal of the European Union*.

## **Chapter VII**

### **Measures in respect of vessels and states involved in IUU activities**

#### *Article 36 – Action in respect of vessels included in the European Community IUU vessels list*

The following measures shall apply to the vessels referred to in Article 26:

- a) flag Member States shall not submit to the Commission any requests for fishing authorisations in respect of IUU vessels;
- b) current fishing authorisations or special fishing permits issued by flag Member States in respect of IUU vessels shall be withdrawn;
- c) IUU vessels flying the flag of a third country shall not be authorised to fish in Community waters and shall be prohibited to be chartered;
- d) fishing vessels flying the flag of a Member State shall not in any way assist, engage in fish processing operations or participate in any transshipment or joint fishing operations with vessels on the IUU vessels list;

- e) IUU vessels flying the flag of a Member State shall only be authorised access to their home ports and to no other Community port, except in case of force majeure. IUU vessels flying the flag of a third country shall not be authorised to enter into a port of a Member State, except in case of force majeure. Alternatively, a Member State may authorise the entry into its ports of an IUU vessel on the condition that the catches on board and, where appropriate, fishing gear prohibited pursuant to conservation and management measures adopted by Regional Fisheries Management Organisations, are confiscated. Member States shall also confiscate catches and, where appropriate, fishing gear prohibited pursuant to conservation and management measures adopted by Regional Fisheries Management Organisations, on board IUU vessels which have been authorised to enter into its ports for reason of force majeure or distress;
- f) IUU vessels flying the flag of a third country shall not be supplied in ports with provisions, fuel or other services, except in case of force majeure;
- g) IUU vessels flying the flag of a third country shall not be authorised to change the crew, except as necessary in case of force majeure;
- h) Member States shall refuse the granting of their flag to IUU vessels;
- i) the importation of fishery products caught by such vessels shall be prohibited, and accordingly catch certificates accompanying such products shall not be accepted or validated;
- j) the exportation and re-exportation of fishery products from IUU vessels for processing shall be prohibited.

*Article 37 – Action in respect of non-cooperating states*

The following measures shall apply to the states referred to in Article 32:

- a) the importation into the Community of fishery products caught by vessels flying the flag of such states shall be prohibited, and accordingly catch certificates accompanying such products shall not be accepted; in case where the identification of a non-cooperating state pursuant to Article 30 is justified by the lack of appropriate measures adopted by this state in relation to IUU fishing activities affecting a given stock or species, the prohibition of importation may only apply in respect of this stock or species;
- b) the purchase by Community operators of a fishing vessel flying the flag of such states shall be prohibited;
- c) the reflagging of a fishing vessel flying the flag of a Member State to such states shall be prohibited;
- d) Member States shall not authorise the conclusion of chartering agreements with such states for fishing vessels flying their flag;
- e) the exportation of Community fishing vessels to such states shall be prohibited;

- f) private trade arrangements between nationals of a Member State and such states in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of such states shall be prohibited;
- g) joint fishing operations involving vessels flying the flag of a Member State with a vessel flying the flag of such states shall be prohibited;
- h) Member States shall inform importers, transhippers, buyers, equipment suppliers, bankers, and operators carrying out other services, of the risks associated with conducting business operations linked to fishing activities with nationals of any of such states;
- i) the Commission shall propose the denunciation of any standing bilateral fisheries agreement or fisheries partnership agreements with such states;
- j) the Commission shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such states.

## **Chapter VIII**

### **Nationals**

#### *Article 38 – Nationals who engage in or support IUU fishing*

1. Member States shall cooperate among themselves and with third countries, and shall take all necessary measures in accordance with national and Community law, in order to:
  - a) ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board vessels referred to in Article 26;
  - b) identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing activities.
2. Without prejudice to the primary responsibility of the flag state, Member States shall take appropriate measures, subject to and in accordance with their applicable laws and regulations:
  - a) to verify if any natural or legal persons subject to their jurisdiction are engaged in IUU fishing activities;
  - b) to take appropriate action in response to any verified activities referred to in subparagraph a).
3. In each Member State, a single authority shall be responsible for coordinating the collection and verification of information on activities of nationals referred to in this Article and for reporting to and cooperating with the Commission.

