

Combating Illegal Fishing

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Abstract

Illegal, unreported and unregulated (IUU) fishing is a worldwide phenomenon. Its extent and its environmental, economic and social consequences are such that it has become a priority issue at international level. IUU fishing contributes to the depletion of fish stocks and jeopardises protection and recovery measures put in place to ensure the viability of resources. It represents unfair competition for those who exploit fish resources legally. The Commission have been involved in the fight against IUU fishing for over a decade and in 2002 the Commission adopted an Action Plan against IUU fishing inspired by the FAOs International Plan of Action to prevent, deter and eliminate IUU fishing of 2001. However, despite regional and international efforts to stop IUU fishing the phenomenon is still a growing problem and as a result, the European Community intensified its action towards IUU fishing by launching a consultation process in 2007. A Proposal to prevent, deter and eliminate IUU fishing was adopted in October 2007 and a Regulation to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing was adopted on 29 September 2008, after a unanimous political agreement.

Keywords: fishery, implementation, law, legal, Regulation

1. Introduction

A meeting was held on 13 October 2008 with representatives from Missions to third countries in Brussels and the Directorate-General for Maritime Affairs and Fisheries is also organising a series of regional seminars for the benefit of authorities in developing countries.

The Directorate-General for Maritime Affairs and Fisheries is committed to inform stakeholders of the Regulation and are organising and participating in several events.

The Commission is working towards an effective implementation of the IUU Regulation. It has carried out technical training with both third countries and EC Member States and is preparing the official list of flag State notifications for publication at the end of 2009. A provisional list of flag State notifications is available below.

The Implementing regulation to the IUU Regulation was adopted on 29 January 2010. The Commission has also drafted a handbook to facilitate the implementation of the IUU Regulation. The handbook is a reader-friendly document in English which gives practical advice for both authorities and stakeholders in EC Member States and third countries. [1]

Regulation (EC) No 86/2010 provides for the adoption of detailed rules and measures to implement the provisions it sets out.

In accordance with Articles 6(3) and 16(1) of Regulation (EC) No 86/2010 the period of three working days set out for the prior notification of landings or transshipments in port and for the submission of catch certificates before the estimated time of arrival of fishery products at the place of entry into the territory of the Community may be modified in the light of certain factors. These factors include: the type of fishery product; the distance between the fishing ground, landing places and ports where the vessels in question are registered or listed; the distance to the place of

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entry into the territory of the Community; the transport means used. Fresh fishery products and consignments arriving by air, road or rail require a shorter period than three working days. Consistency should be ensured in documents transmitted in relation to prior notification of landings and transshipments, landing and transshipment declarations and sighting reports.

Article 9(1) and Article 17(3) of Regulation (EC) No 86/2010 provide that Member States shall carry out port inspections of at least 5 % of landing and transshipment operations by third country fishing vessels as well as verifications deemed necessary to ensure that the provisions of the Regulation are correctly applied, in accordance with benchmarks determined on the basis of risk management and on the basis of national or Community risk management criteria. It is appropriate to lay down common risk management criteria for checking, inspection and verification activities in order to allow timely risk analyses and global assessments of relevant control information. [2]

The common criteria aim at ensuring a harmonized approach to inspection and verification in all Member States and to establish a level playing field for all operators. Article 52 of Regulation (EC) No 86/2010 provides that measures necessary for implementing the provisions of that Regulation are to be adopted in accordance with the Committee procedure. Given the fact that the Community should take account of possible capacity constraints for the proper implementation of the certification scheme, it is deemed necessary to adapt the scheme for some fishery products obtained by small fishing vessels, introducing the possibility of a simplified catch certificate. In the absence of a general definition of small scale fisheries certain specific criteria should be laid down under which the validation of a simplified catch certificate may be requested by the exporter. These criteria should take account in the first instance of the limited capacity of the fishing vessels concerned, in relation to which the obligation to apply the standard catch certification scheme would constitute a disproportionate burden.

Article 13(1) of Regulation (EC) No 86/2010 provides for the recognition of catch documentation schemes agreed and in force in the framework of regional fisheries management organizations (hereinafter referred to as RFMO) in

so far as they comply with the requirements of the Regulation. Some of these schemes can be recognized as complying with the requirements of Regulation (EC) No 86/2010, while others are subject to additional conditions.

2. Materials and methods

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

Article 12(4) of Regulation (EC) No 86/2010 provides for an administrative cooperation between the Commission and third countries in areas pertaining to the implementation of the catch certification provisions. Within the framework of Article 20(4) of Regulation (EC) No 1005/2008, the catch certificate may be established, validated or submitted by electronic means or may be replaced by electronic traceability systems ensuring the same level of control by authorities, in agreement with flag States. These administrative arrangements with flag States shall be regularly updated and Member States and the public shall be informed in due time.

According to Article 51(2) of Regulation (EC) No 86/2010 a system shall be established for mutual assistance between the Member States, with third countries and the Commission. Such administrative cooperation is essential to ensure that the Community catch certification scheme can be applied properly and that IUU fishing is properly investigated and sanctioned. Rules should therefore be drawn up for a systematic exchange of information either on request or spontaneously, and for the possibility to request enforcement measures and administrative notification by another Member State. Practical procedures should be laid down for exchanging information and requesting assistance. However, these provisions are not such as to affect the application in the Member States of rules on judicial cooperation in criminal cases. [2, 3]

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

3. Results and discussion

The benchmarks for port inspections as referred to in Article 9(1) of Regulation (EC) No 86/2010 shall consist of the following criteria: [4]

