

Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008

TITLE II

**FISHING OPERATIONS BY UNION FISHING VESSELS OUTSIDE UNION WATERS**

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.

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## 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 SFPAs.

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 SFPAs. 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 SFPAs, 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 SFPAs 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

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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.

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## 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 have 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.

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## 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 SFPA 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

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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 2 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.

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**Changes and effects yet to be applied to :**

- Regulation revoked by [2020 c. 22 Sch. 11 para. 8](#)

**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Title IIIa addition by [EUR 2019/498 Regulation](#)
- Title 2Ch. 2s. 4 addition by [EUR 2019/498 Regulation](#)
- Ch. 2 heading words substituted by [S.I. 2019/739 reg. 8\(10\)](#)
- Ch. 3 heading words substituted by [S.I. 2019/739 reg. 8\(20\)](#)
- Ch. 4 heading words substituted by [S.I. 2019/739 reg. 8\(25\)](#)
- Ch. 5 heading words substituted by [S.I. 2019/739 reg. 8\(29\)](#)
- Art. 2(a) words substituted by [S.I. 2019/739 reg. 8\(3\)\(b\)](#)
- Art. 2(b) words substituted by [S.I. 2019/739 reg. 8\(3\)\(b\)](#)
- Art. 2(c) words substituted by [S.I. 2019/739 reg. 8\(3\)\(c\)](#)
- Art. 3(2)(b) substituted by [S.I. 2019/739 reg. 8\(4\)\(a\)](#)
- Art. 3(2)(b) words inserted in earlier amending provision [S.I. 2019/739, reg. 8\(4\)\(a\)](#) by [S.I. 2019/1312 reg. 8\(2\)\(b\)\(i\)](#)
- Art. 3(2)(c) words substituted by [S.I. 2019/739 reg. 8\(4\)\(b\)](#)
- Art. 3(2)(d) words omitted by [S.I. 2019/739 reg. 8\(4\)\(c\)](#)
- Art. 3(2)(e) words substituted by [S.I. 2019/739 reg. 8\(4\)\(d\)](#)
- Art. 3(2)(f) words inserted by [S.I. 2019/739 reg. 8\(4\)\(e\)\(i\)](#)
- Art. 3(2)(f) words omitted by [S.I. 2019/739 reg. 8\(4\)\(e\)\(ii\)](#)
- Art. 3(2)(f) words omitted by [S.I. 2019/739 reg. 8\(4\)\(e\)\(iii\)](#)
- Art. 5(1)(a) words substituted by [S.I. 2019/739 reg. 8\(7\)\(a\)\(iii\)](#)
- Art. 5(1)(c) words substituted by [S.I. 2019/739 reg. 8\(7\)\(a\)\(iv\)](#)
- Art. 5(1)(d) words substituted by [S.I. 2019/739 reg. 8\(7\)\(a\)\(v\)](#)
- Art. 5(1)(e) words substituted by [S.I. 2019/739 reg. 8\(7\)\(a\)\(vi\)](#)
- Art. 6(2)(d) omitted by [S.I. 2019/739 reg. 8\(8\)\(b\)\(ii\)](#)
- Art. 6(3)(d) words substituted by [S.I. 2019/739 reg. 8\(8\)\(c\)\(ii\)](#)
- Art. 6(4)(b) omitted by [S.I. 2019/739 reg. 8\(8\)\(d\)\(ii\)](#)
- Art. 18a Text replacement by [EUR 2019/1797 Regulation](#)
- Art. 20(1)(a) words substituted by [S.I. 2019/739 reg. 8\(22\)\(a\)\(ii\)](#)
- Art. 20(1)(b) words substituted by [S.I. 2019/739 reg. 8\(22\)\(a\)\(iii\)](#)
- Art. 21(b) words substituted by [S.I. 2019/739 reg. 8\(23\)\(c\)](#)
- Art. 24(b) words substituted by [S.I. 2019/739 reg. 8\(27\)\(c\)](#)
- Art. 33(1)(c) words substituted by [S.I. 2019/739 reg. 8\(38\)\(c\)](#)
- Art. 33(1)(d) words substituted by [S.I. 2019/739 reg. 8\(38\)\(d\)](#)
- Art. 38a Text replacement by [EUR 2019/1797 Regulation](#)
- Art. 38b replacement by [EUR 2019/1797 Regulation](#)
- Art. 38c para. 2 Point (f) replacement by [EUR 2019/1797 Regulation](#)