COMMISSION REGULATION (EC) No 1277/2007

of 29 October 2007

amending Regulation (EC) No 1438/2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ([1]), and in particular Articles 11(5), 12(2), 13(2) and 14(2) thereof,

Having regard to the Treaty of Accession of Bulgaria and Romania,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 56 thereof,

Whereas:

(1) Commission Regulation (EC) No 1438/2003 ([2]) establishes implementing rules for the Chapter on Fleet Policy of Regulation (EC) No 2371/2002, in particular for the application of Articles 11, 12, 13 and 14 thereof.

(2) On 28 July 2007 the provisions of Article 11 of Regulation (EC) No 2371/2002 have been amended by Regulation (EC) No 865/2007 to allow Member States to rebuild 4 % of the annual average tonnage scrapped with public aid between 1 January 2003 and 31 December 2006 and 4 % of the tonnage scrapped with public aid as from 1 January 2007.

(3) On 28 July 2007 the provisions of Article 13 of Regulation (EC) No 2371/2002 have been amended to take account of the requirement, as laid down in Article 25(3)(b) and (c) of Council Regulation (EC) No 1198/2006 ([3]), to reduce by at least 20 % the power of an engine that has been replaced with public aid, excluding engine replacements in the small-scale coastal fisheries as defined in that Regulation. In addition, a transitory arrangement is no longer applicable that linked to an overall capacity reduction by 3 % any public aid commitment for fleet renewal occurring after the introduction of the new common fisheries policy and until the end of 2004.

(4) After completion of the measurement of all fishing vessels, the adjustment rule referring to the effect of such measurement on the tonnage reference level can be discontinued; however, it should be maintained for a strict application of the entry-exit regime in terms of tonnage.

(5) It is necessary to revise the existing exemption from the entry-exit regime for the vessels that joined the fleet as from 1 January 2003 or, for those Member States that acceded later, as from the accession date, on the basis of an administrative decision adopted respectively before 1 January 2003 or before the accession date. This revision will allow such exemption for vessels whose entry, although decided in accordance with national and Community law before the accession or the administrative decision, could not benefit from the transitional measures because the three-year transitional period was too short.

(6) Bulgaria and Romania acceded to the Community on 1 January 2007, and therefore the provisions of Regulation (EC) No 1438/2003 should be adapted.

(7) Regulation (EC) No 1438/2003 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1438/2003 is amended as follows:

1. Article 2 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. "GT_{a1}" or "the total tonnage of vessels leaving the fleet with public aid between 1 January 2003 and 31 December 2006" means the total tonnage of vessels that left the fleet with public aid between 1 January 2003 and 31 December 2006. In the formula concerning the reference level in tonnage in Article 4 this value is only taken into account for the amount of capacity that went beyond the tonnage reduction necessary to comply with the reference levels under Article 12(1) of Regulation (EC) No 2371/2002;

([1]) OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).
([2]) OJ L 204, 13.8.2003, p. 21. Regulation as amended by Regulation (EC) No 916/2004 (OJ L 163, 30.4.2004, p. 81).
([3]) OJ L 223, 15.8.2006, p. 1.

For the New Member States, "GT_{a1}" or "the total tonnage of vessels leaving the fleet with public aid between 1 January 2003 and 31 December 2006" means the total tonnage of vessels that left the fleet with public aid between the accession date and 31 December 2006.'

(b) Paragraph 3 is replaced by the following:

'3. "GT_{a2}" or "the total tonnage of vessels leaving the fleet with public aid after 31 December 2006" means the total tonnage of vessels that left the fleet with public aid between 1 January 2007 and the date for which GT_t is calculated. In the formula concerning the reference level in tonnage in Article 4 this value is only taken into account for the amount of capacity that went beyond the tonnage reduction necessary to comply with the reference levels under Article 12(1) of Regulation (EC) No 2371/2002;'

(c) Paragraph 11 is replaced by the following:

'11. "New Member State" means a Member State that acceded to the Community after 1 January 2003.'

(d) The following paragraph 12 is added:

'12. "kW_r" or "the total power of the engines replaced with public aid conditional to a power reduction": means the total power of the engines replaced with public aid after 31 December 2006 under the provisions of Article 25(3)(b) and (c) of Council Regulation (EC) No 1198/2006 (*).

(*) OJ L 223, 15.8.2006, p. 1.'

2. Article 4 is replaced by the following:

'*Article 4*

Monitoring of reference levels

1. For each Member State, excluding the New Member States, the reference level in tonnage at any given date after 1 January 2003 ($R(GT)_t$) shall be equal to the reference level for that Member State set out in Annex I at 1 January 2003 ($R(GT)_{03}$) adjusted by:

(a) deducting

(i) 99 % of the total tonnage of vessels leaving the fleet with public aid between 1 January 2003 and 31 December 2006 (GT_{a1});

(ii) 96 % of the total tonnage of vessels leaving the fleet with public aid after 31 December 2006 (GT_{a2});

(b) and adding the total tonnage increases granted under the provisions of Article 11(5) of Regulation (EC) No 2371/2002 (GT_S).