### *Article 39 – Prevention and sanction*

1. Nationals of a Member State shall notify to their competent authorities any information pertaining to legal, beneficial or financial interests in, or control of, fishing vessels flagged to a third country. Member States shall ensure that the failure to provide such notification is adequately sanctioned under their domestic law.
2. Nationals of a Member State shall not sell or export any vessel to operators involved in the operation, management or ownership of vessels referred to in Article 26.
3. Importers, transhippers, buyers, consumers, equipment suppliers, bankers, insurers, and other service providers shall not conduct business with vessels referred to in Article 26 or trade in fish or fish products derived from IUU fishing.
4. Without prejudice to other provisions laid down in Community law pertaining to public funds, Member States shall not grant any public aid under national aid regimes or under Community funds to operators involved in the operation, management or ownership of fishing vessels referred to in Article 26.
5. Member States shall obtain information on the existence of any arrangement between their nationals and a third country allowing the reflagging of fishing vessels flying their flag to such third country. They shall inform the Commission thereof by submitting of a list of the vessels concerned.

## **Chapter IX**

### **Immediate enforcement measures, sanctions and accompanying sanctions**

#### *Article 40 – Scope*

This Chapter shall apply in relation to:

- a) serious infringements committed within the territory or within the maritime waters subject to the sovereignty or jurisdiction of the Member States, and
- b) serious infringements committed by Community fishing vessels or Community nationals.

#### *Article 41 – Serious infringements*

For the purpose of this Regulation, serious infringement means:

- a) the activities considered to constitute IUU fishing activities in accordance with the criteria set out in Article 3;
- b) the intentional conduct of business with vessels that have engaged in IUU fishing as referred to in Article 26;

- c) the intentional trade in fishery products derived from IUU fishing;
- d) the importation of fishery products into the Community in contravention of this Regulation.

*Article 42 – Immediate enforcement measures*

1. Where a natural or legal person is suspected of having committed or is found *in flagrante delicto* while committing a serious infringement referred to in Article 41, Member States shall start a full investigation of the infringement and, in conformity with their national law and depending on the gravity of the infringement, take immediate enforcement measures such as in particular:
  - a) the immediate cessation of fishing activities;
  - b) the rerouting to port of the vessel;
  - c) the rerouting of the transport vehicle to another location for inspection;
  - d) the ordering of a bond;
  - e) the seizure of illegal fishing gear, catches or fisheries products;
  - f) the temporary immobilisation of the vessel or transport vehicle concerned;
  - g) the suspension of the authorisation to fish.
2. The enforcement measures shall be of such nature as to prevent the continuation of the infringement and to allow the competent authorities to complete the investigation of the serious infringement concerned.

*Article 43 – Sanctions for serious infringements*

1. Member States shall ensure that a natural person having committed or a legal person found liable for a serious infringement is punishable by effective, proportionate and dissuasive sanctions, which shall include fines of a maximum of at least EUR 300 000 for natural persons and of at least EUR 500 000 for legal persons.
2. Member States may apply a system whereby the fine is proportionate to the prejudice caused to the fishery resources or the marine environment concerned, to the financial advantage achieved or envisaged by the commission of an offence, or to any other value indicating the financial situation of the natural or legal person, provided that such system allows for maximum fines, which are at least equivalent to EUR 300 000 for natural persons and of at least EUR 500 000 for legal persons.
3. Member States in which the Euro has not been adopted shall apply the exchange rate between the Euro and their currency as published in the *Official Journal of the European Union* on [...].

*Article 44 – Overall level of sanctions and accompanying sanctions*

The overall level of sanctions and accompanying sanctions shall be calculated in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements. For this purpose, account must be also taken of measures taken pursuant to Article 42.

*Article 45 – Accompanying sanctions*

The sanctions provided for in this chapter may be accompanied by other sanctions or measures, in particular:

- a) the sequestration of the vessel involved in the infringement;
- b) temporary immobilisation of the vessel;
- c) the confiscation of prohibited gears, catches, products;
- d) the suspension or withdrawal of authorisation to fish;
- e) the reduction or withdrawal of fishing rights;
- f) the temporary or permanent exclusion from the right to obtain new fishing rights;
- g) temporary or permanent ban on access to public assistance or subsidies.

