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

REGULATION (EU) 2017/2403 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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.

(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[(6)]. 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

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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[7] (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,

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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.

(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[(8)] (the 'IUU Regulation') was adopted in parallel to the FAR, and Council Regulation (EC) No 1224/2009[(9)] ('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 SFPA ('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

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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 SFPA is in force. In both cases these activities should be carried out in a transparent and sustainable way. Flag Member 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 starts 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 3 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 underutilised 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.

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(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) Transhipments at sea escape any proper control by flag or coastal states and therefore constitute a possible way for operators to carry illegal catch. Transhipments 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 transhipment 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[(10)], Directive 95/46/EC of the European Parliament and of the Council[(11)] 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.