

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

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.

(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.

⁽¹⁾ OJ C 229, 31.7.2012, p. 112.

⁽²⁾ Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 25 September 2012.

⁽³⁾ OJ L 286, 29.10.2008, p. 1.

- (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 ⁽¹⁾.
- (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,
- (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;

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;

- (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.

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

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

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;
- (g) prohibiting the reflagging of fishing vessels flying the flag of a Member State to the flag of that country;
- (h) prohibiting Member States from authorising the conclusion of chartering agreements whereby Union economic operators charter their vessels to economic operators of that country;
- (i) prohibiting the exportation to that country of fishing vessels flying the flag of a Member State or of fishing equipment and supplies needed to fish on the stock of common interest;

(j) prohibiting the conclusion of private trade arrangements between Union economic operators and that country that enable a fishing vessel flying the flag of a Member State to use fishing opportunities of that country;

(k) prohibiting joint fishing operations involving fishing vessels flying the flag of a Member State and fishing vessels flying the flag of that country.

2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(2).

Article 5

General requirements concerning the measures adopted pursuant to this Regulation

1. The measures referred to in Article 4 shall be:

- (a) related to the conservation of the stock of common interest;
- (b) made effective in conjunction with restrictions on fishing by Union vessels, or on production or consumption within the Union, applicable to fish and fishery products made of or containing such fish of the species for which the measures have been adopted;
- (c) proportionate to the objectives pursued and compatible with the obligations imposed by international agreements to which the Union is a party and any other relevant norms of international law.

2. The measures referred to in Article 4 shall take into account measures already taken pursuant to Regulation (EC) No 1005/2008.

3. The measures referred to in Article 4 shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

4. When adopting the measures referred to in Article 4, the Commission shall, in order to ensure that those measures are environmentally sound, effective, proportionate and compatible with international rules, evaluate the environmental, trade, economic and social effects of those measures in the short and long terms and the administrative burden associated with their implementation.

5. The measures referred to in Article 4 shall provide for an appropriate system for their enforcement by competent authorities.

Article 6

Procedures prior to the adoption of measures in respect to countries allowing non-sustainable fishing

1. Where the Commission considers that it is necessary to adopt measures referred to in Article 4, it shall notify the country concerned of the intention to identify it as a country

allowing non-sustainable fishing. In such cases, the European Parliament and the Council shall be immediately informed.

2. That notification shall include information on the reasons for the identification of that country as a country allowing non-sustainable fishing and shall describe the possible measures that may be taken in relation to it pursuant to this Regulation.

3. Prior to adopting measures referred to in Article 4, the Commission shall provide the country concerned with a reasonable opportunity to respond to the notification in writing and to remedy the situation within one month of receiving that notification.

Article 7

Period of application of the measures in respect to countries allowing non-sustainable fishing

1. The measures referred to in Article 4 shall cease to apply when the country allowing non-sustainable fishing adopts appropriate corrective measures necessary for the conservation and management of the stock of common interest and those corrective measures:

- (a) have either been adopted autonomously or have been agreed in the context of consultations with the Union and, where applicable, other countries concerned; and
- (b) do not undermine the effect of measures taken by the Union either autonomously, or in cooperation with other countries, for the purpose of the conservation of the fish stocks concerned.

2. The Commission shall adopt implementing acts determining whether the conditions laid down in paragraph 1 have been complied with and, where necessary, providing that the measures adopted in respect of the country concerned pursuant to Article 4 cease to apply. Those implementing acts

shall be adopted in accordance with the examination procedure referred to in Article 8(2).

On duly justified imperative grounds of urgency relating to unforeseen economic or social disruption, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 8(3) to decide that the measures adopted pursuant to Article 4 are to cease to apply.

Article 8

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

4. The results of the evaluation referred to in Article 5(4), shall be made available to the European Parliament and the Council, in accordance with the procedure provided for in Article 10(4) of Regulation (EU) No 182/2011, together with the documents referred to therein.

Article 9

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

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

Done at Strasbourg, 25 October 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

A. D. MAVROYIANNIS