Those reference levels shall be determined according to the following formula:

$$R(GT)_t = R(GT)_{03} - 0{,}99\ GT_{a1} - 0{,}96\ GT_{a2} + GT_S$$

When new fishing capacity enters the fleet under the conditions of Article 13(1)(b)(ii) of Regulation (EC) No 2371/2002 the reference levels mentioned in the second subparagraph shall be reduced by 35 % of the total tonnage of vessels of more than 100 GT entering the fleet with public aid granted after 31 December 2002 (GT_{100}) according to the following formula:

$$R(GT)_t = R(GT)_{03} - 0{,}99\ GT_{a1} - 0{,}96\ GT_{a2} - 0{,}35\ GT_{100} + GT_S$$

2. For each Member State, excluding the New Member States, the reference level in power at any given date after 1 January 2003 ($R(kW)_t$) shall be equal to the reference level for that Member State set out in Annex I at 1 January 2003 ($R(kW)_{03}$) as adjusted by deducting the total power of vessels leaving the fleet with public aid after 31 December 2002 (kW_a) and 20 % of the total power of the engines replaced with public aid conditional to a power reduction (kW_r).

Those reference levels shall be determined according to the following formula:

$$R(kW)_t = R(kW)_{03} - kW_a - 0{,}2\ kW_r$$

When new fishing capacity enters the fleet under the conditions of Article 13(1)(b)(ii) of Regulation (EC) No 2371/2002 the reference levels referred to in the second subparagraph shall be reduced by 35 % of the total power of vessels of more than 100 GT entering the fleet with public aid granted after 31 December 2002 (kW_{100}) according to the following formula:

$$R(kW)_t = R(kW)_{03} - kW_a - 0{,}2\ kW_r - 0{,}35\ kW_{100}'$$

3. Article 5 is deleted.

4. Article 6 is replaced by the following:

'*Article 6*

Fishing capacity of the fleet on 1 January 2003

Except for the New Member States, for the purposes of Article 7 the fishing capacity in terms of tonnage (GT_{03}) and power (kW_{03}) at 1 January 2003 shall be determined taking into account, in accordance with Annex II, the entries of vessels which are based on an administrative decision by the Member State concerned taken between 1 January 1998 and 31 December 2002 in conformity with the legislation applicable at that time, and in particular in accordance with the national entry/exit regime notified to the Commission under Article 6(2) of Decision 97/413/EC (*), and which take place not later than five years after the date of that administrative decision.

(*) OJ L 175, 3.7.1997, p. 27.'

5. Article 6a is replaced by the following:

'*Article 6a*

Fishing capacity of the fleet of the New Member States at the accession date

For the New Member States, for the purposes of Article 7a, the fishing capacity in terms of tonnage (GT_{acc}) and power (kW_{acc}) at the accession date shall be determined taking into account, in accordance with Annex III, the entries of vessels which are based on an administrative decision by the Member State concerned taken up to five years before the accession date, and which take place not later than five years after the date of that administrative decision.'

6. Article 7 is replaced by the following:

'*Article 7*

Monitoring of entries and exits

1. In order to comply with Article 13 of Regulation (EC) No 2371/2002 each Member State, excluding the New Member States, shall ensure that at all times the fishing capacity in tonnage (GT_t) is equal to or less than the fishing capacity at 1 January 2003 (GT_{03}) as adjusted by:

(a) deducting:

(i) 99 % of the total tonnage of vessels leaving the fleet with public aid between 1 January 2003 and 31 December 2006 (GT_{a1});

(ii) 96 % of the total tonnage of vessels leaving the fleet with public aid after 31 December 2006 (GT_{a2});

(iii) 35 % of the total tonnage of vessels of more than 100 GT entering the fleet with public aid granted after 31 December 2002 (GT_{100});

(b) and adding

(i) the total tonnage increases granted under the provisions of Article 11(5) of Regulation (EC) No 2371/2002 (GT_S);

(ii) the result of the re-measurement of the fleet (Δ(GT-GRT)).

Each Member State shall ensure that the following formula is complied with:

$$GT_t \leq GT_{03} - 0{,}99\ GT_{a1} - 0{,}96\ GT_{a2} - 0{,}35\ GT_{100} + GT_S + \Delta(GT\text{-}GRT)$$

2. In order to comply with Article 13 of Regulation (EC) No 2371/2002, each Member State, excluding the New Member States, shall ensure that at all times the fishing capacity in power (kW_t) is equal to or less than the fishing capacity at 1 January 2003 (kW_{03}) as adjusted by deducting:

(a) the total power of vessels leaving the fleet with public aid after 31 December 2002 (kW_a);

(b) 20 % of the total power of the engines replaced with public aid conditional to a power reduction (kW_r);

(c) 35 % of the total power of vessels of more than 100 GT entering the fleet with public aid granted after 31 December 2002 (kW_{100}).

