

REGULATION (EU) 2016/96 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 20 January 2016****amending Regulation (EU) No 1236/2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries**

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) Regulation (EU) No 1236/2010 of the European Parliament and of the Council ⁽³⁾ implements in Union law the provisions of the Scheme of control and enforcement ('the Scheme') established by a recommendation adopted by the North-East Atlantic Fisheries Commission (NEAFC) at its annual meeting on 15 November 2006, and subsequently amended by several recommendations at its annual meetings in November 2007, November 2008 and November 2009.
- (2) At its annual meeting in November 2012, NEAFC adopted Recommendation 15:2013 amending Article 13 of the Scheme, concerning the communication of transhipments and of port of landing. At its subsequent annual meeting in November 2013, NEAFC adopted Recommendation 9:2014 amending Articles 1, 20 to 25 and 28 of the Scheme, concerning, respectively, the definitions, a number of provisions applying to port state control of foreign fishing vessels and the infringement procedures. At its annual meeting in November 2014, NEAFC adopted Recommendation 12:2015 amending Recommendation 9:2014 with respect to Articles 22 and 23 of the Scheme on port state control of foreign fishing vessels.
- (3) Under Articles 12 and 15 of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, approved by Council Decision 81/608/EEC ⁽⁴⁾, Recommendation 15:2013 entered into force on 8 February 2013.
- (4) Recommendation 9:2014, as amended by Recommendation 12:2015, entered into force on 1 July 2015. Since Recommendation 9:2014 became binding on the Contracting Parties on that date, it is appropriate to align the date of application of certain provisions of this Regulation with the date of application of that Recommendation.
- (5) It is necessary to implement those Recommendations in Union law. Regulation (EU) No 1236/2010 should therefore be amended accordingly,

⁽¹⁾ OJ C 332, 8.10.2015, p. 81.

⁽²⁾ Position of the European Parliament of 15 December 2015 (not yet published in the Official Journal) and decision of the Council of 15 January 2016.

⁽³⁾ Regulation (EU) No 1236/2010 of the European Parliament and of the Council of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries and repealing Council Regulation (EC) No 2791/1999 (OJ L 348, 31.12.2010, p. 17).

⁽⁴⁾ Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1236/2010 is amended as follows:

(1) Article 3 is amended as follows:

(a) point 6 is replaced by the following:

‘6. “fishing activities” means fishing, including joint fishing operations, fish processing operations, the transshipment or landing of fishery resources or products thereof and any other commercial activity in preparation for, or related to, fishing, including packaging, transporting, refuelling or resupplying;’

(b) point 10 is replaced by the following:

‘10. “non-Contracting Party vessel” means any vessel engaged in fishing activities that is not flagged in a Contracting Party, including vessels for which there are reasonable grounds for suspecting them to be without nationality;’

(c) point 13 is replaced by the following:

‘13. “port” means any place on shore used for landing or for the provision of services in relation to, or in support of, fishing activities, or a place on or close to the shore designated by a Contracting Party for transshipping of fishery resources;’

(2) in point (d) of Article 9(1), the last sentence is replaced by the following:

‘Without prejudice to Chapter IV, at least 24 hours before any landing, the receiving vessel shall report the total catch on board, the total weight to be landed, the name of the port and the estimated date and time of landing, regardless of whether the landing is to take place in a port inside or outside the Convention Area.’;

(3) the title of Chapter IV is replaced by the following:

PORT STATE CONTROL OF FISH CAUGHT BY VESSELS FLYING THE FLAG OF ANOTHER CONTRACTING PARTY;

(4) Article 22 is replaced by the following:

Article 22

Scope

Without prejudice to Regulation (EC) No 1224/2009 and Council Regulation (EC) No 1005/2008 (*), the provisions set out in this Chapter shall apply to the use of ports of Member States by fishing vessels carrying on board fishery resources, caught in the Convention Area by fishing vessels flying the flag of another Contracting Party, that have not been previously landed or transhipped at a port.

(5) Article 23 is replaced by the following:

Article 23

Designated ports

Member States shall designate and notify the Commission of ports where the landing or transshipment of fishery resources, caught in the Convention Area by fishing vessels flying the flag of another Contracting Party, or the provision of port services to such vessels are permitted. The Commission shall notify the NEAFC Secretary of those ports and of any changes to the list of ports designated at least 15 days before the change comes into force.

Landings and transshipments of fish caught in the Convention Area by fishing vessels flying the flag of another Contracting Party as well as the provision of port services to such vessels shall be allowed only in designated ports.’;

(*) 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).;

(6) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In accordance with Article 6 of Regulation (EC) No 1005/2008, when the master of a fishing vessel carrying fish referred to in Article 22 of this Regulation intends to call into a port, the master of the vessel, or his representative, shall notify the competent authorities of the Member State of the port he wishes to use no later than 3 working days before the estimated time of arrival.

However, a Member State may make provision for another notification period, taking into account, in particular, the type of processing of the fish caught or the distance between the fishing grounds and its ports. In such a case, the Member State shall inform the Commission, or the body designated by it, and the NEAFC Secretary thereof without delay.;

(b) in paragraph 2, the first subparagraph is replaced by the following:

'2. The prior notification referred to in paragraph 1 may be cancelled by the sender by notifying the competent authorities of the port that the master wished to use no later than 24 hours before the notified estimated time of arrival in that port.;

(7) Article 25 is amended as follows:

(a) the title is replaced by the following:

'Authorisation to land or tranship and of other use of port';

(b) in paragraph 1, the introductory part is replaced by the following:

'1. In response to a notification transmitted pursuant to Article 24, the flag state of the fishing vessel intending to land or tranship or, where the fishing vessel has engaged in transshipment operations outside Union waters, the flag state or states of the donor vessels, shall, by completing the prior notification referred to in Article 24, confirm that.;

