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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 744/2008

of 24 July 2008

instituting a temporary specific action aiming to promote the restructuring of the European Community fishing fleets affected by the economic crisis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund [2] lays down the rules regarding Community structural assistance in the fisheries sector. In particular, Chapter I of Title IV of that Regulation lays down the terms on which the Member States may receive a financial contribution from the European Fisheries Fund (EFF) for the measures for the adaptation of the Community fishing fleet.

(2) The EFF aims to contribute to the steps that have been taken since the 2002 reform of the common fisheries policy (CFP) in view of reducing pressure on fish stocks, whilst ensuring sustainable social and economic conditions for the sector concerned.

(3) In the context of the recent economic situation, following in particular the drastic increase in fuel prices, there is an impending need to take additional measures aiming for a more rapid adaptation of the Community fishing fleet to the current situation, addressing the need to ensure sustainable social and economic conditions for the sector concerned. Such measures should contribute to attaining the general objectives set out in Article 33 of the Treaty and the CFP objectives as laid down in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [3]. In this context, those measures should address both the immediate situation of economic and social hardship while tackling systemic overcapacity.

(4) It is of importance to ensure that such measures will be equally available for all Member States and that they do not introduce any distortion of competition between Member States or fleets. They therefore need to be addressed and coordinated at Community level.

(5) Consequently, there is a need for a Community initiative supplementing and allowing for temporary derogations from certain provisions of Regulation (EC) No 1198/2006 and to temporarily derogate from certain provisions of Regulations (EC) No 2371/2002 and (EC) No 1198/2006. This initiative should therefore provide for specific measures of general nature and for the implementation of Fleet Adaptation Schemes in the Member States, which effectively address the current economic difficulties, whilst ensuring the long-term viability of fisheries sector.

(6) In view of the exceptional nature of those measures and of the economic hardship they intend to address, the duration of these measures should be limited to the shortest possible period sufficient to achieve the expected aims.

[1] Opinion delivered on 10 July 2008 (not yet published in the Official Journal).

[2] OJ L 223, 15.8.2006, p. 1.

[3] 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).

(7) These measures should be implemented by the Member States in the context of their operational programme under the EFF and financed from the funds allocated to them in that framework.

(8) Moreover, Member States should be entitled to supplement the measures benefiting from such funds by financing certain measures through solely national funds with no financing from Community financial instruments. In view of the need to rapidly tackle the serious situation faced by the fisheries sector, those measures, aimed at bringing about structural improvement and long-term economic viability of the sector, should not be subject to the application of Articles 87, 88 and 89 of the Treaty. In order to limit possible distortions of competition and effects on the internal market, those measures should be subject to certain limitations.

(9) This Regulation should provide for a Community contribution to measures for permanent and temporary cessation of fishing activities, for investments on board aiming to reduce fuel dependency of fishing vessels, for socio-economic compensation as well as for certain actions of a more collective nature. In order to ensure the effectiveness of those measures, as well as to allow Member States to make use of the available funds to the fullest extent possible, the thresholds for private participation in the financing of the measures should be lowered.

(10) In order to contribute to restructuring, the temporary cessation of fishing activities should be made available. Temporary cessation of fishing activities should in particular be aimed at enhancing economic benefits by supporting stock recovery or by promoting more favourable marketing conditions. To that effect, Member States should be encouraged to link the period of temporary cessation with considerations of biological dynamics, seasonality and market dynamics. In the context of the economic crisis, it is also necessary to facilitate the compensation to be granted to fishers that have temporary ceased their activities prior to the adoption of this Regulation.

(11) In view of assisting the fishing sector to adapt to less fuel consuming fishing techniques, it is appropriate to facilitate the replacement of existing equipment on board fishing vessels in order to allow for new, less energy-consuming, fishing techniques. In this regard, additional possibilities for contributions to investments on board fishing vessels should be made available.

