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III

(Preparatory Acts)

COUNCIL

POSITION (EU) No 6/2017 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008

Adopted by the Council on 17 October 2017

(2017/C 390/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 1006/2008 ⁽³⁾ (the 'FAR') established a system concerning authorisations for fishing activities of Union fishing vessels outside Union waters and the access of third-country vessels to Union waters.
- (2) The Union is a contracting party to the United Nations Convention on the Law of the Sea of 10 December 1982 ⁽⁴⁾ (UNCLOS) and has ratified the United Nations Agreement of 4 August 1995 on the Implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks ⁽⁵⁾. Those international provisions set out the principle that all states have to adopt appropriate measures to ensure the sustainable management and conservation of marine resources and to cooperate with each other to that end.

⁽¹⁾ OJ C 303, 19.8.2016, p. 116.

⁽²⁾ Position of the European Parliament of 2 February 2017 (not yet published in the Official Journal) and position of the Council at first reading of 17 October 2017. Position of the European Parliament of ... (not yet published in the Official Journal) [and decision of the Council of ...].

⁽³⁾ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33).

⁽⁴⁾ Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1).

⁽⁵⁾ Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 14).

- (3) The Union has accepted the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas of 24 November 1993 of the Food and Agriculture Organisation of the United Nations ⁽¹⁾. That Agreement stipulates that a contracting party is to abstain from granting authorisation to use a vessel for fishing on the high seas if certain conditions are not met, as well as implement sanctions if certain reporting obligations are not fulfilled.
- (4) The Union has endorsed the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and undeclared fishing ('IPOA-IUU') adopted in 2001. The IPOA-IUU and the FAO Voluntary Guidelines for flag state performance endorsed in 2014 underline the responsibility of the flag State to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems. The IPOA-IUU provides that a flag State should issue authorisations to fish in waters outside its sovereignty or jurisdiction to vessels flying its flag. Those Voluntary Guidelines also recommend that an authorisation be given by the flag State and by the coastal State when the fishing activities take place under a fisheries access agreement or even outside such an agreement. They should both be satisfied that such activities will not undermine the sustainability of the stocks in the coastal State's waters.
- (5) In 2014, all members of the FAO, including the Union and its developing country partners, unanimously adopted the Voluntary Guidelines on Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. Point 5.7 of those Guidelines highlights that small-scale fisheries should be given due consideration before agreements on resource access are entered into with third countries and third parties. Those Guidelines call for the adoption of measures for the long-term conservation and sustainable use of fisheries resources and for the securing of the ecological foundation for food production, underlining the importance of environmental standards for fishing activities outside Union waters that include an ecosystem-based approach to fisheries management together with the precautionary approach.
- (6) If there is evidence that the conditions on the basis of which a fishing authorisation has been issued are no longer met, the flag Member State should take appropriate action, including amending or withdrawing the authorisation and, if necessary, imposing effective, proportionate and dissuasive sanctions. In fisheries under a Regional Fisheries Management Organisation ('RFMO') or a Sustainable Fisheries Partnership Agreement ('SFPA'), if a Union fishing vessel does not comply with the conditions for a fishing authorisation and the Member State fails to take appropriate action to remedy the situation, even after having been required to do so by the Commission, the Commission should conclude that no appropriate action has been taken. Consequently, the Commission should take additional action to make sure that the vessel concerned should no longer fish as long as the conditions are not met.
- (7) The Union committed itself at the United Nations Summit on Sustainable Development on 25 September 2015 to implementing the resolution containing the outcome document entitled 'Transforming our world: the 2030 Agenda for Sustainable Development', including Sustainable Development Goal 14 which is to 'conserve and sustainably use the oceans, seas and marine resources for sustainable development', as well as Sustainable Development Goal 12 which is to 'ensure sustainable consumption and production patterns' and their targets.
- (8) The objective of the Common Fisheries Policy (CFP), as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾ (the 'Basic Regulation'), is to ensure that fishing activities are environmentally, economically and socially sustainable and are managed consistently with the objectives of achieving economic, social and employment benefits, and of restoring and maintaining fish stocks above levels which can produce maximum sustainable yield and that they are contributing to the availability of food supplies. It is also necessary, in implementing this policy, to take account of development cooperation objectives in accordance with the second subparagraph of Article 208(1) of the Treaty on the Functioning of the European Union ('TFEU').
- (9) The Basic Regulation also requires that SFPAs be limited to surplus catches as referred to in Article 62(2) and (3) of UNCLOS.

⁽¹⁾ Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (OJ L 177, 16.7.1996, p. 24).

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

- (10) The Basic Regulation stresses the need to promote the objectives of the CFP internationally, ensuring that Union fishing activities outside Union waters are based on the same principles and standards as those applicable under Union law, while promoting a level playing field for Union operators and third-country operators.
- (11) The FAR was intended to establish common ground for authorising fishing activities to be carried out by Union vessels outside Union waters with a view to supporting the fight against illegal, unreported and undeclared ('IUU') fishing and better control and monitoring of the Union fleet across the globe, as well as conditions for the authorising of third-country vessels fishing in Union waters.
- (12) Council Regulation (EC) No 1005/2008 ⁽¹⁾ (the 'IUU Regulation') was adopted in parallel to the FAR, and Council Regulation (EC) No 1224/2009 ⁽²⁾ (the Control Regulation) was adopted a year later. Those Regulations are the three implementing pillars of the control and enforcement provisions of the CFP.
- (13) However, the IUU Regulation, the FAR and the Control Regulation were not implemented consistently; in particular there were inconsistencies between the FAR and the Control Regulation. The implementation of the FAR also revealed several loopholes, since some challenges in terms of control, such as chartering, reflagging and the issuance of fishing authorisations issued by a third-country competent authority to a Union fishing vessel outside the framework of an SFPAs ('direct authorisations'), were not covered. Besides, some reporting obligations have proven difficult as has the division of administrative roles between the Member States and the Commission.
- (14) The core principle of this Regulation is that any Union vessel fishing outside Union waters should be authorised by its flag Member State and monitored accordingly, irrespective of where it operates and the framework under which it does so. The issuing of an authorisation should be dependent on a basic set of common eligibility criteria being fulfilled. The information gathered by the Member States and provided to the Commission should allow the Commission to intervene in the monitoring of the fishing operations of all Union fishing vessels in any given area outside Union waters at any time.
- (15) Recent years have seen considerable improvements in the Union's external fisheries policy, in terms of the conditions and terms of SFPAs and the diligence with which the provisions are enforced. Safeguarding the Union's interests in terms of access rights and conditions within the framework of SFPAs should therefore be a priority objective of the Union's external fisheries policy and similar conditions should be applied to Union activities outside the scope of SFPAs.
- (16) Support vessels may have a substantial impact on the way fishing vessels are able to carry out their fishing operations and on the quantity of fish they can retrieve. It is therefore necessary to take them into account in the authorisation and reporting processes set out in this Regulation.
- (17) Reflagging operations become an issue when their objective is to circumvent CFP rules or existing conservation and management measures. The Union should therefore be able to define, detect and hamper such operations. Traceability and proper follow-up of compliance history should be ensured throughout the lifespan of a vessel owned by a Union operator regardless of the flag or flags it operates under. The requirement that a unique vessel number be granted by the International Maritime Organisation (IMO) where required under Union law should also serve that purpose.
- (18) In third-country waters, Union vessels may operate either under the provisions of SFPAs concluded between the Union and third countries or by obtaining direct fishing authorisations from third countries if no SFPAs is in force. In both cases these activities should be carried out in a transparent and sustainable way. Flag Member

⁽¹⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

⁽²⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

States may authorise the vessels flying their flag to seek and obtain direct authorisations from third countries which are coastal States, under a defined set of criteria and subject to monitoring. The fishing operation should be authorised once the flag Member State is satisfied that it will not undermine sustainability and where the Commission has no duly justified objection. The operator should be allowed to start its fishing operation only after having been given the authorisation from both the flag Member State and the coastal State.