(c) paragraph 2 is replaced by the following:

'2. Landing or transshipment operations may only start after authorisation has been given by the competent authorities of the port Member State by duly completing the prior notification referred to in Article 24. Such authorisation shall only be given if the confirmation from the flag state referred to in paragraph 1 has been received.;

(d) the following paragraph is inserted:

'3a. Landing, transshipment and other use of port shall not be authorised if the port Member State receives clear evidence that the catch on board was taken in contravention of applicable requirements of a Contracting Party in respect of areas under its national jurisdiction.;

(e) paragraph 4 is replaced by the following:

'4. The competent authorities of the port Member State shall without delay notify their decision on whether or not to authorise the landing, transshipment and other use of port to the master of the vessel or his representative and to the flag state of the vessel by completing as appropriate the prior notification referred to in Article 24 and shall inform the NEAFC Secretary thereof.;

(8) Article 26 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall carry out inspections of at least 5 % of landings or transshipments of fresh fish and at least 7,5 % of frozen fish in its ports during each reporting year, on the basis of risk management that takes into consideration the general guidelines outlined in Annex II.;

(b) the following paragraph is inserted:

'1a. Inspections shall be conducted in a fair, transparent and non-discriminatory manner and shall not constitute harassment of any vessel.;

- (c) paragraph 2 is replaced by the following:
- '2. Inspectors shall examine all relevant areas of the vessel in order to verify compliance with the relevant conservation and management measures. Inspections shall be conducted in accordance with the procedures laid down in Annex III.;
- (d) the following paragraph is inserted:
- '2a. Each Member State shall make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including, where possible and where needed by ensuring that the inspector is accompanied by an interpreter.;
- (e) the following paragraph is inserted:
- '3a. National inspectors shall not interfere with the master's ability to communicate with the authorities of the flag state.;
- (f) paragraph 4 is replaced by the following:
- '4. The port Member State may invite inspectors of other Contracting Parties to accompany its own inspectors and observe the inspection.;
- (9) in Article 29(2), the following sentence is added:
- 'Where appropriate, the Member State carrying out the inspection shall also communicate the findings of that inspection to the Contracting Party in whose waters the infringement took place and the state of which the vessel's master is a national.;
- (10) the Annex becomes Annex I;
- (11) a new Annex II is added as set out in Annex I to this Regulation;
- (12) a new Annex III is added as set out in Annex II to this Regulation.

Article 2

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

However, points 1 and 4 to 12 of Article 1 shall apply from 1 July 2015.

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

Done at Strasbourg, 20 January 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

A.G. KOENDERS

ANNEX I

The following Annex is added to Regulation (EU) No 1236/2010:

ANNEX II

GENERAL GUIDELINES FOR RISK MANAGEMENT IN RELATION TO PORT MEMBER STATE CONTROL

Risk management means the systematic identification of risks and the implementation of all measures necessary for limiting the occurrence of those risks. This includes activities such as collecting data and information, analysing and assessing risks, preparing and taking action and regular monitoring and review of the process and its outcomes.

On the basis of its risk assessment, each port Member State defines its risk-management strategy to facilitate compliance with this Regulation. That strategy should encompass the identification, description and allocation of appropriate cost-effective control instruments and inspection means, in relation to the nature and the estimated level of each risk, and the achievement of target benchmarks.

Risk-assessment and management criteria are laid down for checking, inspection and verification activities in order to allow timely risk analyses and general assessments of relevant control and inspection information.

Individual fishing vessels, groups of fishing vessels, operators, and/or fishing activity, on different species and in different parts of the Convention Area are subject to control and inspections in accordance with the level of risk attributed, using, *inter alia*, the following general assumptions of risk-level criteria in relation to the port Member State control of landings and transshipments in port:

- (a) catches taken by a non-Contracting Party vessel;
 - (b) frozen catches;
 - (c) catches of a large volume;
 - (d) catches previously transhipped at sea;
 - (e) catches taken outside the waters under the jurisdiction of Contracting Parties, i.e. in the Regulatory Area;
 - (f) catches taken both inside and outside the Convention Area;
 - (g) catches of high value species;
 - (h) catches of fishery resources for which there are particularly limited fishing opportunities;
 - (i) number of inspections previously carried out and number of detected infringements for a vessel and/or operator.
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ANNEX II

The following Annex is added to Regulation (EU) No 1236/2010:

ANNEX III

PORT MEMBER STATE INSPECTION PROCEDURES

National inspectors shall:

- (a) verify that the vessel identification documentation on board and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag state or international records of vessels if necessary;
 - (b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organisation (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
 - (c) verify that the authorisations for fishing and fishing-related activities are true, complete, correct and consistent with the information provided in accordance with Article 24;
 - (d) review all other relevant documentation and records held on board, including those in electronic format and vessel monitoring system (VMS) data from the flag state or relevant regional fisheries management organisations. Relevant documentation may include logbooks, catch, transshipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
 - (e) examine all relevant fishing gear on board, including any gear stowed out of sight as well as related devices, and verify that they are in conformity with the conditions of the authorisations. The fishing gear shall also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorised for the vessel;
 - (f) determine whether the fish on board were harvested in accordance with the applicable authorisations;
 - (g) monitor the entire discharge or transshipment and cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped;
 - (h) examine the fish, including by sampling, to determine their quantity and composition. In doing so, inspectors may open containers where the fish have been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;
 - (i) when the landing or transshipment is completed, verify and note the quantities by species of fish remaining on board;
 - (j) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing-related activities in support of such fishing;
 - (k) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag state, in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and
 - (l) arrange, where necessary and possible, for the translation of relevant documentation.'
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