(12) A Community contribution should also be provided for collective actions aimed at delivering expertise to vessel owners in relation to energy audits for vessels, and expert advice on the development of restructuring and modernisation plans and Fleet Adaptation Schemes. Moreover, financing should be made available for pilot projects aiming at reducing energy consumption for vessels, engines, equipment or gear.

(13) In view of long-term viability of the fishing sector, a new instrument should be introduced allowing Member States to reduce capacity and to increase profitability of the fleets. This should take the form of Fleet Adaptation Schemes and concern fleets where the energy costs represent on average at least 30 % of the production costs. These Fleet Adaptation Schemes should result in a capacity reduction of the fleets concerned of at least 30 % expressed in GT and kW.

(14) Where measures are implemented by Member States in the context of Fleet Adaptation Schemes, with a view to ensuring the long-term viability of one or more of their fleets through capacity reduction, more favourable conditions should apply.

(15) There is a need to encourage Member States to further extend their permanent cessation schemes in order to adjust their fleets to the available resources. Consequently, it is appropriate to allow for further contribution possibilities to permanent cessation. In order to facilitate restructuring, further possibilities for temporary cessation of fishing activities should be allowed for fishers and vessel owners concerned by Fleet Adaptation Schemes.

(16) Furthermore, Member States having adopted a Fleet Adaptation Scheme should also be allowed to implement partial decommissioning measures ensuring a more cost-efficient use of funds available for reducing capacity and energy consumption of the fleet concerned. Within such partial decommissioning measures, vessel owners withdrawing one or more of their vessels from the fleet should be allowed to re-use part of the capacity withdrawn for a new smaller and less energy consuming vessel. In addition, Member States should be allowed to allocate a limited amount of the total capacity withdrawn under the Fleet Adaptation Scheme to new vessels. In such case, funds should be made available only for the part of the capacity which is permanently withdrawn.

(17) The obligations of Member States regarding management and control pursuant to Article 70 of Regulation (EC) No 1198/2006 and the mechanism for corrections pursuant to Article 97 of Regulation (EC) No 1198/2006 should apply in the framework of this Regulation.

(18) Failure to achieve the 30 % minimum reduction in capacity laid down in a Fleet Adaptation Scheme or failure to comply with the rules on temporary cessation, permanent cessation or partial decommissioning should be regarded as irregularities within the meaning of Article 97 of Regulation (EC) No 1198/2006.

(19) In view of the urgency of the situation and the need for immediate action in all Member States, it is appropriate to increase the percentage of Community co-financing under the EFF of the measures under this initiative to 95 %. In the same context, it is important that these funds are available to Member States within shorter delays than normally applicable and that expenditure is eligible from the date of the entry into force of this Regulation.

(20) Given the urgency of the situation, there is a compelling need to allow an exception to the six-week period referred to in Section I.3 of the Protocol on the role of national parliaments in the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes a specific Community action designed to provide for exceptional and temporary support for the persons and enterprises active in the fisheries sector affected by the economic crisis induced by the increase of oil prices in 2008, as a special regime under the European Fisheries Fund (hereinafter referred to as EFF).

2. This specific action shall consist of:

(a) general measures supplementing and derogating from certain provisions of Regulation (EC) No 1198/2006, and

(b) special measures supplementing and derogating from certain provisions of Regulations (EC) No 2371/2002 and (EC) No 1198/2006 that are conditional upon the implementation of a Fleet Adaptation Scheme as referred to in Article 12.

Article 2

Scope

This Regulation shall apply only to public aid which has been the subject of an administrative decision by the relevant national authorities by 31 December 2010.

Article 3

Financial framework

1. The measures provided for under this Regulation may receive financial support from the EFF within the limits of the commitment appropriations defined for the period 2007-13.

2. Public aid granted under this specific action may not be cumulated with another public aid having the same purpose, and in particular that granted by the European Agricultural Fund for Rural Development (EAFRD), the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, other Community financial instruments and national funds.