- (19) Union fishing vessels are not allowed to fish in waters under the jurisdiction or sovereignty of third countries with which the Union has an agreement but no protocol in force. In the case of such an agreement, where no protocol has been in force for at least three years, the Commission should examine the reasons for the situation and take appropriate action, which could include proposing to negotiate a new protocol.
- (20) A specific issue pertaining to SFPAs is the reallocation of under-utilised fishing opportunities that occurs when fishing opportunities allocated to Member States by the relevant Council Regulations are not fully used. Since the access costs set out in the SFPAs are financed for a large part by the Union general budget, a temporary reallocation and sub-allocation system is important to preserve Union financial interests and ensure that no fishing opportunity which has been paid for is wasted. It is therefore necessary to clarify and improve those allocation systems, which should be a last resort mechanism. Its application should be temporary and it should not affect the initial allocation of fishing opportunities among Member States in accordance with applicable relative stability principles. Reallocation should only occur once the relevant Member States have given up on their rights to exchange fishing opportunities among themselves, and should primarily be addressed in the context of SFPAs giving access to mixed fisheries.
- (21) Where a third country is not party to an RFMO, the Union may endeavour to provide, with the third country with which an SFPA is being considered, for the allocation of a proportion of the sectoral support funding to facilitate the joining of that RFMO by the third country concerned.
- (22) Fishing operations under the auspices of RFMOs and on the high seas should also be authorised by the flag Member State and comply with RFMO-specific rules or Union law governing fishing operations on the high seas.
- (23) In order to implement the Union's international commitments in RFMOs and in accordance with the objectives referred to in Article 28 of the Basic Regulation, the Union should encourage periodic assessments of performance by independent bodies, and should play an active role in setting up and reinforcing implementation committees in all RFMOs to which it is a contracting party. It should in particular ensure that those implementation committees perform general supervision of the implementation of the external fisheries policy and of the measures decided within RFMOs.
- (24) Effective management of chartering arrangements is important to ensure that the effectiveness of conservation and management measures is not undermined, as well as to ensure the sustainable exploitation of living marine resources. It is therefore necessary to set out a legal framework that helps the Union to better monitor the activities of Union fishing vessels chartered by either a third country or by Union operators on the basis of what has been adopted by the relevant RFMO.
- (25) Transshipments at sea escape any proper control by flag or coastal States and therefore constitute a possible way for operators to carry illegal catch. Transshipments by Union vessels on the high sea and under direct authorisations should be subject to prior notification when conducted outside port. Member States should inform the Commission on all transshipment operations carried out by their vessels, once a year.
- (26) Procedures should be transparent and predictable for Union and third-country operators, as well as for their respective competent authorities.
- (27) The exchange of data in electronic form between Member States and the Commission, as provided for by the Control Regulation, should be ensured. Member States should collect all requested data about their fleets and their fishing operations, manage those data and make them available to the Commission. Moreover, they should cooperate with each other, the Commission and third countries where relevant in order to coordinate those data collection activities.

- (28) With a view to improving the transparency and accessibility of information on Union fishing authorisations, the Commission should set up an electronic fishing authorisation database comprising both a public part and a secure part. Information in the Union fishing authorisation database includes personal data. The processing of personal data based on this Regulation should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾, Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾ and applicable national law.
- (29) With a view to properly addressing access to Union waters of fishing vessels flying the flag of a third country, the relevant rules should be consistent with those applicable to Union fishing vessels, in accordance with the Control Regulation. In particular, Article 33 of that Regulation on the reporting of catch and catch-related data should also apply to third-country vessels fishing in Union waters.
- (30) Fishing vessels from third countries without authorisation under this Regulation should, when navigating in Union waters, be obliged to ensure that their fishing gear is installed in such a manner that it is not readily usable for fishing operations.
- (31) Member States should be responsible for controlling the fishing operations of third-country vessels in Union waters and, in the event of infringements, for recording them in the national register provided for in Article 93 of the Control Regulation.
- (32) Third-country fishing vessels fishing under agreements on exchange or joint management should respect the quotas allocated to them by their own flag states in Union waters. When third countries' vessels overfish the quotas allocated to them for stocks in Union waters, the Commission should operate deductions from the quotas allocated to those third countries in subsequent years. In those cases, the deduction of quotas to be operated by the Commission in the case of overfishing is to be understood as the input that the Commission provides in the framework of the consultation with coastal States.
- (33) In order to simplify authorisation procedures, a common system of data exchange and data storage should be used by the Member States and the Commission to provide necessary information and updates while minimising administrative burden.
- (34) In order to take into account technological progress and subsequent possible new international law requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adoption of modifications to the Annex to this Regulation setting out the list of information to be provided by an operator in order to obtain a fishing authorisation, and in respect of supplementing the conditions for fishing authorisations in Article 10 to the extent necessary to reflect in Union law the outcome of the consultations between the Union and third countries with which the Union has concluded an agreement, or of arrangements with coastal states with which fish stocks are shared. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽³⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the recording, format and the transmission of data related to fishing authorisations from the Member States to the Commission and to the Union fishing authorisation database, as well as for deciding on the temporary reallocation of unused fishing opportunities under existing protocols to SFPAs as a transitional measure corresponding to the provisions of Article 10 of the FAR. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁴⁾.

⁽¹⁾ 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 (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ 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 (OJ L 281, 23.11.1995, p. 31).

⁽³⁾ OJ L 123, 12.5.2016, p. 1.

⁽⁴⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (36) In order to make the Union fishing authorisation database operational and to enable Member States to meet the technical transmission requirements, the Commission should provide technical assistance to the Member States concerned to enable them to transfer data electronically. Member States may also draw on financial aid from the European Maritime and Fisheries Fund pursuant to point (a) of Article 76(2) of Regulation (EU) No 508/2014 of the European Parliament and of the Council ⁽¹⁾.
- (37) By reason of the number and importance of the amendments to be made, the FAR should be repealed,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation sets out rules for issuing and managing fishing authorisations for:

- (a) Union fishing vessels conducting fishing operations in waters under the sovereignty or jurisdiction of a third country, under the auspices of an RFMO to which the Union is a contracting party, in or outside Union waters, or on the high seas; and
- (b) third-country fishing vessels conducting fishing operations in Union waters.

Article 2

Relationship to international and Union law

This Regulation shall apply without prejudice to the provisions:

- (a) in SFPAs and other fisheries agreements concluded between the Union and third countries;
- (b) adopted by RFMOs to which the Union is a contracting party;
- (c) in Union law implementing or transposing provisions referred to in points (a) and (b).

