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

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.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/96 of the European Parliament and of the Council. (See end of Document for details)*

(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,

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 transhipment 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 transhipping 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[(5)], 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 transhipment 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 transhipments 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.;

(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 transhipment 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 transhipment 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, transhipment 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, transhipment 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 transhipments 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