Article 4

Application of State aid rules

1. Without prejudice to paragraph 2 of this Article, Articles 87, 88 and 89 of the Treaty shall not apply to aid granted by Member States, pursuant to and in conformity with this Regulation within the scope of Article 36 of the Treaty.

2. Aid granted by Member States with no financing from Community financial instruments and exceeding the limits laid down in Article 1(3) of Commission Regulation (EC) No 736/2008 of 22 July 2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products [1] shall be subject to the application of Articles 87, 88 and 89 of the Treaty.

3. Where aid is granted by Member States with no financing from Community financial instruments within the limits laid down in Article 1(3) of Regulation (EC) No 736/2008, they shall forward to the Commission a summary of the information regarding such aid prior to its implementation. Moreover, each year, by 1 July at the latest, Member States shall submit to the Commission a report on the aid granted under this paragraph.

[1] OJ L 201, 30.7.2008, p. 16.

CHAPTER II

GENERAL MEASURES

Article 5

General measures

Public aid to the persons and enterprises referred to in Article 1 may be granted until 31 December 2010 according to the rules set out in this Chapter.

Article 6

Temporary cessation of fishing activities

1. In addition to the measures provided for in Article 24 of Regulation (EC) No 1198/2006, the EFF may contribute to the financing of aid measures for the temporary cessation of fishing activities for fishers and owners of fishing vessels for a maximum duration of three months implemented during the period from 1 July 2008 to 31 December 2009, provided that:

(a) the temporary cessation of fishing activities commenced before 31 December 2008, and

(b) the beneficiary enterprises become subject until 31 January 2009 to restructuring measures such as Fleet Adaptation Schemes, fishing effort adjustment plans, national decommissioning schemes, catch plans, other restructuring/modernisation measures.

The management plans provided for in Articles 9 and 10 of Regulation (EC) No 2371/2002 shall be covered by this paragraph, insofar as they involve fishing effort adjustment plans pursuant to Article 21 of Regulation (EC) No 1198/2006.

2. The measures provided for in paragraph 1 may cover the following costs:

(a) part of the fixed cost incurred by the vessel owners when the vessel is tied-up in the port (such as port charges, insurance cost, maintenance costs, financial costs related to loans);

(b) part of the basic salary of the fishers.

3. The total public aid per Member State to the measures provided for in paragraph 1 shall not exceed the higher of the following two thresholds: EUR 6 million or an amount equal to 8 % of the EFF financial assistance allocated to the sector in the Member State concerned.

Article 7

Investments on board fishing vessels and selectivity

By way of derogation from point (a) of Annex II to Regulation (EC) No 1198/2006 where a contribution is granted for the financing of equipment, including auxiliary motors, which significantly improves energy efficiency on board fishing vessels, including small scale coastal fishing vessels, and reduces emissions and contributes to the fight against climate change, the minimum private financial participation to that operation shall be 40 %.

Article 8

Socio-economic compensation

In addition to the measures provided for in Article 27 of Regulation (EC) No 1198/2006, the EFF may contribute to the financing of early departure measures, including early retirement for workers in the fisheries sector, with the exception of workers in the aquaculture sector and in the sector of processing of fisheries and aquaculture products.

Article 9

Collective actions

1. In addition to the collective actions provided for in Article 37 of Regulation (EC) No 1198/2006, the EFF may contribute to the financing of measures providing assistance for:

(a) carrying out energy audits for groups of vessels, and

(b) expert advice on the development of restructuring or modernisation plans, including Fleet Adaptation Schemes referred to in Article 12.

2. By way of derogation from point (a) of Annex II to Regulation (EC) No 1198/2006, where a contribution is granted for the financing of measures referred to in paragraph 1 of this Article, the maximum rate for public contribution shall be 100 %.

3. The EFF may contribute to the financing of compensation granted to producer organisations which are no longer entitled to benefit from aid under the second and third subparagraph of Article 10(1) of Council Regulation (EC) 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products [1], in order to offset the costs arising from the obligations imposed on them under Article 9 of the same Regulation, and subject to the conditions laid down in Article 10, paragraphs 2, 3 and 4 of that Regulation.