*Article 46 – Liability of legal persons*

1. Member States shall ensure that legal persons can be held liable for serious infringements referred to in Article 41 where such infringements have been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a determining position within the legal person, based on:
  - a) a power of representation of the legal person, or
  - b) an authority to take decisions on behalf of the legal person, or
  - c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Article 41 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person shall not exclude proceedings against natural persons who are perpetrators, instigators or accessories in the infringements concerned.

## **Chapter X**

### **Implementation of provisions adopted within certain Regional Fisheries Management Organisations pertaining to vessel sightings**

#### *Article 47 – Sighting at sea*

1. The provisions of this Chapter shall apply to fishing activities subject to the rules on sightings at sea adopted within ICCAT, CCAMLR and IOTC. The scope of this Chapter shall be reviewed by 2012.
2. In the event that a Member State's vessel, aircraft or competent authority responsible for inspection at sea sights a fishing vessel, engaged in activities that may be considered as IUU fishing activities, it shall forthwith issue a report of such sighting. These reports and the results of investigations carried out on these fishing vessels by Member States shall be considered evidence for use in the implementation of the different identification and enforcement mechanisms provided in this Regulation.
3. In the event that the master of a Community fishing vessel sights a fishing vessel engaged in activities referred to in paragraph 2, the master shall document as much information as possible on such sighting, including:
  - a) the name and description of the fishing vessel;
  - b) the fishing vessel's call sign;
  - c) the registration number and, if appropriate, the Lloyds IMO number of the fishing vessel;
  - d) the flag state of the fishing vessel;
  - e) the position (latitude, longitude) at the time when first identified;
  - f) the date/time UTC when first identified;
  - g) a photograph or photographs of the fishing vessel to support the sighting;
  - h) any other relevant information regarding the observed activities of the fishing vessel concerned.
4. Sighting reports shall be sent without delay to the competent authority of the flag Member State of the sighting vessel, which shall immediately transmit them to the Commission or to the body designated by it. The Commission or the body designated by it shall then immediately inform the flag state of the fishing vessel sighted. The Commission or a body designated by it shall thereupon transmit the sighting report to all the Member States and, as appropriate, to the Executive Secretary of the relevant Regional Fisheries Management Organisations for further action in accordance with the measures adopted by those organisations.

5. A Member State which receives a sighting report reporting the activities of a fishing vessel flying its flag from the competent authority of a contracting party of a Regional Fisheries Management Organisation shall immediately notify the report and all relevant information to the Commission or to the body designated by it, which shall thereupon forward this information to the Executive Secretary of the Regional Fisheries Management Organisation concerned for further action in accordance with the measures adopted by this organisation, as appropriate.
6. This Article shall apply without prejudice to stricter provisions adopted by Regional Fisheries Management Organisations to which the Community is a Contracting Party or a Cooperating Non-Contracting Party.

*Article 48 – Submission of information regarding sighted fishing vessels*

1. Member States which obtain suitably documented information regarding sighted fishing vessels shall transmit without delay this information to the Commission or to the body designated by it.
2. The Commission or the body designated by it shall also examine suitably documented information regarding sighted vessels submitted by individual citizens, civil society organizations, including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

*Article 49 – Investigation of sighted fishing vessels*

1. Member States shall immediately and fully investigate the activities of fishing vessels flying their flag which have been sighted in accordance with Article 47.
2. Member States shall notify to the Commission or the body designated by it the details of any action taken or intended in respect of the sighted vessels flying their flag, as soon as practicable and in any case within two months of the notification of the sighting report pursuant to Article 47(4). Reports on the progress of the investigations on the activities of the sighted fishing vessel shall be provided to the Commission or to the body designated by it at appropriate regular intervals. A final report on the outcome when the investigations are completed shall be provided to the Commission or to the body designated by it.
3. Member States other than the flag Member State concerned shall verify if the sighted vessels reported have carried out activities in the waters under their jurisdiction or if fisheries products stemming from those vessels have been landed or imported into their territory and shall investigate their record of compliance with relevant conservation and management measures. Member States shall notify without delay to the Commission, or to the body designated by it, and to the flag Member State concerned the outcome of their verifications and investigations.
4. The Commission or the body designated by it shall notify to all the Member States the information received in accordance with paragraphs 2 and 3.
5. This Article shall apply without prejudice to the provisions of Chapter V of Council Regulation (EC) No 2371/2002 and to the provisions adopted by Regional Fisheries

Management Organisations to which the Community is a Contracting Party or a Cooperating Non-Contracting Party.