Article 3

Definitions

1. For the purpose of this Regulation, the definitions set out in Article 4 of the Basic Regulation and in points 1 to 4, 15, 16 and 22 of Article 2 of the IUU Regulation shall apply, save as otherwise provided for in this Regulation.
 2. For the purpose of this Regulation, the following definitions also apply:
 - (a) 'support vessel' means a vessel other than a craft carried on board that is not equipped with operational fishing gear designed to catch or attract fish and that facilitates, assists or prepares fishing operations;
 - (b) 'fishing authorisation' means, in respect of a Union fishing vessel, an authorisation:
 - within the meaning of point 10 of Article 4 of the Control Regulation,
 - issued by a third country entitling a Union fishing vessel to carry out specific fishing operations in the waters under the sovereignty or jurisdiction of that third country, during a specified period, in a given area or for a given fishery under specific conditions,
- and, in respect of a third-country fishing vessel, an authorisation entitling it to carry out in Union waters specific fishing operations during a specified period, in a given area or for a given fishery under specific conditions;

⁽¹⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

- (c) 'direct authorisation' means a fishing authorisation issued by a third-country competent authority to a Union fishing vessel outside the framework of an SFPFA or of an agreement on exchange of fishing opportunities and joint management of species of common interest;
- (d) 'third-country waters' means waters under the sovereignty or jurisdiction of a third country. The waters of a Member State that are not Union waters are considered as third-country waters for the purpose of this Regulation;
- (e) 'observer programme' means a scheme under the auspices of an RFMO, an SFPFA, a third country or a Member State that provides observers onboard fishing vessels including, where specifically provided for in the applicable observer scheme, to verify the vessel's compliance with the rules adopted by that RFMO or that third country, or under that SFPFA;
- (f) 'chartering' means an arrangement by which a fishing vessel flying the flag of a Member State is contracted for a defined period by an operator in either another Member State or a third country without a change of flag;
- (g) 'fishing operation' means all activities in connection with searching for fish, the shooting, towing and hauling of active gears, setting, soaking, removing or resetting of passive gears and the removal of any catch from the gear, keep nets, or from a transport cage to fattening and farming cages.

TITLE II

FISHING OPERATIONS BY UNION FISHING VESSELS OUTSIDE UNION WATERS

CHAPTER I

Common provisions

Article 4

General principle

Without prejudice to the requirement to obtain an authorisation from the competent organisation or third country, a Union fishing vessel shall not carry out fishing operations outside Union waters unless it has been authorised by its flag Member State, and the fishing operations are indicated in a valid fishing authorisation issued in accordance with Chapters II to V, as appropriate.

Article 5

Eligibility criteria

1. A flag Member State may only issue a fishing authorisation for fishing operations outside Union waters if:
 - (a) it has received complete and accurate information, in accordance with the requirements of the Annex or the SFPFA concerned or RFMO concerned, about the fishing vessel and the associated support vessel(s), including non-Union support vessels;
 - (b) the fishing vessel has a valid fishing licence under Article 6 of the Control Regulation;
 - (c) the fishing vessel and any associated support vessel apply the relevant IMO ship identification number scheme insofar as is required under Union law;
 - (d) the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
 - (e) where applicable, fishing opportunities are available to the flag Member State under the fisheries agreement concerned or the relevant provisions of the RFMO; and
 - (f) where applicable, the fishing vessel complies with the requirements set out in Article 6.

2. The Commission is empowered to adopt delegated acts, in accordance with Article 44, for the purpose of amending the Annex to ensure appropriate monitoring of the activities of fishing vessels under this Regulation, in particular through new data requirements resulting from fisheries agreements or the development of information technologies.

Article 6

Reflagging operations

1. This Article applies to vessels that, during the five years preceding the application for a fishing authorisation, have:
 - (a) left the Union fishing fleet register and been reflagged in a third country; and
 - (b) subsequently returned to the Union fishing fleet register.
2. A flag Member State may only issue a fishing authorisation if it has verified that, during the period that the vessel referred to in paragraph 1 operated under a third-country flag, it did not:
 - (a) engage in IUU fishing;
 - (b) operate in waters of a third country identified as a country allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012 of the European Parliament and of the Council ⁽¹⁾;
 - (c) operate in waters of a third country listed as non-cooperating pursuant to Article 33 of the IUU Regulation; and
 - (d) operate in waters of a third country identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of six weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation.
3. To that end, an operator shall provide the following information related to the period during which the vessel operated under a third-country flag required by a flag Member State:
 - (a) a declaration of catches and fishing effort during the relevant period as required by the third-country flag State;
 - (b) a copy of any fishing authorisations permitting fishing operations during the relevant period;
 - (c) an official statement by the third country where the vessel was reflagged listing the sanctions the vessel or the operator had been subject to during the relevant period;
 - (d) complete flag history during the period when the vessel had left the Union fleet register.
4. A flag Member State shall not issue a fishing authorisation to a vessel that has been reflagged in a third country:
 - (a) listed as non-cooperating in fighting IUU fishing pursuant to Article 33 of the IUU Regulation;
 - (b) identified as non-cooperating in fighting IUU fishing pursuant to Article 31 of the IUU Regulation after a period of six weeks following the adoption of the decision of the Commission identifying that third country as such, except for any operations carried out in the event that the Council has rejected a proposal to designate that third country as non-cooperating pursuant to Article 33 of that Regulation; or
 - (c) identified as allowing non-sustainable fishing pursuant to point (a) of Article 4(1) of Regulation (EU) No 1026/2012.
5. Paragraph 4 shall not apply if the flag Member State is satisfied that, as soon as the circumstances described in points (b) to (d) of paragraph 2 or points (a) to (c) of paragraph 4 became applicable, the operator:
 - (a) ceased fishing operations; and
 - (b) immediately started the relevant administrative procedures to remove the vessel from the fishing fleet register of the third country.

⁽¹⁾ Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing (OJ L 316, 14.11.2012, p. 34).

*Article 7***Management of fishing authorisations**

1. When applying for a fishing authorisation, an operator shall provide the flag Member State with complete and accurate data.
2. An operator shall immediately inform the flag Member State of any change to the related data.
3. A flag Member State shall on a regular basis monitor whether the conditions on the basis of which a fishing authorisation has been issued continue to be met during the period of validity of that authorisation.
4. If, as a result of the final outcome of the monitoring activities referred to in paragraph 3, there is evidence that the conditions on the basis of which a fishing authorisation has been issued are no longer met, the flag Member State shall take appropriate action, including amending or withdrawing the authorisation and, if necessary, imposing sanctions. The sanctions applied by the flag Member State in respect of infringements shall be sufficiently stringent to ensure effective compliance with the rules, to prevent infringements and to deprive offenders of the benefits derived from infringements. The flag Member State shall immediately notify the operator and the Commission thereof. Where relevant, the Commission shall notify the secretariat of the RFMO or the third country concerned accordingly.
5. Upon a reasoned request from the Commission, a flag Member State shall take appropriate action as provided for in paragraph 4, in the event of contravention of conservation and management measures of marine biological resources adopted by an RFMO to which the Union is a contracting party, or under SFPAs.
6. Where the Union is a contracting party to an RFMO and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 21 as established in the final inspection report recognised by the RFMO, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels referred to in Article 22 to the Secretariat of the RFMO to address the vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

7. Where the Union has concluded an SFPA with a third country and a Union fishing vessel does not comply with the conditions set out in point (b) of Article 10 as established in the final inspection report recognised by the competent authorities, and where the flag Member State fails to take the appropriate action as provided for in paragraph 4 of this Article, the Commission may by decision require the flag Member State concerned to ensure that the Union fishing vessel concerned fulfils those conditions.