[1] Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products (OJ L 17, 21.1.2000, p. 22). Regulation as last amended by Regulation (EC) No 1759/2006 (OJ L 335, 1.12.2006, p. 3).

Article 10

Pilot projects

In addition to the measures provided for in Article 41(2) of Regulation (EC) No 1198/2006, the EFF may contribute to the financing of pilot projects testing technical improvements aiming at reducing energy consumption for vessels, engines, equipment or gear and at reducing emissions and contributing to the fight against climate change.

CHAPTER III

SPECIAL MEASURES APPLICABLE ONLY TO FLEETS CONCERNED BY FLEET ADAPTATION SCHEMES

Article 11

Measures applicable only to fleets subject to Fleet Adaptation Schemes

Public aid to the persons and enterprises referred to in Article 1 may be granted until 31 December 2010, according to the rules set out in this Chapter, provided they are subject to a Fleet or Fleet Segment Adaptation Scheme referred to in Article 12.

Article 12

Fleet Adaptation Schemes

1. Member States may adopt and implement Fleet Adaptation Schemes aimed at restructuring the fishing fleets or fleet segments affected by the economic crisis.

2. Fleet Adaptation Schemes may include the measures provided for in Chapter I of Title IV of Regulation (EC) No 1198/2006 and those provided for in this Regulation.

3. A Fleet Adaptation Scheme shall concern only fleets or fleet segments where the energy costs represent on average at least 30 % of the production costs, based on the trading account for the 12 months preceding 1 July 2008 for the fleet concerned by that scheme.

4. A Fleet Adaptation Scheme shall fulfil the following requirements:

(a) it shall result, by 31 December 2012 at the latest, in a permanent reduction of at least 30 % of the fishing capacity of the fleet or fleet segment covered by the scheme; that threshold may be lowered to a minimum of 20 %, subject to the approval of the Commission, where the Fleet Adaptation Scheme concerns a Member State whose fleet is less than 100 active vessels, or less than 12 000 GT, or where a Fleet Adaptation Scheme covers only vessels of less than 12 metres, and a 30 % reduction would disproportionately affect the viability of the fisheries related activities depending on it, and

(b) it shall include the list of the vessels covered by the scheme, identified by their names and Community Fishing Fleet Register numbers.

5. Each fishing vessel may be included only in one Fleet Adaptation Scheme. The conditions for including a fishing vessel in a Fleet Adaptation Scheme shall be as follows:

(a) vessels must have carried out a fishing activity of at least 120 days at sea during the two years preceding the date of the adoption of the Fleet Adaptation Scheme; and

(b) vessels must be operational on 31 July 2008.

6. By 30 June 2009 at the latest, Member States shall communicate to the Commission the Fleet Adaptation Schemes adopted.

7. When a Member State requests a revision of its operational programme for the purpose of incorporating the Fleet Adaptation Schemes, Article 18 of Regulation (EC) No 1198/2006 shall apply accordingly.

Article 13

Compliance and audit of Fleet Adaptation Schemes

1. The reports mentioned in Article 67 of Regulation (EC) No 1198/2006 shall include the results achieved in implementation of the Fleet Adaptation Schemes.

2. The Commission may perform audits on the implementation of the Fleet Adaptation Schemes. To that purpose, it may be assisted by external experts financed by the EFF under the provisions of Article 46(1) of Regulation (EC) No 1198/2006.

Article 14

Permanent cessation of fishing activities

1. For the purposes of Article 23 of Regulation (EC) No 1198/2006, Fleet Adaptation Schemes are assimilated to the fishing effort adjustment plans referred to in that Article.

2. The provisions of Article 23(2) of Regulation (EC) No 1198/2006 shall not apply to permanent cessation measures adopted in the context of a Fleet Adaptation Scheme.