## **Chapter XI**

### **Mutual assistance between the Member States, with third states and with the Commission and the IUU fishing information system**

#### *Article 50*

1. The administrative authorities responsible for implementation of this Regulation in the Member States shall cooperate with each other, with administrative authorities of third states and with the Commission in order to ensure compliance with this regulation.
2. To this end, a system for mutual assistance shall be established, which shall include an automated information system, the "IUU fishing information system" to assist competent authorities in preventing, investigating and prosecuting IUU fishing activities.
3. Detailed rules for the application of this Chapter shall be adopted in accordance with the procedure laid down in Article 52.

## **Chapter XII**

### **Final provisions**

#### *Article 51 – Implementation*

The measures necessary for implementing the provisions of this Regulation shall be adopted in accordance with the procedure referred to in Article 52.

#### *Article 52 – Committee procedure*

1. The Commission shall be assisted by the Committee set up under 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.
3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.
4. The Committee shall adopt its Rules of Procedure.

*Article 53 – Reporting obligations*

1. Not later than 30 April each year, the Member States shall transmit to the Commission a report on the application of this Regulation during the previous calendar year.
2. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up a report every three years to be submitted to the Council and the European Parliament.
3. An evaluation of the impact of this regulation on IUU fishing activities shall be undertaken by the Commission 5 years after the entry into force of this regulation.

*Article 54 – Repeal*

Article 28b(2), 28e, 28f and 28g of Council Regulation (EEC) No 2847/93, Council Regulation (EC) No 1093/94, Council Regulation (EC) No 1447/1999, Articles 8, 19a, 19b, 19c, 21, 21b, 21c of Council Regulation (EC) No 1936/2001 and Articles 26a, 28, 29, 30 and 31 of Council Regulation (EC) No 601/2004 are hereby repealed.

References to the repealed Regulations shall be construed as references to the present Regulation.

*Article 55 – Entry into force*

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

Chapter III shall apply one year after the entry into force of this Regulation.

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 – European Community Catch Certificate

EUROPEAN COMMUNITY CATCH CERTIFICATE									
<b>Document number</b>									
<b>PRODUCTION SECTION</b>									
<b>1. Validating Authority</b>									
<b>Name</b>			<b>Address</b>				<b>Tel. Fax</b>		
<b>2. Fishing Vessel Name</b>			<b>Flag - Home Port &amp; Registration Number</b>				<b>Call Sign</b>		<b>IMO/Lloyd's Number (if issued)</b>
<b>Fishing licence No. – Valid to</b>			<b>Inmarsat No. Telefax No. Telephone No. E-mail address (if issued)</b>						
<b>3. Description of Product</b>			<b>Type of processing authorised:</b>			<b>4. References of applicable conservation and management measures</b>			
<b>Species</b>	<b>Product code</b>	<b>Catch area(s) dates</b>	<b>Estimated live weight (kg)</b>	<b>Estimated weight to be landed (kg)</b>	<b>Verified Weight Landed (kg)</b>				
<b>5. Master of Fishing vessel declaration:</b> I certify that the above information is complete, true and correct and that the catch has been made in a manner consistent with the applicable conservation and management measures . <b>Name - Signature - Seal:</b>									
<b>6. Declaration of Transhipment at Sea</b>					<b>Signature and Date</b>		<b>Transhipment Date/Area/Position</b>		<b>Estimated weight (kg)</b>
Master of Fishing vessel Name									
I certify that the above information is complete, true and correct.									
<b>Master of Receiving Vessel</b>			<b>Signature</b>		<b>Vessel Name</b>		<b>Call Sign</b>		<b>IMO/Lloyds Number (if issued)</b>
Name									
I certify that the above information is complete, true and correct.									
<b>7. Transhipment authorisation within a Port Area:</b>									
<b>Name</b>			<b>Authority</b>		<b>Signature</b>			<b>Seal (Stamp)</b>	
I certify that the above information is complete, true and correct									
<b>Name</b>	<b>Authority</b>	<b>Signature</b>	<b>Address</b>	<b>Tel.</b>	<b>Port of Landing</b>	<b>Date of Landing</b>	<b>Seal (Stamp)</b>		
<b>8. Transport section: Country of exportation Port/airport/other place of departure</b>				<b>7. Exporter Declaration:</b> I certify that the above information is complete, true and correct.					
<b>Vessel name and flag</b>				<b>Container number(s): list attached</b>		<b>Name</b>	<b>Address</b>		<b>Signature</b>
<b>Flight number airway bill number</b>									
<b>Truck nationality and registration number</b>									
<b>Railway bill number</b>									
<b>Other transport document:</b>									
<b>9. Flag State Authority</b>			<b>Name/Title</b>		<b>Signature</b>		<b>Date</b>		<b>Seal (Stamp)</b>
Validation: I certify that the above information is complete, true and correct									
<b>10. Importer Declaration:</b>									
I certify that the above information is complete, true and correct.									
<b>Name of Consignee/Importer</b>			<b>Address</b>		<b>City</b>		<b>Date</b>		<b>Signature</b>
<b>Non-manipulation document</b>			<b>References</b>						
<b>11. Import control</b>									
<b>Authority</b>			<b>Place</b>		<b>Importation authorised *</b>		<b>Importation suspended*</b>		<b>Verification requested - date</b>
<b>customs declaration (if issued)</b>			<b>Number</b>		<b>Date</b>		<b>Place</b>		