Where the flag Member State concerned has not taken appropriate action to comply with the Commission decision referred to in the first subparagraph within a period of 15 days, the Commission shall send the updated details of the fishing vessels to the third country to address the Union fishing vessel concerned. The Commission shall inform the flag Member State of its action. The flag Member State shall notify the operator of the action of the Commission.

*CHAPTER II****Fishing operations by Union fishing vessels in third-country waters***

Section 1

Fishing operations under SFPAs*Article 8***Scope**

This Section shall apply to fishing operations carried out by Union fishing vessels in third-country waters under an SFPA.

*Article 9***RFMO Membership**

A Union fishing vessel may only carry out fishing operations in waters of a third country on stocks managed by an RFMO if that third country is a contracting party to that RFMO.

*Article 10***Conditions for fishing authorisations by the flag Member State**

A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters under an SFPA if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the conditions set out in the relevant SFPA are complied with;
- (c) the operator has paid all fees due under the relevant agreements, and where applicable, related financial sanctions established by a judicial or administrative decision having final and binding effect; and
- (d) the fishing vessel has a valid fishing authorisation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place.

*Article 11***Procedure for obtaining fishing authorisations of the third country**

1. For the purpose of point (d) of Article 10, a flag Member State that has verified that the conditions set out in points (a) to (c) of Article 10 are complied with shall send to the Commission the corresponding application for the authorisation of the third country.
2. The application referred to in paragraph 1 shall contain the information required under the SFPA.
3. The flag Member State shall send the application to the Commission at least 10 calendar days before the deadline for the transmission of applications laid down in the SFPA. The Commission may send a duly justified request to the flag Member State for any additional information necessary for verifying the conditions.
4. Upon receipt of the application or any additional information requested pursuant to paragraph 3 of this Article, the Commission shall conduct a preliminary examination to determine whether the conditions set out in points (a) to (c) of Article 10 are met. The Commission shall then:
 - (a) send the application to the third country without delay and, in any event, before the expiry of the deadline for the transmission of applications laid down in the SFPA, provided that the deadline set out in paragraph 3 of this Article has been met; or
 - (b) notify the Member State that the application is refused.
5. If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a fishing authorisation for a Union fishing vessel under the agreement, the Commission shall immediately inform the flag Member State accordingly, if possible by electronic means.

*Article 12***Temporary reallocation of unused fishing opportunities in the framework of SFPAs**

1. During a specific year or any other relevant period of the implementation of a protocol to an SFPA taking into account validity periods of the fishing authorisations and fishing seasons, the Commission may identify unused fishing opportunities and inform Member States benefiting from the corresponding shares of the allocation accordingly.

2. Within 10 calendar days of receipt of this information from the Commission, the Member States referred to in paragraph 1 may:
 - (a) inform the Commission that they will use their fishing opportunities later in the relevant period of implementation by providing a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing; or
 - (b) notify the Commission of the use of their fishing opportunities through exchanges of fishing opportunities, pursuant to Article 16(8) of the Basic Regulation.
3. If certain Member States have not informed the Commission of one of the actions referred to in paragraph 2, or have informed it of a partial use of their fishing opportunities only, and, if as a result, fishing opportunities remain unused, the Commission may launch a call for interest for the available unused fishing opportunities among the other Member States benefiting from a share of the allocation. The Commission shall at the same time inform all Member States of the launch of the call for interest.
4. Within 10 calendar days of receipt of the call for interest referred to in paragraph 3, Member States benefiting from a share of the allocation may communicate their interest in the available unused fishing opportunities to the Commission. In support for their request, they shall provide a fishing plan with detailed information on the number of fishing authorisations requested, the estimated catches, area and period of fishing.
5. If deemed necessary for the assessment of the request, the Commission may ask the Member States concerned for additional information.
6. In the absence of interest in the total amount of the available unused fishing opportunities by the Member States benefiting from a share of the allocation at the end of the 10-day period referred to in paragraph 4, the Commission may extend the call for interest to all Member States. A Member State may communicate its interest in the unused fishing opportunities under the conditions referred to in that paragraph.
7. On the basis of the information provided by Member States in accordance with paragraph 4 or 6 of this Article, the unused fishing opportunities shall be reallocated by the Council in accordance with Article 43(3) TFEU, solely on a temporary basis for the relevant period of time referred to in paragraph 1 of this Article.

The Commission shall inform the Member States of the Member States to which the reallocation has been made and the quantities reallocated.

8. The temporary reallocation of fishing opportunities shall be based on transparent and objective criteria including, where applicable, those of an environmental, social and economic nature. Those criteria may include:
 - (a) the fishing opportunities available for reallocation;
 - (b) the number of requesting Member States;
 - (c) the share assigned to each requesting Member State in the initial allocation of fishing opportunities;
 - (d) the historic catch and effort levels of each requesting Member State, where applicable;
 - (e) the viability of the fishing plans provided by the requesting Member States, in light of the number, type and characteristics of vessels and gear used.

Article 13

Sub-allocation of a yearly quota broken down into several successive catch limits

1. Where a protocol to an SFPAs sets monthly or quarterly catch limits or other subdivisions of the fishing opportunities available for the relevant year, and where the fishing opportunities allocated are not all used during the same monthly, quarterly or otherwise applicable period of time, the corresponding available fishing opportunities shall be sub-allocated by the Council in accordance with Article 43(3) TFEU among the Member States concerned for the relevant periods of time.

2. The sub-allocation of the available fishing opportunities shall be carried out using transparent and objective criteria. It shall be consistent with the annual fishing opportunities allocated to Member States under the relevant Council Regulation.

Section 2

Fishing operations under agreements on exchange or joint management

Article 14

Applicable provisions

1. Articles 8 to 11 shall apply *mutatis mutandis* to Union fishing vessels fishing in third-country waters under an agreement on exchange of fishing opportunities or joint management of fish stocks of common interest.

2. By way of derogation from Article 11, a flag Member State may provide the Commission with the details of Union fishing vessels that are eligible for carrying out fishing operations in third-country waters under the relevant agreement. When it is established that the conditions set out in points (a) to (c) of Article 10 are met, the Commission shall forward the details of the relevant Union fishing vessels to the third country without delay. As soon as the third country informs the Commission that the details of those Union fishing vessels has been approved, the Commission shall inform the flag Member State accordingly. The Union fishing vessels for which the required details have been provided shall be considered to have a valid fishing authorisation for the purpose of point (d) of Article 10. The Commission shall also inform the flag Member State without delay by electronic means of any notification by the third country that a Union fishing vessel is not eligible for carrying out fishing operations in its waters.

Article 15

Consultations with third countries in respect of Union fishing vessels

The Commission is empowered to adopt delegated acts, in accordance with Article 44, in order to supplement Article 10 by implementing in Union law the outcome of the consultations between the Union and third countries with which the Union has concluded an agreement, or of arrangements with coastal States with which fish stocks are shared, as regards the conditions for fishing authorisations.

Section 3

Fishing operations under direct authorisations

Article 16

Scope

This Section shall apply to fishing operations carried out by Union fishing vessels in waters of a third country outside the framework of an agreement referred to in Section 1 or 2.