3. Within six months from the adoption of a Fleet Adaptation Scheme, the vessels listed for permanent cessation of fishing activities under this Fleet Adaptation Scheme shall cease permanently their fishing activities.

Article 15

Temporary cessation of fishing activities

1. In addition to the measures provided for by Article 24 of Regulation (EC) No 1198/2006 and in Article 6 of this Regulation, the EFF may contribute to the financing of aid measures for temporary cessation of fishing activities for fishers and owners of fishing vessels included in a Fleet Adaptation Scheme, provided that the temporary cessation is implemented during the period going from 1 January 2009 to 31 December 2009 and has a maximum duration of:

(a) three months prior to the permanent withdrawal of the vessel or during the period of engine replacement; a maximum of three additional months may be granted where the process of engine replacement is still ongoing;

(b) six weeks in the case of the other vessels included in a Fleet Adaptation Scheme when those vessels are subject to one of the other measures referred to in Article 12, paragraph 2.

2. The measures provided for in paragraph 1 may cover the following costs:

(a) the fixed cost incurred by the vessel owners when the vessel is tied-up in the port (such as port charges, insurance cost, maintenance costs, financial costs related to loans);

(b) part of the basic salary of the fishers.

3. The total public aid per Member State to the measures provided for in paragraph 1 shall not exceed the higher of the following two thresholds: EUR 6 million or an amount equal to 8 % of the EFF financial assistance allocated to the sector in the Member State concerned.

Article 16

Investments on board fishing vessels and selectivity

1. By way of derogation from point (a) of Annex II to Regulation (EC) No 1198/2006, where a contribution is granted for the financing of equipment or of gear or engine replacement which significantly improves energy efficiency on board fishing vessels, including small scale coastal fishing vessels, and reduces emissions and contributes to the fight against climate change, the minimum private financial participation to that operation shall be 40 % of the total of the eligible costs of the operation.

2. Member States shall fix the minimum private financial participation referred to in paragraph 1 on the basis of objective criteria such as the age of the vessel, the energy efficiency improvement, or the amount of capacity reduction included in the Fleet Adaptation Scheme.

3. The age limit referred to in Article 25(1) of Regulation (EC) No 1198/2006 shall not apply to the vessels receiving aid under this Article for equipment or gear replacement.

4. By way of derogation from Article 25(3)(c) of Regulation (EC) No 1198/2006, the EFF may contribute to one replacement of the engine per vessel of more than 24 metres in overall length included in a Fleet Adaptation Scheme, provided that the new engine has at least 20 % less power than the old one and it increases energy efficiency.

5. By way of derogation from paragraph 7 of Article 25 of Regulation (EC) No 1198/2006, one additional replacement of gear shall be allowed to vessels included in a Fleet Adaptation Scheme under the condition that the new gear significantly improves energy efficiency. The conditions laid down in points (a) and (b) of that paragraph shall not apply.

CHAPTER IV

MEASURES FOR PARTIAL DECOMMISSIONING UNDER FLEET ADAPTATION SCHEMES

Article 17

Partial decommissioning

Public aid to vessel owners permanently withdrawing one or more vessels included in a Fleet Adaptation Scheme in order to build a new vessel of lesser fishing capacity and lesser energy consumption (hereinafter referred to as partial decommissioning) may be granted until 31 December 2010 according to the rules laid down in this Chapter, and provided that the Fleet Adaptation Scheme fulfils the following two requirements:

(a) it includes vessels using one and the same fishing gear, and

(b) it includes vessels representing at least 70 % of the capacity of the fleet using that gear in the Member State.

Article 18

Public aid for the permanent cessation of fishing in the case of partial decommissioning

1. In addition to Article 23 of Regulation (EC) No 1198/2006, vessel owners engaging in partial decommissioning shall be entitled to receive public aid for the permanent cessation of fishing activities for the difference between the capacity withdrawn and the capacity re-allocated to a new vessel.

