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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU) No 1236/2010 of the European Parliament and of the Council
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**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

This proposal seeks to amend the EU rules transposing the Scheme of control and enforcement adopted by the North East Atlantic Fisheries Commission (NEAFC).

• General context

The Convention on Future Multilateral Cooperation in North East Atlantic Fisheries to which the European Union is a Contracting Party aims to ensure the long term conservation and optimum utilisation of the fishery resources of the North East Atlantic area, providing sustainable, environmental and social benefits.

For the purpose of ensuring the application of this Convention and recommendations adopted by the North East Atlantic Commission (NEAFC), measures concerning control and enforcement relating to fisheries concerned may be adopted. The Scheme of control and enforcement contains such measures and applies to all vessels used or intended for use for fishing activities conducted on fishery resources in areas defined in the Convention.

Regulation (EU) No 1236/2010 transposes into Union law the Scheme of control and enforcement adopted by the NEAFC. This regulation lays down certain specific control measures to monitor fishing activities in the area covered by the Convention on Future Multilateral Cooperation in North East Atlantic Fisheries and supplements the control measures provided for in 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,¹ and in Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing².

At its Annual Meetings in 2012 and 2013, NEAFC adopted recommendations amending the Scheme of control and enforcement. The main change, operated by Recommendation 9/2014, is the alignment of the Scheme with the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU, approved by the EU in 2011. Contracting Parties have agreed that this recommendation will enter into force on 1 July 2015. The other change, made through Recommendation 15/2013, clarifies that vessels involved in a transshipment operation in the Regulatory Area as receiving vessel shall communicate the port of landing regardless of whether the landing is to take place in a port inside or outside the Convention Area. At its Annual Meeting in November 2014, NEAFC adopted Recommendation 12/2015 amending Recommendation 9/2014 with respect to notification procedures on Port State Control of foreign fishing vessels with the aim to adapt them for the switch-over from a paper based system to a modern web-based ICT application, operated by the NEAFC Secretary.

Recommendation 15/2013 came into force in 2013 and Recommendation 9/2014 as amended by Recommendation 12/2015 will enter into force on 1 July 2015. Both Recommendations are binding on the Contracting Parties under the terms of the NEAFC Convention. The EU, as a Contracting Party, should consequently apply them.

These Recommendations were adopted with the full support of the EU in NEAFC. It is in the EU's interest therefore that they be introduced in Union law by means of the proposed regulation.

¹ OJ L 343 22.12.2009, p.1

² OJ L 286, 29.10.2008, p.1

- **Existing provisions in the area of the proposal**

Regulation (EU) No 1236/2010 of the European Parliament and of the Council 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 transposes into Union law the Scheme of control and enforcement adopted by the NEAFC. It should then be amended in order to incorporate into Union law amendments to the Scheme which become obligatory for the Union.

Measures to implement Regulation (EU) No 1236/2010 were adopted through Commission Implementing Regulation (EU) No 433/2012 of 23 May 2012 laying down detailed rules for the application of Regulation (EU) No 1236/2010 of the European Parliament and of the Council 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.

Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the "IUU Regulation") applies since 1 January 2010.

- **Consistency with the other policies and objectives of the Union**

This proposal is, in keeping with the general pattern of the sustainable exploitation of fisheries resources, in compliance with the objectives of the common fisheries policy and contributes to sustainable development.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Not applicable

Summary of responses and how they have been taken into account

Not applicable

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Not applicable

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Transpose into Union law amendments to the Scheme of control and enforcement adopted by NEAFC.

- **Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal incorporates into Union law amendments to the Scheme as adopted in NEAFC Recommendations 15/2013 and 9/2014 as amended by Recommendation 12/2015. These recommendations are binding for the Contracting Parties to NEAFC and consequently for the EU. Therefore, no concern on the principle of proportionality arises.

- **Choice of instruments**

Proposed instrument: regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: Recommendations adopted by regional fisheries management organisations are transposed in European Parliament and Council regulations, unless the powers to transpose them have been delegated to the Commission, which is not the case for the concerned Recommendations.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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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 Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 1236/2010 incorporates into 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 the Annual Meetings in November 2007, 2008 and 2009.
- (2) At its Annual Meeting in November 2012, NEAFC adopted Recommendation 15:2013 amending Article 13 of the Scheme, concerning the communication of transshipments 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, Recommendation 15:2013 came into force on 8 February 2013.
- (4) Pursuant to its provisions, Recommendation 9:2014 as amended by Recommendation 12:2015 will enter into force on 1 July 2015.
- (5) It is necessary to transpose those Recommendations into Union law. Regulation (EU) No 1236/2010 should therefore be amended accordingly,

³ OJ C , , p . .

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 fisheries resources or products thereof and any other commercial activity in preparation for, or related to, fishing, including *inter alia*, packaging, transporting, refuelling or re-supplying;'

(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 fisheries resources;'

(2) In Article 9(1)(d), 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 heading 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.'

(*) Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, p. 1).

(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.'

(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 three 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:

'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 heading is replaced by the following:

'Article 25

Authorisation to land or tranship and other use of port'

(b) In paragraph 1, the introductory sentence 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 3a 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 1a 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 2a 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 that the inspector is accompanied by an interpreter.'

(e) The following paragraph 3a 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 such 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 heading of the Annex is replaced by the following:

'ANNEX I

REGULATED RESOURCES'.

(11) A new Annex II is added as set out in Annex 1 to this Regulation.

(12) A new Annex III is added as set out in Annex 2 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, Article 1(1), (4), (5), (6), (7), (8), (9), (10), (11) and (12) shall apply from 1 July 2015.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President