Article 17

Conditions for fishing authorisations by the flag Member States

1. A flag Member State may only issue a fishing authorisation for fishing operations carried out in third-country waters outside the framework of an agreement referred to in Section 1 or 2 if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) no SFPAs or agreement on exchange of fishing opportunities or joint management with the third country concerned is in force or provisionally applied;
- (c) the operator has provided each of the following:
 - a copy of or an exact reference to the applicable fisheries legislation as provided to the operator by the third country with sovereignty or jurisdiction over the waters where the activities take place;

- a scientific evaluation demonstrating the sustainability of the planned fishing operations, including consistency with the provisions of Article 62 of UNCLOS, as applicable;
 - a designated official, public bank account number for the payment of all the fees;
- (d) in the event that the fishing operations are to be carried out on species managed by an RFMO, the third country is a contracting party to that organisation; and
- (e) the operator has provided either:
- a valid fishing authorisation for the fishing vessel concerned, issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place; or
 - a written confirmation issued by the third country with sovereignty or jurisdiction over the waters where the fishing operations take place, following the discussions between the operator and that third country, of the terms of the intended direct authorisation to give the operator access to its fishing resources, including the duration, conditions, and fishing opportunities expressed as effort or catch limits.
2. In any event, fishing operations shall not commence until the third country has issued the valid fishing authorisation referred to in point (e) of paragraph 1. The flag Member State shall suspend its authorisation if the third-country authorisation has not been issued by the beginning of the planned fishing operations.
3. The scientific evaluation referred to in the second indent of point (c) of paragraph 1 shall be provided by an RFMO or by a regional fisheries body with scientific competence or shall be provided by, or in cooperation with, the third country. The scientific evaluation emanating from the third country shall be reviewed by a scientific institute or body of a Member State or of the Union.

Article 18

Procedure for obtaining fishing authorisations of the third country

1. A flag Member State that has verified that the conditions set out in points (a) to (e) of Article 17(1) are complied with shall send the Commission the relevant information listed in the Annex, and information related to the fulfilment of the conditions set out in point (c) of Article 17(1).
2. If the Commission considers that the information referred to in paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 17, it shall request further information or justification within 10 working days of the receipt of that information.
3. If, following the request for further information or justification referred to in paragraph 2 of this Article and after discussions with the Member State concerned, the Commission finds that the conditions set out in Article 17 are not met, it may object to the granting of the fishing authorisation within 30 calendar days of receipt of all the required information or justification. If the Commission finds that those conditions are met, it shall inform the Member State concerned without delay of its intention not to object.
4. The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or prior to that deadline, provided that the Commission has informed the Member State of its intention not to raise objections.
5. By way of derogation from paragraphs 1 to 4, in the event of renewal of a fishing authorisation with the same terms and conditions and within two years from the granting of the initial fishing authorisation, the flag Member State may issue the fishing authorisation upon verification of the information received in relation to the conditions set out in points (a), (b), (d) and (e) of Article 17(1) and shall inform the Commission thereof without delay.
6. If a third country informs the Commission that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the Commission shall immediately inform the flag Member State accordingly.
7. If a third country informs the flag Member State that it has decided to issue, refuse, suspend or withdraw a direct authorisation to a Union fishing vessel, the flag Member State shall immediately inform the Commission accordingly.
8. An operator shall provide the flag Member State with a copy of the agreed final conditions between him and the third country, including a copy of the direct authorisation.

CHAPTER III

Fishing operations by Union fishing vessels under the auspices of RFMOs

Article 19

Scope

This Chapter shall apply to fishing operations carried out by Union fishing vessels fishing for stocks under the auspices of an RFMO, in or outside Union waters, insofar as their operations are subject to an authorisation regime put in place by the RFMO.

Article 20

Fishing authorisations

1. A Union fishing vessel the fishing operations of which are subject to an authorisation regime adopted by the RFMO shall not carry out fishing operations under the auspices of the RFMO unless:

- (a) the Union is a contracting party to the RFMO;
- (b) it has been issued with a fishing authorisation by its flag Member State;
- (c) it has been included in the relevant register or list of authorised vessels of the RFMO; and
- (d) where the fishing operations are carried out in third-country waters, it has been issued with a fishing authorisation by the relevant third country in accordance with Chapter II.

2. Point (a) of paragraph 1 of this Article shall not apply in respect of Union fishing vessels fishing exclusively in Union waters that have already been issued with a fishing authorisation in accordance with Article 7 of the Control Regulation.

Article 21

Conditions for fishing authorisations by the flag Member States

A flag Member State may issue a fishing authorisation only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the rules laid down by the RFMO or the transposing Union law are complied with; and
- (c) where the fishing operations are carried out in third-country waters, the criteria set out in Articles 10 or 17 are complied with.

Article 22

Registration by RFMOs

1. A flag Member State shall send the Commission details of vessels it has authorised for fishing operations in accordance with Article 20 of this Regulation or, in the case of Article 20(2) of this Regulation, in accordance with Article 7 of the Control Regulation.

2. The details referred to in paragraph 1 shall be drawn up in accordance with conditions laid down by the RFMO and accompanied by the information required by that organisation.

3. The Commission may request any additional information that it deems necessary from the flag Member State within a period of 10 days after receiving the details referred to in paragraph 1. It shall provide a justification for any such request.

4. When it is satisfied that the conditions set out in Article 21 are met, and within a period of 15 days after receiving the details referred to in paragraph 1 of this Article, the Commission shall send the details of authorised vessels to the RFMO.

5. If the RFMO register or list is not public, the Commission shall circulate the details of authorised vessels to the Member States involved in the relevant fishery.

CHAPTER IV

Fishing operations by Union fishing vessels on the high seas

Article 23

Scope

This Chapter shall apply to fishing operations carried out on the high seas falling outside the scope of Chapter III by Union fishing vessels exceeding 24 metres in overall length.

Article 24

Conditions for fishing authorisations by the flag Member States

A flag Member State may issue a fishing authorisation for fishing operations on the high seas only if:

- (a) the eligibility criteria set out in Article 5 are fulfilled;
- (b) the planned fishing operations are:
 - in accordance with a scientific evaluation, demonstrating the sustainability of the planned fishing operations, provided or validated by a scientific institute in the flag Member State; or
 - part of a research programme, including a scheme for data collection, organised by a scientific body. The scientific protocol of the research, which will be required in any event, shall be validated by a scientific institute in the flag Member State.

Article 25

Procedure for obtaining fishing authorisations

1. A flag Member State that has verified that the conditions set out in Article 24 are complied with, shall send to the Commission the information listed in the Annex, and information related to the fulfilment of the conditions set out in Article 5.
2. If the Commission considers that the information provided in accordance with paragraph 1 of this Article is insufficient to assess the fulfilment of the conditions set out in Article 24, it shall request further information or justification within 10 calendar days of receipt of that information.
3. If, after receiving the requested additional information or justification referred to in paragraph 2 of this Article, the Commission finds that the conditions set out in Article 24 are not met, it may object to the granting of the fishing authorisation within five calendar days of receipt of the additional information or justification. If the Commission finds that the conditions are met, it shall inform the Member State concerned without delay of its intention not to object.
4. The flag Member State may issue the fishing authorisation upon expiry of the period referred to in paragraph 2. Where the Commission has requested further information in accordance with that paragraph, the flag Member State may issue the fishing authorisation if no objection has been raised by the Commission within the deadline referred to in paragraph 3 or prior to that deadline, provided that the Commission informed the Member State of its intention not to raise objections.