2. The fishing capacity of the new vessel shall not be higher than 40 % of the capacity withdrawn by the vessel owners.

3. Where appropriate, Member States shall adapt the fishing licence accordingly.

Article 19

Withdrawal and reallocation of fishing capacity

1. By way of derogation from Article 11, paragraphs 3 and 4, of Regulation (EC) No 2371/2002, Member States shall be entitled to reallocate up to 25 % of the capacity permanently withdrawn in the context of a Fleet Adaptation Scheme to new vessels as referred to in Article 17 of this Regulation.

2. The reference levels referred to in Article 12 of Regulation (EC) No 2371/2002 are deducted by the difference between the capacity permanently withdrawn and the capacity reallocated.

3. The capacity reallocated under paragraph 1 of this Article need not be taken into account for the establishment of the balance of entries and exits by Member States under Article 13 of Regulation (EC) No 2371/2002.

4. In Fleet Adaptation Schemes where partial decommissioning is applied to more than 33 % of initial fleet capacity, the total reduction in capacity under the Fleet Adaptation Scheme shall be of at least 66 %.

CHAPTER V

FINANCIAL PROVISIONS

Article 20

Financial provisions

1. By way of derogation from Article 53 of Regulation (EC) No 1198/2006, the contribution from the EFF to operations financed in the context of the specific action set out in this Regulation shall be subject to a ceiling of 95 % of the total public expenditure and shall not be taken into account for the purposes of the ceilings referred to in Article 53(3) of the said Regulation.

2. By way of derogation from Article 55(1) and (3), second subparagraph, of Regulation (EC) No 1198/2006, the date of eligibility of expenditure for measures financed by this specific action shall be 31 July 2008.

3. By way of derogation from Article 81(1) of Regulation (EC) No 1198/2006, a second pre-financing amount representing 7 % of the contribution from the EFF for the period 2007 to 2013 to the operational programme shall be paid by the Commission upon request by the Member State. For operational programmes adopted in 2007, the above request shall be submitted to the Commission at the latest by 31 October 2008. For operational programmes adopted in 2008, the above request shall be submitted to the Commission at the latest by 30 June 2009. It may be spread to two financial years in accordance with the available budget of the EFF.

4. By way of derogation from Article 81(2) of Regulation (EC) No 1198/2006, where the second pre-financing amount is paid in accordance with paragraph 2 of the said Article, the total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no application for payment under the operational programme is sent within 24 months from the date on which the Commission paid the first instalment of the second pre-financing amount.

CHAPTER VI

OBLIGATIONS OF MEMBER STATES AND OF THE COMMISSION

Article 21

Follow-up and financial corrections

1. Member States shall ensure that aid granted pursuant to Chapters II, III and IV of this Regulation complies with the conditions laid down in Article 70 of Regulation (EC) No 1198/2006.

2. The Commission shall undertake the financial corrections provided for in Article 97 of Regulation (EC) No 1198/2006) if Member States fail to comply with the conditions laid down in this Regulation, in particular:

(a) the obligation of persons or enterprises receiving aid to undergo restructuring measures pursuant to Article 6(1)(b);

(b) the obligations laid down to reduce fishing capacity, and the temporary or permanent cessation of fishing activities as laid down in a Fleet Adaptation Scheme pursuant to Articles 12, 14 and 15;

(c) reductions in fishing capacity effected in the framework of partial decommissioning undertaken pursuant to Articles 17, 18 and 19.

The criteria for corrections laid down in Article 97 of Regulation (EC) No 1198/2006 shall apply accordingly.

Article 22

Report

The Commission shall report to the European Parliament and the Council on the application of the measures laid down in this Regulation by 31 December 2009 at the latest.

CHAPTER VII

FINAL PROVISIONS

Article 23

Implementing rules

The implementing rules for this Regulation may be adopted in accordance with the procedure referred to in Article 101(3) of Regulation (EC) No 1198/2006.

Article 24

Entry into force

This Regulation shall enter into force on the day 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, 24 July 2008.

For the Council
The President
B. HORTEFEUX