Each Member State shall ensure that the following formula is complied with:

$$kW_t \leq kW_{03} - kW_a - 0{,}2\ kW_r - 0{,}35\ kW_{100}$$'

7. Article 7a is replaced by the following:

'*Article 7a*

Monitoring of entries and exits in the New Member States

1. In order to comply with Article 13 of Regulation (EC) No 2371/2002, each New Member State shall ensure that at all times the fishing capacity in tonnage (GT_t) is equal to or less than the fishing capacity at the accession date, (GT_{acc}) as adjusted by:

(a) deducting:

(i) for the new Member States that acceded the to Community on 1 May 2004, 98,5 % of the total tonnage of vessels leaving the fleet with public aid between that date and 31 December 2006 (GT_{a1});

(ii) For each new Member State, 96 % of the total tonnage of vessels leaving the fleet with public aid after 31 December 2006 (GT_{a2});

(iii) For each new Member State, 35 % of the total tonnage of vessels of more than 100 GT entering the fleet with public aid granted on or after the accession date (GT_{100});

(b) and adding

(i) the total tonnage increases granted under the provisions of Article 11(5) of Regulation (EC) No 2371/2002 (GT_S);

(ii) the result of the re-measurement of the fleet (Δ(GT-GRT)).

Each New Member State shall ensure that the following formula is complied with:

$$GT_t \leq GT_{acc} - 0{,}985\ GT_{a1} - 0{,}96\ GT_{a2} - 0{,}35\ GT_{100} + GT_S + \Delta(GT\text{-}GRT)$$

2. In order to comply with Article 13 of Regulation (EC) No 2371/2002, each New Member State shall ensure that at all times the fishing capacity in power (kW_t) is equal to or less than the fishing capacity at the accession date, (kW_{acc}) as adjusted by deducting:

(a) the total power of vessels leaving the fleet with public aid on or after the accession date (kW_a);

(b) 20 % of the total power of the engines replaced with public aid conditional to a power reduction (kW_r);

(c) 35 % of the total power of vessels of more than 100 GT entering the fleet with public aid granted on or after the accession date (kW_{100}).

Each New Member State shall ensure that the following formula is complied with:

$$kW_t \leq kW_{acc} - kW_a - 0{,}2\ kW_r - 0{,}35\ kW_{100}'$$

8. Annex II is amended in accordance with Annex I to this Regulation.

9. Annex III is replaced by the text in Annex II to this Regulation.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 October 2007.

For the Commission

Joe BORG

Member of the Commission

ANNEX I

Annex II to Regulation (EC) No 1438/2003 is amended as follows:

1. Point 2 is replaced by the following:

'2. GT_1: means the total tonnage of vessels which entered the fleet after 31 December 2002 with public aid based on an administrative decision taken between 1 January 1998 and 31 December 2002, for which an associated capacity has been withdrawn without public aid between 1 January 1998 and 31 December 2002;'

2. Point 4 is replaced by the following:

'4. GT_3: means the total tonnage of vessels which entered the fleet after 31 December 2002 without public aid based on an administrative decision taken between 1 January 1998 and 31 December 2002, for which an associated capacity has been withdrawn without public aid between 1 January 1998 and 31 December 2002;'

3. Point 7 is replaced by the following:

'7. kW_1: means the total power of vessels which entered the fleet after 31 December 2002 with public aid based on an administrative decision taken between 1 January 1998 and 31 December 2002, for which an associated capacity has been withdrawn without public aid between 1 January 1998 and 31 December 2002;'

4. Point 9 is replaced by the following:

'9. kW_3: means the total power of vessels which entered the fleet after 31 December 2002 without public aid based on an administrative decision taken between 1 January 1998 and 31 December 2002, for which an associated capacity has been withdrawn without public aid between 1 January 1998 and 31 December 2002;'

ANNEX II

Annex III to Regulation (EC) No 1438/2003 is replaced by the following:

'ANNEX III

RULES FOR THE CALCULATION OF THE FISHING CAPACITY IN TERMS OF TONNAGE (GT_{acc}) AND POWER (KW_{acc}) FOR THE NEW MEMBER STATES ON THE ACCESSION DATE

For the purposes of this Annex:

1. GT_{FR}: means the fishing capacity of the fleet on the date of accession in terms of tonnage as calculated on the basis of the Community fishing fleet register;

2. GT_1: means the total tonnage of vessels which entered the fleet after the accession date based on an administrative decision taken up to five years before the accession date;

3. kW_{FR}: means fishing capacity of the fleet on the date of accession in terms of power as calculated on the basis of the Community fishing fleet register;

4. kW_1: means the total power of vessels which entered the fleet after the accession date based on an administrative decision taken up to five years before the accession date.

The fishing capacity of the fleet expressed in terms of tonnage GT_{acc} and power kW_{acc}, as defined in Article 6a, shall be calculated with the following formulae:

$$GT_{acc} = GT_{FR} + GT_1$$

$$kW_{acc} = kW_{FR} + kW_1'$$