CHAPTER V

Chartering of Union fishing vessels

Article 26

Principles

1. A Union fishing vessel shall not carry out fishing operations under chartering arrangements in waters in which an SFPA is in force or is provisionally applied.
2. A Union fishing vessel shall not carry out fishing operations under more than one chartering arrangement at the same time or engage in sub-chartering.

- 3 Union fishing vessels shall operate under chartering agreements in waters under the auspices of an RFMO only if the State to which the vessel is chartered is a contracting party to that organisation.
- 4 A chartered Union fishing vessel shall not use the fishing opportunities of its flag Member State during the period of application of the charter. The catches of a chartered Union fishing vessel shall be counted against the fishing opportunities of the chartering State.
- 5 Nothing in this Regulation shall diminish the responsibilities of the flag Member State with respect to its obligations under international law, the Control Regulation, the IUU Regulation or other provisions of the CFP, including reporting requirements.
- 6 The holder of the fishing licence of a Union fishing vessel that is to be chartered shall inform the flag Member State of the chartering arrangement before its start. That Member State shall inform the Commission thereof without delay.

Article 27

Management of fishing authorisations under a chartering arrangement

When issuing a fishing authorisation to a vessel in accordance with Article 17, 21 or 24, and when the relevant fishing operations are carried out under a chartering arrangement, the flag Member State shall verify that:

- (a) the chartering State's competent authority has officially confirmed that the arrangement is in line with its national law; and
- (b) the details of the chartering arrangement are specified in the fishing authorisation including time period, fishing opportunities and fishing area.

CHAPTER VI

Transshipment operations

Article 28

Transshipment operations

1. Any transshipment operation conducted by a Union fishing vessel on the high seas or under direct authorisations shall be conducted in accordance with Articles 21 and 22 of the Control Regulation. The flag Member State shall provide the Commission by the end of March each year, for transshipments which took place the previous year, with the information given in the transshipment declaration, the date of transshipment, the geographical position and area where the transshipment took place.
2. Masters of Union fishing vessels fishing under direct authorisations or on the high seas shall notify the competent authorities of their flag Member State, prior to the transshipment, of the following information:
 - (a) the name and external identification number of the receiving vessel;
 - (b) the time and geographical position of the planned transshipment operation; and
 - (c) the estimated quantities of species to be transhipped.
3. This Article shall not apply to transshipments carried out in ports by Union fishing vessels.

CHAPTER VII

Observation and reporting obligations

Article 29

Observer programme data

If data are collected on board a Union fishing vessel under an observer programme, related reports shall be sent, in accordance with the transmission rules specified in the observer programme, without delay to the competent authority of the flag Member State.

*Article 30***Information to third countries**

1. When carrying out fishing operations under this Title the master of a Union fishing vessel or that master's representative shall make the relevant catch declarations and landing declarations available to the third country, and in addition send its flag Member State an electronic copy of those data.
2. A flag Member State shall assess, through cross-checking in accordance with Article 109 of the Control Regulation, the consistency of the data referred to in paragraph 1 of this Article, with the data it has received in accordance with that Regulation and, where applicable, in accordance with relevant provisions of the SFPA.
3. The non-transmission of catch declarations or landing declarations to the third country referred to in paragraph 1 of this Article shall also be considered serious infringements for the purposes of Article 90 of the Control Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the flag Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition.

TITLE III

FISHING OPERATIONS BY THIRD-COUNTRY FISHING VESSELS IN UNION WATERS*Article 31***RFMO Membership Requirements**

A third-country fishing vessel may only carry out fishing operations in Union waters on stocks managed by an RFMO if the third country is a contracting party to that RFMO.

*Article 32***General Principles**

1. A third-country fishing vessel shall not engage in fishing operations in Union waters unless it has been issued with a fishing authorisation by the Commission. It shall only be issued with such an authorisation if it fulfils the eligibility criteria set out in Article 5.
2. A third-country vessel authorised to fish in Union waters shall comply with the rules governing the fishing operations of Union vessels in the fishing area in which it operates. Should the provisions laid down in the relevant fisheries agreement be different, the provisions shall be stated explicitly either in that agreement or by means of rules agreed with the third country implementing that agreement.
3. If a third-country fishing vessel is sailing through Union waters without an authorisation issued under this Regulation, its fishing gear shall be lashed and stowed in accordance with the conditions laid down in Article 47 of the Control Regulation so that it is not readily usable for fishing operations.

*Article 33***Conditions for fishing authorisations**

1. The Commission may only issue an authorisation to a third-country fishing vessel for fishing operations in Union waters if:
 - (a) there is a surplus of allowable catch that would cover the proposed fishing opportunities as required under Article 62(2) and (3) of UNCLOS;
 - (b) the conditions set out in the relevant fisheries agreement are complied with and the fishing vessel is eligible under the fisheries agreement with the third country concerned and, where relevant, is on the list of vessels under that agreement;

- (c) the information required under the agreement for the fishing vessel and the associated support vessel(s) is complete and accurate, and the vessel and any associated support vessel(s) have an IMO number when so required under Union law;
 - (d) the fishing vessel is not included in an IUU vessel list adopted by an RFMO and/or by the Union pursuant to the IUU Regulation;
 - (e) the third country is not listed as non-cooperating pursuant to the IUU Regulation or as allowing non-sustainable fishing pursuant to Regulation (EU) No 1026/2012.
2. Point (a) of paragraph 1 shall not apply to third-country vessels carrying out fishing operations under an agreement on exchange of fishing opportunities or joint management of fish stocks of common interest.

Article 34

Procedure for obtaining fishing authorisations

1. The third country concerned shall send the Commission the applications for its fishing vessels before the deadline in the agreement concerned or that set by the Commission.
2. The Commission may ask the third country for additional information necessary for verifying that the conditions provided for in Article 33 have been met.
3. When it is established that the conditions referred to in paragraph 2 are met, the Commission shall issue a fishing authorisation and inform the third country and the Member States concerned of this without delay.

Article 35

Management of fishing authorisations

1. If a condition set out in Article 33 is no longer met, the Commission shall take the appropriate action, including to amend or withdraw the authorisation, and inform the third country and the Member States concerned of this.
2. The Commission may refuse, suspend or withdraw the authorisation issued to the third-country fishing vessel in cases where a fundamental change of circumstances has occurred or in cases of a serious threat to the sustainable exploitation, management and conservation of marine biological resources, or where it is essential in order to prevent or suppress IUU fishing, or in cases where the Union has decided to suspend or sever relations with the third country concerned.

The Commission shall immediately inform the third country concerned in the event that it refuses, suspends or withdraws the authorisation in accordance with the first subparagraph.

Article 36

Closure of fishing operations

1. Where fishing opportunities granted to a third country are deemed to have been exhausted, the Commission shall immediately notify it and the competent inspection authorities of the Member States of this. To ensure the continuance of fishing operations of non-exhausted fishing opportunities, which may also affect the exhausted opportunities, the third country shall submit to the Commission technical measures preventing any negative impact on the exhausted fishing opportunities.
2. From the date of the notification referred to in paragraph 1, the fishing authorisations issued to vessels flying the flag of that third country concerned shall be considered to be suspended for the fishing operations concerned and the vessels shall no longer be authorised to engage in those fishing operations.
3. Fishing authorisations shall be considered to be withdrawn where a suspension of fishing authorisations in accordance with paragraph 2 concerns all the operations for which they have been granted.

