Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing

REGULATION (EU) No 1026/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing

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) and Article 207 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) As provided in the United Nations Convention on the Law of the Sea of 10 December 1982 ('UNCLOS') and in the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 ('UNFSA'), the management of certain shared, straddling and highly migratory fish stocks requires the cooperation of all the countries in whose waters the stock occurs (the coastal States) and the countries whose fleets exploit that stock (the fishing States). This cooperation may be established in the framework of regional fisheries management organisations ('RFMOs') or, where RFMOs have no competence for the stock in question, by means of ad hoc arrangements among the countries having an interest in the fishery.

(2) Where a third country with an interest in a fishery involving a stock of common interest to that country and to the Union allows, without due regard to existing fishing patterns or the rights, duties and interests of other countries and the Union, fisheries activities that jeopardise the sustainability of that stock, and fails to cooperate with other countries and the Union in its management, specific measures should be adopted in order to encourage that country to contribute to the conservation of that stock.

(3) Fish stocks should be considered to be in an unsustainable state when they are not continuously maintained at or above the levels that can produce maximum sustainable yield or, if these levels cannot be estimated, when the stocks are not continuously maintained within safe biological limits.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1026/2012 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) It is necessary to define the conditions upon which a country can be considered to be a country allowing non-sustainable fishing and subject to measures under this Regulation, including a process granting the countries concerned the right to be heard and allowing them an opportunity to adopt corrective action.

(5) In addition, it is necessary to define the type of measures that may be taken with regard to countries allowing non-sustainable fishing and to establish general conditions for the adoption of such measures, so that they are based on objective criteria and are equitable, cost-effective and compatible with international law, in particular with the Agreement establishing the World Trade Organisation.

(6) Such measures should aim to remove the incentives for countries allowing non-sustainable fishing to fish the stock of common interest. This can be achieved inter alia by restricting the importation of fish products caught by vessels conducting fisheries on a stock of common interest under the control of the country allowing non-sustainable fishing, by restricting the access to ports for those vessels, or by preventing Union fishing vessels or Union fishing equipment from being used for fishing the stock of common interest under the control of the country allowing non-sustainable fishing.

(7) In order to ensure that Union action for the conservation of fish stocks is effective and coherent, it is important that the measures set out in Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[(3)] are taken into consideration.

(8) In order to guarantee that measures adopted against a country under this Regulation are environmentally sound, effective, proportionate and compatible with international rules, it is necessary for their adoption to be preceded by an evaluation of their expected environmental, trade, economic and social effects.

(9) If measures adopted against a country under this Regulation are ineffective and that country continues to be considered to be a country allowing non-sustainable fishing, further measures may be adopted in accordance with this Regulation.

(10) The measures adopted against a country under this Regulation should cease to apply when the country allowing non-sustainable fishing has adopted the measures necessary for its contribution to the conservation of the stock of common interest.

(11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to identifying a country allowing non-sustainable fishing, to adopting measures in respect of such country and to deciding that such measures should cease to apply. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(4)].

(12) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the end of application of measures taken pursuant to this Regulation, imperative grounds of urgency so require,

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HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation lays down a framework for the adoption of certain measures regarding the fisheries-related activities and policies of third countries in order to ensure the long-term conservation of stocks of common interest to the Union and those third countries.

2 The measures adopted pursuant to this Regulation may apply in all cases where cooperation between third countries and the Union is required for the joint management of the stocks of common interest, including where that cooperation takes place in the context of an RFMO or a similar body.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) ‘stock of common interest’ means a fish stock the geographical distribution of which makes it available to both the Union and third countries and the management of which requires the cooperation between such countries and the Union, in either bilateral or multilateral settings;

(b) ‘associated species’ means any fish that belongs to the same ecosystem as the stock of common interest and that preys upon that stock, is preyed on by it, competes with it for food and living space or co-occurs with it in the same fishing area, and that is exploited or accidentally taken in the same fishery or fisheries;

(c) ‘regional fisheries management organisation’ or ‘RFMO’ means a sub-regional, regional or a similar organisation with competence under international law to establish conservation and management measures for living marine resources placed under its responsibility by virtue of the convention or agreement by which it was established;

(d) ‘importation’ means the introduction of fish or fishery products into the territory of the Union, including for transhipment purposes at ports in its territory;

(e) ‘transhipment’ means the unloading of all or any fish or fishery products on board a fishing vessel to another fishing vessel;

(f) ‘unsustainable state’ means the condition where the stock is not continuously maintained at or above the levels that can produce maximum sustainable yield or, if these levels cannot be estimated, where the stock is not continuously maintained within safe biological limits; the stock levels determining whether the stock is in an unsustainable state are to be determined on the basis of best available scientific advice;

(g) ‘safe biological limits’ means the boundaries of the size of a stock within which the stock can replenish itself with high probability while allowing high yield fisheries on it;

(h) ‘country’ means a third country, including territories enjoying self-governing status and endowed with competencies in the area of conservation and management of living marine resources.

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Article 3

Countries allowing non-sustainable fishing

A country may be identified as a country allowing non-sustainable fishing where:

(a) it fails to cooperate in the management of a stock of common interest in full compliance with the provisions of the UNCLOS and the UNFSA, or any other international agreement or norm of international law; and

(b) either:

(i) it fails to adopt necessary fishery management measures; or

(ii) it adopts fishery management measures without due regard to the rights, interests and duties of other countries and the Union, and those fishery management measures, when considered in conjunction with measures taken by other countries and the Union, lead to fishing activities which could result in the stock being in an unsustainable state. This condition is considered to be complied with also where the fishery management measures adopted by that country did not lead to the stock being in an unsustainable state solely due to measures adopted by others.

Article 4

Measures in respect of countries allowing non-sustainable fishing

1 The Commission may adopt, by means of implementing acts, the following measures in respect of a country allowing non-sustainable fishing:

a identifying that country as a country allowing non-sustainable fishing;

b identifying, where necessary, the specific vessels or fleets of that country to which certain measures are to apply;

c imposing quantitative restrictions on importations of fish from the stock of common interest that have been caught under the control of that country and on importations of fishery products made of or containing such fish;

d imposing quantitative restrictions on importations of fish of any associated species, and fishery products made of or containing such fish, when caught while conducting fisheries on the stock of common interest under the control of that country; when adopting the measure, the Commission shall, in accordance with Article 5(4) of this Regulation, in application of the principle of proportionality, determine which species and their catches fall within the scope of the measure;

e imposing restrictions on the use of Union ports by vessels flying the flag of that country that fish the stock of common interest and/or associated species and by vessels transporting fish and fishery products stemming from the stock of common interest and/or associated species that have been caught either by vessels flying the flag of that country or by vessels authorised by it while flying another flag; such restrictions shall not apply in cases of *force majeure* or distress within the meaning of Article 18 of the UNCLOS for services strictly necessary to remedy those situations;

f prohibiting the purchase by Union economic operators of a fishing vessel flying the flag of that country;