\* Tick if applicable

## ANNEX II – European Community Re-export Certificate

### European Community Re-export Certificate

<b>EUROPEAN COMMUNITY RE-EXPORT CERTIFICATE</b>						
Certificate number		Date			Member State	
1. Description of re-exported product:				Description or imported product:		
Species	Product CN code	Net weight exported (kg)	Species	Product CN code	Net weight imported (Kg)	Catch certificate number date
2. Re-Exporter Certification I certify that the above information is complete, true and accurate and that the above product comes from product imported with the attached Catch Certificate.						
Name		Address	Signature		Date	
3. Authority						
Name/Title		Signature		Date	Seal (Stamp)	
4. Re-export control						
Place:						
Re-export authorised *		Re-export suspended *	Verification requested – date *		Re-export declaration number and date	

### **ANNEX III – Flag State Notifications, Audit and Cooperative Arrangements**

#### 1. Content of flag state notifications pursuant to Article 19

The Commission shall request flag states to notify the names, addresses and official seal prints of the public authorities situated in their territory which are empowered to:

- register vessels under their flag;
- grant, suspend, withdraw fishing licences to their vessels;
- communicate sample forms of their catch certificate in accordance with the specimen in Annex I;
- attest the veracity of information provided in the catch certificates referred to in Article 13 and validate such certificates;
- implement, control and enforce laws, regulations and conservation and management measures which must be complied with by their vessels;
- carry out verifications of such catch certificates to assist the competent authorities of the Member States through the administrative co-operation referred to in Article 19(2);

and to update such notifications.

#### 2. Catch documentation schemes adopted by Regional Fishery Management Organisations.

- Where a catch documentation scheme adopted by a Regional Fishery Management Organisation has been recognised as a catch certification scheme for the purposes of this Regulation, the flag state notifications made under such catch documentation schemes are deemed to be done in accordance with the provisions laid down in paragraph 1 of this Annex and the provisions of this Annex should be deemed to apply *mutatis mutandis*.

#### 3. Cooperative arrangements with flag states referred to in Article 19

The Commission shall be entitled to enter into negotiations with the flag states referred to in Article 19 in order to conclude arrangements pertaining to the implementation of the catch certification provisions set forth in this Regulation.

Such arrangements shall respond to the following principles:

- They shall establish cooperative means to ensure that fishery products imported into the European Community are originating from catches made in compliance with applicable laws, regulation or conservation and management measures.
- They shall facilitate the accomplishment by flag states of the formalities linked to the access to ports of fishing vessels, the importation of fishery products and the verification requirements of catch certificates established in Chapters II and III.

- They shall provide for the conduct of audits on the spot by the Commission or a body designated by it to verify the effective implementation of the arrangement.
- They shall provide for the establishment of a framework for the exchange of information between the two sides in support of the implementation of the arrangement.