1. the species concerned are subject to a management or recovery plan;
2. the fishing vessel is suspected of not implementing applicable provisions on VMS according to Chapter IV of The benchmarks for port inspections as referred to in Article 9(1) of Regulation (EC) No 1005/2008 shall consist of the following criteria:
 - (a) the species concerned are subject to a management or recovery plan;
 - (b) the fishing vessel is suspected of not implementing applicable provisions on VMS according to Chapter IV of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems;
 - (c) the fishing vessel has not been controlled at port in the port Member State in the last 3 months;
 - (d) the fishing vessel has not been controlled by the port Member State in the last 6 months;
 - (e) the fishing vessel is not on the list of establishments from which imports of specified products of animal origin are permitted, as set out in Article 12 of Regulation (EC) No 854/2004 of the European Parliament and of the Council;

- (f) importation, exportation or trade in fishery products obtained from species of high commercial value;
 - (g) introduction of new kinds of fishery products or discovery of new trade patterns;
 - (h) inconsistencies between the trade patterns and the known fishing activities of a flag State in particular in respect of species, volumes or characteristics of its fishing fleet;
 - (i) inconsistencies between the trade patterns and the known fishing-related activities of a third country in particular in respect of the characteristics of its processing industry or its trade in fishery products;
 - (j) trade pattern not justified in terms of economic criteria;
 - (k) involvement of a newly established operator;
 - (l) significant and sudden increase in trade volume for a certain species;
 - (m) submission of copies of catch certificates accompanying processing statements according to Annex IV of Regulation (EC) No 86/2010, for instance when the catch has been split during production;
 - (n) prior notification, required under Article 6 of Regulation (EC) No 86/2010, not transmitted at the proper time or information incomplete;
- Economic operators may, following an application, be granted a certificate of approved economic operator (hereinafter referred to as APEO certificate) for the purposes of Article 16 of Regulation (EC) No 86/2010 only if they:
- (a) hold an authorised economic operator certificate (hereinafter referred to as AEO certificate) in accordance with Commission Regulation (EEC) No 2454/93 (hereinafter referred to as the Implementing Rules of the Community Customs Code);
 - (b) fulfill the criteria laid down in Article 16(3)(a) to (g) of Regulation (EC) No 86/2010 and detailed in Articles 10 to 13 of this Regulation.
- The sufficient number and volume of import operations referred to in Article 16(3)(b) of Regulation (EC) No 86/2010 must be achieved in the Member State of establishment. Each Member State shall determine the minimum threshold for number and volume of import operations and inform the Commission thereof. [5]
- The record of compliance with the requirements of conservation and management measures referred to in Article 16(3)(c) of Regulation (EC) No 86/2010 shall be considered as appropriate if, over

the last three years preceding the submission of the application, the applicant:

- (a) has not committed a serious infringement of the rules of the common fisheries policy;
- (b) has not committed repeated infringements of the rules of the common fisheries policy;
- (c) has not directly or indirectly participated in or supported activities of vessels or operators engaged in IUU fishing or which are currently subject to investigation in that respect; and
- (d) has not directly or indirectly participated in or supported activities of vessels included in IUU vessel lists adopted by a RFMO.

2. Notwithstanding paragraph 1, the record of compliance with the requirements of conservation and management measures may be considered as appropriate if the competent Member State authority considers an infringement committed by the applicant:

- (a) not to be serious;
- (b) of negligible quantitative importance in relation to the number or size of the import-related operations carried out by the applicant.

4. Conclusions

Suspension in the case of non-compliance with relevant criteria

1. In the case referred to in point (a) of Article 22(1), if the approved economic operator does not regularize the situation within the period referred to in paragraph 2 of that Article, the status of approved economic operator shall be suspended for a period of 30 calendar days. The competent Member State authority shall, without delay, notify the economic operator of the suspension and the competent authorities of the other Member States.

2. Where the economic operator concerned has been unable to regularize the situation within the suspension period of 30 calendar days referred to in paragraph 1 but can provide evidence that the conditions can be met if the suspension period is extended, the issuing authority shall suspend the status of approved economic operator for a further 30 calendar days. The competent authorities of the other Member States shall be informed of the extension.

3. When the economic operator concerned has, within the time limit set out in paragraphs 1 or 2, taken the necessary measures to comply with the criteria laid down in Articles 9 to 13, the issuing

authority shall withdraw the suspension and inform the economic operator concerned and the Commission. The suspension may be withdrawn before the expiry of the time limit laid down in paragraphs 1 or 2. [5, 6]

Suspension in case of legal proceedings

1. In the case referred to in point (b) of Article 22(1), the issuing authority shall suspend the status of the approved economic operator for the duration of the proceedings. It shall notify the approved economic operator thereof. Notification shall also be sent to the competent authorities of the other Member States.

2. The competent Member State authority may however decide not to suspend the status of approved economic operator if it considers the infringement to be of negligible quantitative importance in relation to the number or volume of the import-related operations carried out by that operator. [6]

3. The approved economic operator shall inform the issuing authority of all factors arising after the certificate is granted which may influence its continuation.

4. All relevant information at the disposal of the issuing authority concerning economic operators approved by it shall *upon request* be made available to the Commission and the competent authorities of the other Member States where the approved economic operators carry out import-related activities. [7]

Where national authorities decide, in response to a request for assistance based on this Title or following a spontaneous exchange of information, to take measures which may be implemented only with the authorisation or at the demand of a judicial authority, they shall communicate to the Member State concerned and the Commission any information on those measures which is related to IUU fishing or serious infringements referred to in Article 42(1)(b) and (c) of Regulation (EC) No 86/2010, or to infringements of this Regulation. Any such communication must have the prior authorisation of the judicial authority if such authorisation is required by national law.

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