4. The third country shall ensure that the fishing vessels concerned are informed immediately of the application of this Article and that they cease all fishing operations concerned. The third country shall also inform the Commission without delay when fishing vessels flying its flag have ceased their fishing operations.

Article 37

Overfishing of quotas in Union waters

1. When the Commission establishes that a third country has exceeded the quotas it has been allocated for a stock or group of stocks, the Commission shall operate deductions from the quotas allocated to that country for that stock or group of stocks in subsequent years. The Commission shall endeavour to ensure that the amount of the deduction is consistent with deductions imposed on Member States in similar circumstances.

2. If a deduction in accordance with paragraph 1 cannot be made on the quota for a stock or group of stocks that was overfished as such because that quota for a stock or group of stocks is not sufficiently available to the third country concerned, the Commission may, after consultation with the third country concerned, operate from quotas in subsequent years for other stocks or groups of stocks available to that third country in the same geographical area, or to the corresponding commercial value.

Article 38

Control and enforcement

1. A third-country vessel authorised to fish in Union waters shall comply with the control rules governing the fishing operations of Union vessels in the fishing **area** in which it operates.

2. A third-country vessel authorised to fish in Union waters shall provide to the Commission or the body designated by it, and, where relevant, to the coastal Member State, the data which Union vessels are required to send to the flag Member State under the Control Regulation.

3. The Commission, or the body designated by it, shall send the data referred to in paragraph 2 to the coastal Member State.

4. A third-country vessel authorised to fish in Union waters shall provide upon request to the Commission or the body designated by it the observer reports produced under applicable observer programmes.

5. A coastal Member State shall record all infringements committed by third-country fishing vessels, including the related sanctions, in the national register provided for in Article 93 of the Control Regulation.

TITLE IV

DATA AND INFORMATION

Article 39

Union database for fishing authorisations issued under this Regulation

1. The Commission shall set up and maintain an electronic Union fishing authorisation database containing all fishing authorisations granted in accordance with Titles II and III, made of a public part and a secure part. That database shall:

- (a) record all information submitted in accordance with the Annex and other information submitted to the Commission for the purpose of issuing fishing authorisations under Titles II and III, including the name, city, country of residence of the owner and of up to five main beneficial owners, and display the status of each authorisation as soon as possible;

- (b) be used for data and information exchange between the Commission and a Member State; and
 - (c) be used for the purposes of sustainable management of fishing fleets as well as for the purposes of control only.
2. The list of all fishing authorisations issued under Titles II and III in the database shall be publicly accessible and contain all of the following information:
- (a) the name and flag of the vessel and its CFR and IMO numbers where required under Union law;
 - (b) the type of authorisation including target species or species group(s); and
 - (c) the authorised time and area of fishing operation (start and end dates; fishing area).
3. A Member State shall use the database to submit applications for fishing authorisations to the Commission and to keep its details updated, as required under Articles 11, 18, 22 and 26, and a third country shall use the database to submit applications for fishing authorisations as required under Article 34.

Article 40

Technical requirements

1. The exchange of information referred to in Titles II, III and IV shall be carried out in an electronic format.
2. The Commission may adopt implementing acts, without prejudice to the provisions of Directive 2007/2/EC of the European Parliament and of the Council ⁽¹⁾, establishing technical operational requirements for the recording, formatting and transmission of the information referred to in Titles II, III and IV. The technical operational requirements shall become applicable not earlier than six months, and not later than 18 months, after their adoption. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(2).

Article 41

Access to data

Without prejudice to Article 110 of the Control Regulation, the Member States or the Commission shall grant access to the secure part of the Union database for external fishing fleets' fishing authorisations referred to in Article 39 of this Regulation to the relevant competent administrative services involved in the management of fishing fleets.

Article 42

Data management, protection of personal data and confidentiality

Data obtained under this Regulation shall be handled in accordance with Articles 112 and 113 of the Control Regulation, Regulation (EC) No 45/2001 and Directive 95/46/EC and its national implementing rules.

Article 43

Relations with third countries and RFMOs

1. When a Member State receives information from a third country or an RFMO which is relevant for the effective application of this Regulation, it shall communicate that information to the Commission or the body designated by it, and, where appropriate, to other Member States concerned, provided that it is permitted to do so under bilateral agreements with that third country or the rules of the RFMO concerned.
2. The Commission or the body designated by it may, in the framework of fisheries agreements concluded between the Union and third countries, under the auspices of RFMOs to which the Union is a contracting party, communicate relevant information concerning non-compliance with the rules of this Regulation, or serious infringements, to other parties to those agreements or organisations subject to the consent of the Member State that supplied the information and in accordance with Regulation (EC) No 45/2001.

⁽¹⁾ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

TITLE V

PROCEDURES, DELEGATION AND IMPLEMENTING MEASURES*Article 44***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 5(2) and 15 shall be conferred on the Commission for a period of five years from ... [*the date of entry into force of this Regulation*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 5(2) and 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 5(2) and 15 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 45***Committee procedure**

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established under Article 47 of the Basic Regulation. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

TITLE VI

FINAL PROVISIONS*Article 46***Repeal**

1. The FAR is hereby repealed.
2. References to provisions of the repealed Regulation shall be construed as references to this Regulation.

*Article 47***Transitional provisions concerning the temporary reallocation of fishing opportunities under existing protocols**

1. By way of derogation from Article 12, for those protocols to SFPAs that are in force or are provisionally applied on ... [*the date of entry into force of this Regulation*], the procedure for temporary reallocation of fishing opportunities set out in this Article shall be used until the expiry of the protocol in question.

2. In the context of an SFPA if, on the basis of the requests for transmission of applications referred to in Article 11, it appears that the number of fishing authorisations or the amount of fishing opportunities allocated to the Union under a protocol are not fully utilised, the Commission shall inform the Member States concerned and shall request them to confirm not making use of those fishing opportunities. The absence of a reply within the deadlines, to be set by the Council upon the conclusion of the SFPA, shall be considered as confirmation that the vessels of the Member State concerned are not making full use of their fishing opportunities in the given period.

3. After confirmation by the Member State concerned, the Commission shall assess the total non-utilised fishing opportunities and shall make that assessment available to the Member States.

4. Member States wishing to make use of the non-utilised fishing opportunities referred to in paragraph 3 shall submit to the Commission a list of all vessels for which they intend to request a fishing authorisation, as well as the request for the transmission of applications for each of those vessels, in accordance with Article 11.

5. The Commission shall decide on the reallocation, in close cooperation with the Member States concerned.

If a Member State concerned objects to that reallocation, the Commission shall, by means of implementing acts, decide on the reallocation taking into account the criteria laid down in paragraph 8 of this Article, and shall notify the Member States concerned thereof. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(2).

6. The transmission of applications in accordance with this Article shall in no way affect the allocation of fishing opportunities or their exchange amongst Member States, in accordance with Article 16 of the Basic Regulation.

7. The Commission shall not be prevented from applying the mechanism referred to in paragraphs 2 to 5 until the deadlines referred to in paragraph 2 are finalised.

8. For the reallocation of fishing opportunities under this Article, the Commission shall take into account, in particular:

- (a) the date of each of the requests received;
- (b) the fishing opportunities available for reallocation;
- (c) the number of requests received;
- (d) the number of requesting Member States; and
- (e) if fishing opportunities are fully or partly based on amounts of fishing effort or catches, the fishing effort expected to be deployed or the catches expected to be made by each of the vessels concerned.

