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

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

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,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The Convention on future multilateral cooperation in the North-East Atlantic fisheries (the Convention), was approved by the Council in Decision 81/608/EEC[(3)] and entered into force on 17 March 1982.

(2) The Convention provides for an appropriate framework for multilateral cooperation on the rational conservation and management of fishery resources in the Area defined by the Convention (the Convention Area).

(3) The North-East Atlantic Fisheries Commission (NEAFC), at its Annual Meeting on 15 November 2006, adopted a recommendation establishing a scheme of control and enforcement (the Scheme) applicable to fishing vessels operating in the waters of the Convention Area which lie beyond the waters under the fisheries jurisdiction of the Contracting Parties (the Regulatory Area). The Scheme, which came into force on 1 May 2007, was amended by several recommendations at the Annual Meetings in November 2007, 2008 and 2009.

(4) Under Articles 12 and 15 of the Convention, these recommendations came into force on 9 February 2008, 6 and 8 January 2009, and 6 February 2010 respectively.

(5) The Scheme provides for control and enforcement measures applicable to vessels flying the flag of Contracting Parties and operating in the Regulatory Area, and arrangements for inspection at sea which include inspection and surveillance procedures and infringement procedures which must be implemented by the Contracting Parties.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1236/2010 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*

(6) The Scheme provides for a new Port State Control system which will effectively close European ports to landings and transhipments of frozen fish which have not been verified to be legal by the flag state of fishing vessels flying the flag of a Contracting Party other than the port state.

(7) Certain control provisions adopted by NEAFC have been incorporated into Union law by way of the yearly TAC and quotas Regulation, and most recently by Council Regulation (EC) No 43/2009 of 16 January 2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required[(4)]. For the sake of legal certainty, such provisions which are not of a temporary nature should be the subject of a new separate regulation.

(8) The Scheme also comprises provisions to promote compliance by vessels flying the flag of a non-Contracting Party with the control and enforcement measures in order to ensure full respect of conservation and management measures adopted by NEAFC. NEAFC recommended removing a number of vessels from the list of vessels that have been confirmed to have engaged in illegal, unreported and unregulated fisheries. The incorporation of those recommendations into Union law should be ensured.

(9) Article 5(2) of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy[(5)] provides that Member States shall control access to waters and resources and control activities outside EU waters carried out by vessels flying their flag. Provision should therefore be made for Member States whose vessels are authorised to fish in the Regulatory Area to assign inspectors to the Scheme to undertake monitoring and surveillance as well as adequate resources for inspection.

(10) In order to ensure the monitoring of fishing activities in the Convention Area, it is necessary for Member States to cooperate with one another and with the Commission and the body designated by it in applying the Scheme.

(11) It is the responsibility of Member States to ensure that their inspectors comply with the inspection procedures laid down by NEAFC.

(12) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) in respect of detailed rules concerning lists of the fishery resources to be notified, procedures for prior notification of entry into port and for the cancellation thereof as well as authorisation to land or tranship. The Commission should also be empowered to adopt delegated acts in respect of the incorporation into Union law of future amendments of those measures of the Scheme which form the subject matter of certain expressly defined non-essential elements of this Regulation and which become binding upon the Union in accordance with the terms of the Convention. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(13) The measures necessary for the implementation of this Regulation should be adopted by the Commission by means of implementing acts in accordance with Article 291

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1236/2010 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*

TFEU. According to that Article, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(6)] continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(14) As this Regulation will establish new rules concerning control and enforcement in the Convention Area, Council Regulation (EC) No 2791/1999 of 16 December 1999 laying down certain control measures applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries[(7)] should be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the general rules and conditions for the application by the Union of the Scheme adopted by NEAFC.

Article 2

Scope

Unless otherwise stated, this Regulation shall apply to all EU vessels used or intended for use for fishing activities carried out in respect of fishery resources in the Regulatory Area.

Article 3

Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. 'Convention' means the Convention on future multilateral cooperation in North-East Atlantic fisheries, as amended;

2. 'Convention Area' means the Convention Area as defined in Article 1(1) of the Convention;

3. 'Regulatory Area' means the waters of the Convention Area which lie beyond the waters under the fisheries jurisdiction of the Contracting Parties;

4. 'Contracting Parties' means the Contracting Parties to the Convention;

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1236/2010 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*

5. 'NEAFC' means the North-East Atlantic Fisheries Commission;

6. **[**F1'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;**]**

7. 'fishery resources' means the resources referred to in Article 1(2) of the Convention;

8. 'regulated resources' means those fishery resources which are subject to recommendations under the Convention and are listed in the Annex;

9. 'fishing vessel' means any vessel used or intended for use for the purposes of the commercial exploitation of fishery resources, including fish processing vessels and vessels engaged in transhipment;

10. **[**F1'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;**]**

11. 'joint fishing operation' means any operations between two or more vessels where catch is taken from the fishing gear of one fishing vessel to another;

12. 'transhipment operation' means the unloading of all or any fishery products on board a fishing vessel onto another fishing vessel;

13. **[**F1'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.**]**

Textual Amendments

F1 Substituted by 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.

Article 4

Contact points

1 Member States shall designate the competent authority which shall act as the contact point for the purposes of receiving surveillance and inspection reports in accordance with Articles 12, 19, 20 and 27 and for receiving notifications and issuing authorisations in accordance with Articles 24 and 25.

2 Contact points for receiving notifications and issuing authorisations in accordance with Articles 24 and 25 shall be available 24 hours a day.

3 Member States shall send to the Commission or to the body designated by it and to the NEAFC Secretary the telephone number, e-mail address and fax number of the designated contact point.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1236/2010 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 Any subsequent changes to the information concerning the contact points referred to in paragraphs 1 and 3 shall be notified to the Commission or the body designated by it and to the NEAFC Secretary no later than 15 days before the change comes into force.

5 The format for transmission of the information referred to in paragraphs 1 and 3 shall be established in accordance with Article 50(2).

CHAPTER II

MONITORING MEASURES

Article 5

Union participation

1 Member States shall send to the Commission, in a computer-readable form, a list of all vessels flying their flag and registered in the Union which are authorised to fish in the Regulatory Area, in particular the vessels authorised to fish directly for one or more regulated resources together with any amendments to the list. This information shall be sent no later than 15 December each year or no later than 5 days before the vessel enters the Regulatory Area. The Commission shall forward the information promptly to the NEAFC Secretary.

2 The format for transmission of the list referred to in paragraph 1 shall be determined in accordance with Article 50(2).

Article 6

Marking of gear

1 Member States shall ensure that gear used by their fishing vessels in the Regulatory Area is marked in accordance with Commission Regulation (EC) No 356/2005 of 1 March 2005 laying down detailed rules for the marking and identification of passive fishing gear and beam trawls[(8)].

2 Member States may remove and dispose of fixed gear that is not marked in accordance with Regulation (EC) No 356/2005 or that contravenes in any other way recommendations adopted by NEAFC, as well as fish that are found in the gear.

Article 7

Retrieval of lost gear

1 The competent authority of the flag Member State shall send without delay to the NEAFC Secretary the information provided to it pursuant to Article 48(3) of Regulation (EC) No 1224/2009 as well as the call sign of the vessel that has lost the gear.

2 Member States shall undertake to retrieve on a regular basis lost gears belonging to vessels flying their flag.