Article 48

Entry into force

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

Done at ...,

For the European Parliament
The President

...

For the Council
The President

...

—

ANNEX

List of data to be provided

I	APPLICANT
1	Name of the economic operator
2	Email
3	Address
4	Fax
5	Telephone
6	Name of the owner
7	Email
8	Address
9	Fax
10	Telephone
11	Name of association or agent representing the economic operator
12	Email
13	Address
14	Fax
15	Telephone
16	Name(s) of master(s)
17	Email
18	Address
19	Fax
20	Telephone
II	FISHING VESSEL
21	Vessel name
22	Vessel identifier (IMO number, CFR number, etc)
23	Method of fish preservation on board
24	Vessel type FAO code
25	Gear type FAO code

III	FISHING CATEGORY FOR WHICH AUTHORISATION IS REQUESTED
26	Type of authorisation (direct authorisation; high seas; support)
27	Fisheries area (FAO Area(s), Subarea(s), Division(s), Subdivision(s) as appropriate)
28	Area of operation (high seas; third country — specify)
29	Landing ports
30	Target species FAO code(s) (or fishing category for SFPA)
31	Authorisation period requested (start and end dates)
32	List of support vessels (vessel name; IMO number; CFR number)
IV	CHARTERING
33	Vessel operating under chartering arrangement (Y/N)
34	Type of chartering arrangement
35	Period of chartering (start and end dates)
36	Fishing opportunities (mt) allocated to vessel under chartering
37	Third country allocating fishing opportunities to the vessel under chartering

Statement of the Council's reasons: Position (EU) No 6/2017 of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008

(2017/C 390/02)

I. INTRODUCTION

1. On 11 December 2015, the Commission submitted a proposal to the European Parliament and to the Council for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets ⁽¹⁾, repealing Council Regulation (EC) No 1006/2008 ⁽²⁾. The proposal envisages an overhaul of the authorisation regime for Union fishing vessels to fish outside Union waters, and for third country vessels to fish inside Union waters.
2. Following an in-depth examination of the proposal by the Working Party on Internal and External Fisheries Policy, the Council agreed on a general approach ⁽³⁾ on 28 June 2016.
3. On 1 March 2016, the Committee of the Regions decided not to issue an opinion.
4. On 25 May 2016, the European Economic and Social Committee adopted its opinion ⁽⁴⁾.
5. On 2 February 2017, the European Parliament adopted its legislative report containing the first reading position ⁽⁵⁾.
6. Between February and early March 2017, the Working Party on Internal and External Fisheries Policy examined the set of amendments contained in the European Parliament's legislative report, and on 8 March 2017 COREPER established a mandate ⁽⁶⁾ for negotiations with the EP.
7. After informal trilogues held on 27 April, 30 May and 20 June 2017, COREPER was informed that a provisional agreement had been reached with the EP.
8. By letter dated 14 July 2017, the Chair of the European Parliament's Committee on Fisheries informed the President of COREPER I that, should the Council transmit formally to the European Parliament its position as agreed, subject to legal-linguistic review, it will recommend to the Plenary that the Council's position be accepted without amendments at Parliament's second reading.
9. On 19 July 2017, COREPER confirmed the final compromise text with a view to an agreement ⁽⁷⁾ and on 25 September 2017 the text received the Council's political agreement ⁽⁸⁾.

II. OBJECTIVE

10. The aim of the proposal was to update the existing Regulation on the External Fishing Fleet in accordance with the 2013 reform of the Common Fisheries Policy (CFP), notably by improving the authorisation regime for Union fishing vessels to fish outside Union waters, and for third country vessels to fish inside Union waters. In addition to clarifying and simplifying the existing rules, and making them more consistent with key legislation adopted in the meantime, the proposal intends to broaden the scope of the existing Regulation to other related aspects such as direct authorisations obtained from third countries, reflagging, chartering, and to improve monitoring and transparency. It is therefore expected that this set of updated rules constitutes an enhanced tool to fight against illegal, unreported and unregulated fishing (IUU).

⁽¹⁾ Cf. doc. 15262/1/15 REV 1 PECHE 481 CODEC 1773.

⁽²⁾ Cf. Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33).

⁽³⁾ Cf. doc. 10143/16 PECHE 217 CODEC 868.

⁽⁴⁾ OJ C 303, 19.8.2016, p. 116.

⁽⁵⁾ Cf. doc. 5866/17 PECHE 44 CODEC 141 PE 4.

⁽⁶⁾ Cf. doc. 6304/2/17 REV 2 PECHE 58 CODEC 211.

⁽⁷⁾ Cf. doc. 10550/17 PECHE 263 CODEC 1108.

⁽⁸⁾ Cf. doc. 11583/17 PECHE 306 CODEC 1298.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

11. The Council's position largely endorses the Commission's proposal with respect to updating the fishing authorisation regime, simplifying reporting obligations and increasing transparency. However, the Council harmonised the authorisation procedures to decrease their complexity, reduce related administrative burdens and avoid disproportionate measures.
12. In addition, the three institutions saw merit in providing for a single fishing authorisation for vessels fishing only in EU waters with no additional conditionality for authorisations to EU vessels fishing outside EU waters connected to previous serious infringements (Article 5 of the Council's position), as Union law already requires appropriate sanctions in case of such infringements. This approach was considered to be more in line with the Control Regulation.
13. With regard to further changes to the Commission proposal, the Council builds on amendments suggested by the Parliament, notably with respect to 'monitoring fishing authorisations' (amendment 32) and when ensuring that planned fishing activities are in accordance with a scientific evaluation (amendments 49 and 57). Also, the Council agrees to further clarify and limit the delegation of powers already foreseen in the Commission proposal based on an amendment proposed by the Parliament (amendment 73).

B. Particular Elements

14. Of particular concern for the three institutions were provisions added as a result of the CFP reform such as 'reflagging'. This Regulation should ensure that fishing vessels that had left the Union fishing fleet, were subsequently reflagged by a third country, and then returned to the Union fishing fleet later on, had not been involved in IUU fishing or fished under the flag of an IUU non-cooperating country. The Council maintained that a vessel is not eligible for authorisation when it had continued to fish in the third country's fishing fleet after that third country was listed as allowing non-sustainable fishing or as a non-cooperating country in fighting IUU fishing pursuant to Article 33 of Council Regulation (EC) No 1005/2008, but not where the third country was only identified as a non-cooperating country in fighting IUU fishing. However, in order to cater for the Parliament's concerns, the Council agreed that a vessel should also not be eligible for authorisation when it continued to fish in the third country's fishing fleet after six weeks from the decision identifying that third country as a non-cooperating country in fighting IUU fishing, except where the Council has decided not to list that third country as such (Article 6(2)(d) of the Council's position).
15. In the course of the discussions with the Parliament and the Commission, the Council furthermore accepted to include information requirements concerning transshipments under direct authorisations and on the high seas. It was also agreed to include a requirement for prior notification to the flag Member State for these transshipment operations (new Article 26a of the Council's position).
16. Finally, the Council agreed on establishing a Union database for fishing authorisations issued under this Regulation (Article 39 of the Council's position) that will be composed of a public part and a secure part, thus ensuring a better balance between transparency and control, and securing protection of personal data.

IV. CONCLUSION

17. In establishing its position, the Council has taken full account of the Commission's proposal and of the European Parliament's position at first reading.
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